



New South Wales

Childcare and Economic Opportunity Fund Bill 2022

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2022



New South Wales

Childcare and Economic Opportunity Fund Bill 2022

Act No _____, 2022

An Act to provide for financial assistance for the purposes of the provision of affordable and accessible childcare.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name of Act

This Act is the *Childcare and Economic Opportunity Fund Act 2022*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Definitions

In this Act—

appointed member—see section 9(3)(c).

Board—see section 9(1).

Chairperson means the Chairperson of the Board.

childcare means the type of care provided by an education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)*.

commissioned person—see section 5(1).

Education Secretary means the Secretary of the Department of Education.

financial year means a year ending on 30 June.

Fund—see section 16.

market monitoring report means a report prepared under section 5.

officer of the Board—see section 11(2).

program guidelines—see section 14(1)(b).

strategic investment plan—see section 13(1).

Note— The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

4 Objective of Act

- (1) The principal objective of this Act is to increase participation in the State's workforce, particularly for women, by making quality childcare more affordable and accessible.
- (2) To achieve this object, this Act aims to—
 - (a) reduce barriers to parents and carers participating in work, and
 - (b) improve affordability and accessibility of childcare, and
 - (c) support the early childhood education and care workforce and sector.

Part 2 Independent market monitoring reports

5 Preparation of independent reports

- (1) The Minister must commission a person (the *commissioned person*) to undertake a review into the childcare sector market, including by reviewing—
 - (a) areas where the commissioned person considers—
 - (i) there are childcare supply shortages, or
 - (ii) there are higher barriers to parents or carers participating in work because of the affordability or accessibility, or both, of childcare, and
 - (b) the state of the childcare sector, including the following—
 - (i) workforce,
 - (ii) pay and conditions,
 - (iii) quality standards in the childcare sector.
- (2) After undertaking the review, the commissioned person must—
 - (a) prepare a report setting out the findings of the review, including the matters set out in subsection (1)(a) and (b), and
 - (b) give the report to the Minister.
- (3) The review and report must be—
 - (a) undertaken and prepared every 2 years or other period prescribed by the regulations, and
 - (b) tabled in each House of Parliament with the annual report tabled under section 22.
- (4) The commissioned person must—
 - (a) be independent from the Board, and
 - (b) have the expertise prescribed by the regulations.
- (5) Different commissioned persons may be commissioned for different years.
- (6) The Independent Pricing and Regulatory Tribunal of New South Wales may be a commissioned person but only with the consent of the Minister administering the *Independent Pricing and Regulatory Tribunal Act 1992*.
- (7) Regulations may be made about reviews and reports including the following—
 - (a) additional matters that must be considered or included,
 - (b) the times within which a report must be prepared and given to the Minister,
 - (c) requirements for consultation, if any,
 - (d) the period for which a report remains in force.

6 Report to contain estimated cost of scheme

- (1) A market monitoring report must include an estimate of the amount required to achieve the objective of this Act and otherwise fund the Board for at least the next 2 financial years after the date on which the report is given to the Minister.
- (2) The estimated amount must not be more than the cap specified in Schedule 1, section 3.
- (3) An estimated amount is not required for a financial year for which an amount is appropriated under section 18.
- (4) If 2 reports contain different estimated amounts for the same financial year, the estimated amount in the later report is to be used.

7 Requirement to give information and answer questions

- (1) A commissioned person may require another person to—
 - (a) give the commissioned person information the commissioned person reasonably requires for the preparation of a market monitoring report (*relevant information*), or
 - (b) answer questions in relation to relevant information if the commissioned person believes on reasonable grounds that the other person has knowledge of the relevant information.
- (2) A commissioned person may require a person to give information or to answer questions under this section only if the commissioned person—
 - (a) has made reasonable efforts to obtain the information without using this section, including by seeking information from the Department of Education and other government agencies of NSW or the Commonwealth, and
 - (b) has been unable to obtain the information.
- (3) The requirement under subsection (1)(a) must be in a written notice given to the other person and must specify the following—
 - (a) the information that must be given,
 - (b) the form in which the information must be given,
 - (c) the time within which the information must be given.
- (4) The commissioned person may, by written notice, require the other person to attend at a specified place and time to answer questions under subsection (1)(b) if—
 - (a) attendance at the place is reasonably required for the questions to be properly put and answered, and
 - (b) the place and time is a reasonable place and time—
 - (i) nominated by the other person, or
 - (ii) if a reasonable place and time is not nominated by the other person—nominated by the commissioned person.
- (5) Relevant information may include information about the following—
 - (a) current and planned childcare services,
 - (b) costs of childcare services, including the cost of providing childcare services,
 - (c) demand for childcare services,
 - (d) legal, economic or other barriers to the provision of childcare services,
 - (e) information prescribed by the regulations.
- (6) Persons who may be required to give information or to answer questions under this section include the following—
 - (a) persons who own, control or operate childcare services,
 - (b) persons who use childcare services,
 - (c) persons who work in the childcare sector,
 - (d) persons who have expert knowledge about the childcare sector,
 - (e) persons prescribed by the regulations.

