



Child Care Subsidy Minister's Amendment Rules (No. 2) 2018

I, SIMON BIRMINGHAM, Minister for Education and Training, make this instrument under subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999* and item 12 of Schedule 4 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.

Dated 21 June 2018

SIMON BIRMINGHAM
Minister for Education and Training

Contents

Preliminary	1
1 Name	1
2 Commencement	1
3 Authority	1
4 Definition	1
5 Amendment of Principal Rules	1
Schedule—Amendments to Principal Rules	2

Preliminary

1 Name

This instrument is the *Child Care Subsidy Minister's Amendment Rules (No. 2) 2018*.

2 Commencement

- (1) Each provision specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument, except item 8 in the Schedule	Immediately after the commencement of the <i>Child Care Subsidy Minister's Amendment Rules (No. 1) 2018</i> .	2 July 2018
2. Item 8 in the Schedule	22 October 2018.	22 October 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999* and item 12 of Schedule 4 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.

4 Definition

In this instrument:

Principal Rules means the *Child Care Subsidy Minister's Rules 2017*.

5 Amendment of Principal Rules

The Principal Rules are amended as set out by a provision contained in the Schedule to this instrument.

Schedule—Amendments to Principal Rules

1 Section 4 (definition of *educator*)

Replace the definition with:

educator, in relation to a child care service in a State or Territory, means an educator within the meaning of the Education and Care Services National Law or, to the extent that the context permits reference to an individual who provides child care at an IHC service, an IHC educator.

2 Section 4

Insert:

IHC educator means an individual employed, contracted or otherwise engaged by an approved provider for the purposes of providing child care by an IHC service.

IHC service means an in home care service as prescribed by section 15B for item 4 of the table in subclause 2(3) of Schedule 2 to the Family Assistance Act.

IHC Support Agency has the same meaning as ***In Home Care Support Agency*** given by subsection 49B(2).

3 Section 7

After paragraph (c) omit “.”, replace with “;” and insert:

- (d) In Home Care Support (under item 267 in Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*).

4 Paragraph 8(1)(b)

Before the words “where the care is provided”, insert “except for care provided by an IHC service,”.

5 Paragraphs 8(1)(d), (e) and (f)

Replace the paragraphs with:

- (d) where the session of care is provided by an FDC service to a child who is an FTB child or regular care child of an FDC educator, or a partner of an FDC educator, and where the session occurs on a day that the FDC educator provides care at an FDC service, unless one of the circumstances in subsection (2) apply;
- (da) where the session of care is provided by an IHC service to a child who is an FTB child or regular care child of an IHC educator, or a partner of an IHC educator, and where the session occurs on a day that the IHC educator provides care at an IHC service;
- (e) where the session of care is provided to children who are in the relationships with an FDC educator of the service, or their partner, as set out in subsection (3), who provides the care at an FDC service;
- (ea) except where subsection (4A) applies, where the session of care is provided by an IHC educator to children who are in one of the relationships, as set out below, with the IHC educator, or their partner:
 - (i) FTB child;

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- (ii) regular care child;
 - (iii) foster care child;
 - (iv) biological or adopted child;
 - (v) brother, sister, half-brother, half-sister, step-brother or step-sister;
 - (vi) grandchild or great-grandchild;
 - (vii) nephew, niece or cousin;
 - (viii) a child (not mentioned in subparagraphs (i) to (vii)) for whom the IHC educator or their partner has legal responsibility, as described in paragraph 22(5)(a) or (b) of the Family Assistance Act;
 - (f) where, during any part of the session, the child is attending school, or engaged in a formal schooling program (including a home schooling or distance education program);
 - (g) where the session of care is provided in breach of the condition for continued approval in subsection 48A(6) of these Rules (about numbers of children who can be cared for by an IHC educator).

6 Section 8

After subsection (4), insert:

(4A) This subsection applies where:

- (a) an IHC Support Agency has made a recommendation that the session of care should be one in respect to which an individual is eligible;
- (b) the premises at which the session of care is provided is in an area designated as ‘very remote Australia’ in accordance with the *Australian Statistical Geography Standard (ASGS) Volume 5 – Remoteness Structure*, July 2016 (cat. no. 1270.0.55.005), as published by the Australian Bureau of Statistics;
- (c) there is no IHC educator reasonably available who is not in the relationships with children described in paragraph (1)(ea); and
- (d) the child is the grandchild, great-grandchild, nephew, niece or cousin of the IHC educator or their partner.

7 Subsection 8(5)

Replace paragraph (a) in the definition of **remote area child** with:

- (a) the child resides in an area designated as ‘remote Australia’ or ‘very remote Australia’ in accordance with the *Australian Statistical Geography Standard (ASGS) Volume 5 – Remoteness Structure*, July 2016 (cat. no. 1270.0.55.005), as published by the Australian Bureau of Statistics; and

8 Paragraph 10(e)

Replace the paragraph with:

- (e) where the child is a resident of South Australia at the time the session of care is provided—the child is at risk within the meaning of section 18 of the *Children and Young People (Safety) Act 2017* (SA); or

9 Paragraph 11(2)(b)

Replace the paragraph with:

- (b) only to the extent that it is relevant to determining whether a child is taken to be at risk of serious abuse or neglect in accordance with section 9.

10 Paragraph 12(2)(d)

Omit “(unless entered into privately)”.

11 Subparagraph 13(7)(c)(ii)

Replace the subparagraph with:

- (ii) the individual has, only once, begun studying at a level below a qualification already achieved, where the study (if completed) will qualify the individual for an occupation listed on the *Skill Shortage List* as modified on 28 March 2018 and as maintained by the Department administering the *Fair Work Act 2009* (the *Skill Shortage List* could in 2018 be viewed on that Department’s website at <https://docs.jobs.gov.au/documents/skill-shortage-list-australia>), and the study involves progression towards a qualification that the individual has not already studied towards; or

12 Subsection 21(1)

Replace the Example at the end of the subsection with:

Example: For paragraphs (b) and (c), examples include reading to children or providing support for other learning or development activities, and could include involvement in a school parents and citizens committee.

13 After Part 3

Insert:

Part 3A—Withholding Amount

40A Prescribed percentage

The prescribed percentage for paragraph 67EB(3)(b) of the Family Assistance Administration Act is 5%.

14 Subsection 43(4)

Replace the subsection with:

- (4) The provider must ensure that each of the following checks is carried out for each person who is an FDC educator for an FDC service or an IHC educator for an IHC service, and be able to provide a written record of each check upon request:
 - (a) a national police check from the State or Territory police service, or an agency accredited by the Australian Criminal Intelligence Commission, no more than 6 months before the date of the application;
 - (b) a check in relation to the issue of a working with children card within the meaning of section 195D of the Family Assistance Administration Act.

Note: For definitions of *FDC educator* and *IHC educator*, see section 4 of these Rules.

15 Section 44

After “FDC educator”, wherever occurring (including in the Note), insert “or IHC educator”.

16 Subsection 45(2)

At the end of subparagraph (2)(a)(iii) omit “and”, replace with “or” and insert:

- (iv) where the service is not an education and care service under the Education and Care Services National Law—a service in respect of which the provider holds any other approvals or licences that are relevant to providing child care and which are required to operate the service under the law of the State or Territory in which the service is situated; and

17 Paragraph 45(3)(a)

Replace the paragraph with:

- (a) the service must be:
 - (i) approved as a centre- based service under the Education and Care Services National Law; or
 - (ii) covered by section 50 of these Rules; or
 - (iii) where the service is not an education and care service under the Education and Care Services National Law—a service in respect of which the provider holds any other approvals or licences that are relevant to providing child care and which are required to operate the service under the law of the State or Territory in which the service is situated; and

18 After section 48

Insert:

48A Additional conditions for continued approval for approved providers of in home care services

- (1) For section 195E of the Family Assistance Administration Act, this section sets out conditions for continued approval for a provider in respect of an IHC service.

Commitment to high quality child care

- (2) The provider must, in the opinion of the Secretary, be equipped to provide high quality child care at the service appropriate to the needs of families and the community having regard to the provider's ability and commitment to:
- (a) provide a tailored, individual education program based on each child's knowledge, ideas, culture, abilities and interests; and
 - (b) develop a program that acknowledges and strengthens the cultural identity of children to whom care is provided; and
 - (c) ensure children are adequately supervised at all times; and
 - (d) ensure reasonable precautions are taken to protect children from harm or injury and any hazard likely to cause harm or injury; and
 - (e) ensure that at least one IHC educator who is caring for children at residential premises holds a current first aid qualification; and
 - (f) do anything else the Secretary considers necessary or appropriate for the provision of high quality child care.