8 Information obtained by commissioned person

- (1) The commissioned person is authorised, despite any Act or law, to disclose information obtained under section 7 to the Board in a market monitoring report or otherwise.

- (2) Information disclosed to the Board, that the commissioned person would not be permitted to disclose to the Board except for subsection (1), must not be disclosed by the Board or a member or officer of the Board other than—
 - (a) to the Board or a member or officer of the Board, or
 - (b) if disclosure of the information is legally authorised or required under another Act or law.
- (3) Regulations may make provision about the use or disclosure of information obtained for the purposes of a market monitoring report.

Part 3 The Board

9 Establishment of Board

- (1) The NSW Childcare and Economic Opportunity Fund Board (the *Board*) is established.
- (2) The Board is a statutory body representing the Crown.
- (3) The Board is to consist of the following members—
 - (a) the Education Secretary or an employee of the Department of Education nominated by the Education Secretary,
 - (b) the Secretary of the Treasury or an employee of the Treasury nominated by the Secretary,
 - (c) 3 other members (*appointed members*) who are appointed by the Minister with the concurrence of the Treasurer.
- (4) A nomination under this section must be written.
- (5) The Education Secretary or the Education Secretary's nominee is the Chairperson of the Board.
- (6) An act, matter or thing done in the name of, or on behalf of, the Board by the Chairperson is taken to have been done by the Board.
- (7) The Board may establish subcommittees.
- (8) A subcommittee may include persons who are not members of the Board.
- (9) Regulations may be made about the members and procedure of the Board, including the following—
 - (a) voting,
 - (b) quorum,
 - (c) codes of conduct.

10 Appointed members

- (1) The appointed members must have—
 - (a) the experience or expertise prescribed by the regulations, or
 - (b) if no experience or expertise is prescribed—experience or expertise in the childcare sector.
- (2) One of the appointed members must be employed in the Department of Education.
- (3) At least one of the appointed members must have experience or expertise in childcare.
- (4) At least one of the appointed members must have experience or expertise in childcare sector workforce issues.
- (5) An appointed member holds office for the period specified in the appointed member's instrument of appointment.
- (6) The period specified must not be more than 3 years.
- (7) An appointed member may be reappointed at the end of the specified period if the appointed member would otherwise be eligible to be appointed at that time.
- (8) An appointed member may not be reappointed more than once.
- (9) Regulations may be made about the appointment of appointed members.

11 Staff and facilities

- (1) The Board may, with the approval of the Minister, arrange for the use of the services of the staff or facilities of a government sector agency.
- (2) Staff used are taken to be *officers of the Board*.

12 Functions

- (1) The Board has the following functions—
 - (a) to develop strategic investment plans for its activities, that include types of programs for which financial assistance will be provided to help achieve the objective of this Act,
 - (b) to develop programs of the type set out in the plan,
 - (c) to administer the programs, including by approving—
 - (i) the provision of financial assistance, and
 - (ii) the payment of amounts from the Fund for that purpose,
 - (d) to provide advice if requested to do so by the Minister or the Treasurer,
 - (e) to engage in other activities in relation to the objective of this Act if approved to do so by the Minister,
 - (f) other functions prescribed by the regulations.
- (2) The provision of financial assistance from the Fund may, subject to the regulations, include grants, recoverable grants, loans or equity.
- (3) The Board may do anything reasonably necessary to perform its functions, including entering contracts.
- (4) The Board is subject to the direction and control of the Minister in the exercise of its functions except in relation to approving—
 - (a) the provision of financial assistance, and
 - (b) the payment of amounts from the Fund for that purpose.

13 Strategic investment plans

- (1) The Board must prepare plans (*strategic investment plans*) setting out—
 - (a) key investment priorities, and
 - (b) the types of program for which financial assistance will be provided, and
 - (c) how the priorities relate to the types of programs, and
 - (d) anything required by the regulations.
- (2) Strategic investment plans must be prepared taking into account—
 - (a) the most recent market monitoring report, and
 - (b) government policies related to the early childhood education and care sector.
- (3) Strategic investment plans must be given to the Minister and the Treasurer for approval.
- (4) Regulations may be made about strategic investment plans, including the following—
 - (a) additional matters that must be included,
 - (b) the times within which they must be prepared and given to the Minister and the Treasurer,
 - (c) requirements for consultation, if any,

- (d) the period for which they remain in force.

14 Programs and program guidelines

- (1) If a strategic investment plan is approved by the Minister and the Treasurer, the Board must—
 - (a) develop programs of the type set out in the plan, and
 - (b) prepare guidelines for each program (the *program guidelines*).
- (2) The program guidelines must be given to the Minister for approval.
- (3) If the program guidelines are approved by the Minister, the Board must—
 - (a) make the program guidelines publicly available on a website, and
 - (b) administer the programs in accordance with the strategic investment plan and program guidelines.
- (4) Regulations may be made about program guidelines, including the following—
 - (a) additional matters that must be included,
 - (b) the times within which they must be prepared and given to the Minister and the Treasurer,
 - (c) requirements for consultation, if any,
 - (d) the period for which they remain in force.

Part 4 The Fund

15 Establishment of Fund

A NSW Childcare and Economic Opportunity Fund (the *Fund*) must be established in the Special Deposits Account.

16 Payments into the Fund

The following must be paid into the Fund—

- (a) all money appropriated by Parliament, or advanced by the Treasurer, for the purposes of payment into the Fund,
- (b) the proceeds of the investment of money in the Fund,
- (c) fees and charges paid under this Act,
- (d) all other money directed or authorised to be paid into the Fund by or under any Act or other law,
- (e) all money received from the repayment of financial assistance paid from the Fund, including amounts recovered under this Part as debts.

17 Payments out of the Fund

(1) The following may be paid out of the Fund—

- (a) amounts for the provision of financial assistance if the Board is satisfied payment of the amount is—
 - (i) under a program for which program guidelines have been approved under Part 3, and
 - (ii) in accordance with the program guidelines, and
 - (iii) in accordance with the objective of this Act,
- (b) money required to meet administrative expenses related to the Fund or the Board up to a maximum, if any, prescribed under subsection (3).

(2) An amount may not be paid out of the Fund for the provision of financial assistance if it would cause the total amount of financial assistance provided in a financial year to be more than the maximum specified for the financial year in Schedule 1.

Note— Underspends that are carried forward and are spent in a future financial year do not count towards the maximum for that financial year, see Schedule 1, clause 4.

(3) The regulations may prescribe—

- (a) a maximum amount that may be paid out to meet administrative expenses related to the Fund or the Board in a financial year, and
- (b) governance requirements related to administrative expenses.

(4) Administrative expenses related to the Board include services provided to the Board by the Education Secretary.

18 Appropriation for financial years 2024–2026

The amounts set out in the table to this section are appropriated—

- (a) out of the Consolidated Fund for payment into the Fund, and
- (b) for the financial year specified in the table, and
- (c) at the beginning of the financial year specified.

Financial year	Amount appropriated
year ending 30 June 2024	\$100 million

Financial year	Amount appropriated
year ending 30 June 2025	\$270 million
year ending 30 June 2026	\$405 million

19 Standing appropriation

- (1) For a financial year after the financial year ending 30 June 2026, the Consolidated Fund is appropriated to the extent necessary for the payment into the Fund for the provision of financial assistance under this Act.
- (2) This section is repealed at the end of 30 June 2032.

20 Recovery of amounts

- (1) The Board may recover as a debt in a court of competent jurisdiction an amount from a person who was provided financial assistance from the Fund if—
 - (a) the amount was provided to the person wrongly, including because of fraud or incorrect information, or
 - (b) the provision of the amount was subject to conditions and the person failed to comply with the conditions.
- (2) An amount recovered under this section, less the cost of recovering the amount, must be paid into the Fund.

21 Performance audit

- (1) The Auditor-General must conduct performance audits of the Fund and financial assistance provided from the Fund.
- (2) A performance audit must also address whether payments from the Fund have been made in accordance with this Act.
- (3) A report on the performance audit must be given to the Minister as soon as practicable after the completion of the audit.
- (4) A performance audit must be completed at least once every 3 years with the first performance audit being completed no later than 3 years after the approval of the first strategic investment plan by the Minister and the Treasurer.

22 Annual report

- (1) The Minister must produce an annual report for each financial year, reporting on the activities of the Fund during the year.
- (2) The annual report is to include the audit report of the Fund by the Auditor General under the *Government Sector Finance Act 2018*.
- (3) The audit report of the Auditor General must include a statement as to whether the payments from the Fund have been made in accordance with this Act.
- (4) The annual report must be tabled in each House of Parliament within 6 months after the end of the financial year.

23 Review of Fund

- (1) The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years after the approval of the first strategic investment plan by the Minister and the Treasurer.

- (3) A report on the outcome of the review must be tabled in each House of Parliament within 6 months after the end of the period of 3 years.

Part 5 Miscellaneous

24 Matters to consider when exercising functions under Act

- (1) A person exercising functions under this Act must consider the following—
 - (a) the percentage of marginal income spent by families on childcare,
 - (b) the impact the cost of childcare has on—
 - (i) preventing children from accessing early childhood education, and
 - (ii) discouraging persons from participating, or increasing participation, in work.
- (2) The Minister may, with the concurrence of the Treasurer, publish guidelines for the purposes of this section.

25 Personal liability

- (1) A protected person is not personally subject to any liability for anything done—
 - (a) in good faith, and
 - (b) for the purpose of exercising a function under this Act.
- (2) The liability instead attaches to the Crown.
- (3) In this section—

done includes omitted to be done.

liability means civil liability and includes action, claim or demand.

protected person means—
 - (a) a member of the Board, or
 - (b) an officer of the Board, or
 - (c) a person acting under the direction of a member of the Board or officer of the Board.

26 Delegation

The Minister, Board or Chairperson may delegate the exercise of a function of the Minister, Board or Chairperson, other than this power of delegation, to—

- (a) a member of the Board, or
- (b) an officer of the Board, or
- (c) a person authorised by the regulations.

27 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1 Financial assistance

sections 6 and 17

1 Financial years 2024–2026

The maximum amount of financial assistance that may be paid from the Fund is—

- (a) for the financial year ending on 30 June 2024—\$100 million, or
- (b) for the financial year ending on 30 June 2025—\$270 million, or
- (c) for the financial year ending on 30 June 2026—\$405 million.

2 Financial years after 2026

Subject to a higher amount being recommended for a financial year in a strategic investment plan, the maximum amount of financial assistance that may be paid from the Fund for a financial year after the financial year ending on 30 June 2026 is the lesser of—

- (a) the estimated amount for the financial year as specified in the market monitoring report, or
- (b) the cap for the financial year set out in this Schedule, section 3.

3 Cap for financial years after 2026

- (1) The cap for a financial year after the financial year ending on 30 June 2026 is the amount calculated as follows—

$\$650 \text{ million} \times A/B$

where—

A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

B is the CPI number for the March quarter of 2026.

- (2) In this section—

CPI number means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

4 Underspends may be carried forwards

- (1) If the financial assistance paid from the Fund for a financial year is less than the maximum amount for the financial year, the difference between the amount paid out and the maximum may be carried forward and paid from the Fund as financial assistance in a future financial year.
- (2) An amount carried forward under this section and paid out in a future financial year is not to be counted in the future financial year towards the maximum amount that may be paid out of the Fund in that financial year.
- (3) An amount may be carried forward under this section and paid out in a future financial year only with the approval of the Treasurer.

Schedule 2 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
 - (a) a provision of this Act, or
 - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—
 - (a) for a provision of this Act—the date of assent to this Act, or
 - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
 - (a) affect the rights of a person existing before that publication in a way prejudicial to the person, or
 - (b) impose liabilities on a person for anything done or omitted to be done before that publication.
- (6) In this section—
person does not include the State or an authority of the State.

Part 2 Provisions consequent on enactment of this Act

2 Appointed members

The Minister must ensure appointed members are appointed to the Board by 30 June 2023.

3 Strategic investment plan

The Board must prepare the first strategic investment plan under this Act, section 13 by 30 June 2024.

4 Payments before first strategic investment plan

- (1) A payment of financial assistance may be made out of the Fund before the first strategic investment plan has been approved by the Minister and the Treasurer if the payment—
 - (a) is in accordance with the objective of this Act, and
 - (b) is in accordance with regulations made for the purposes of this section, and
 - (c) is approved by the Minister and the Treasurer for the testing or trialling of a program.
- (2) No later than 45 days after a payment is made under this section, the following information about the payment must be made publicly available on a website—
 - (a) the amount of the payment,
 - (b) the scope of the program funded by the payment,
 - (c) the reasons for making the payment.