Serious incidents

- (3) The provider must implement appropriate arrangements to manage serious incidents (see subsection (4)), including (without limitation) notifying the Secretary in writing within 24 hours after:
- (a) a serious incident occurs; or
 - (b) a circumstance occurs that could have resulted in the occurrence of a serious incident.
- (4) The following incidents are ***serious incidents***:
- (a) the death of a child while being cared for by the service or as a result of an incident that occurred while being cared for by the service;
 - (b) any incident involving injury, harm, trauma to, or illness of, a child while being cared for by the service for which:
 - (i) the attention of a medical practitioner was sought, or ought reasonably to have been sought; or
 - (ii) the child attended, or ought reasonably to have attended, a hospital;
 - (c) any incident for which the attendance of emergency services at premises where care is usually provided is sought, or ought reasonably to have been sought;
 - (d) a child being cared for:
 - (i) is missing; or
 - (ii) appears to have been taken or removed from the premises where the service provides the care in a manner that would contravene the Education and Care Services National Regulations, regardless of whether the regulations apply; or
 - (iii) is accidentally locked in or locked out of the premises where the care is being provided or any part of those premises;
 - (e) any other incident that would be required to be reported to the Regulator under any applicable WHS laws (within the meaning of subsection 49(6) of these Rules).

Insurance

- (5) The provider must, at all times, have in place the following insurance policies:
- (a) workers compensation insurance in relation to the relevant IHC service as required by law; and
 - (b) a current policy of insurance providing adequate cover for the relevant IHC service against public liability with a minimum cover of \$10,000,000.

Number of children who can be cared for

- (6) A provider of an IHC service must ensure that, whenever care is being provided by an IHC service:
- (a) there is at least one IHC educator for any group of up to five children; and
 - (b) for any group of children referred to in paragraph (a), no more than four children are of preschool age or under (within the meaning of the Education and Care Services National Regulations).

Nomination of child in respect to whom individual is eligible

- (7) Where a provider nominates a child for the purposes of paragraph 15A(1)(b) or (2)(b) of these Rules, the nomination must be made in accordance with any preference expressed by the individual who would be eligible for CCS or ACCS in respect of that child, or their partner.

IHC Guidelines

- (8) A provider of an IHC service must undertake to operate in a manner consistent with the *In Home Care National Guidelines* as those Guidelines existed at the time the *Child Care Subsidy Minister's Amendment Rules (No. 2) 2018* were made (in 2018 those Guidelines could be viewed online at: <https://docs.education.gov.au/node/47766>).

Location of care provided by IHC service

- (9) A provider must ensure that an IHC service only provides child care at the residential premises of the individual who would be eligible for CCS or ACCS in respect of that care, except in exceptional circumstances.

Engagement with IHC Support Agencies

- (10) A provider of an IHC service must undertake to:
- (a) only enrol a child for care after receiving a referral from an IHC Support Agency;
 - (b) inform an IHC Support Agency when a child ceases to be enrolled at the service within 7 days of the cessation; and
 - (c) otherwise provide reasonable assistance to and cooperate with an IHC Support Agency consistently with furthering the purpose of their role as set out in the *In Home Care National Guidelines* as those Guidelines existed at the time the *Child Care Subsidy Minister's Amendment Rules (No. 2) 2018* were made (in 2018 those Guidelines could be viewed online at: <https://docs.education.gov.au/node/47766>).

19 Section 50

Replace the section with:

50 Certain providers not required to meet State/Territory requirements

- (1) For section 199F of the Family Assistance Administration Act, a provider is specified in respect of a child care service if, on 30 June 2018:
- (a) a person or entity was in receipt of funding in respect of that service (see subsection (2)) under the Budget Based Funded program administered by the Department; and
 - (b) that service was not approved for the purposes of the family assistance law.

Note: At the time these Rules were made, paragraph 5(2)(k) of the Education and Care Services National Regulations exempted a service described in this subsection from being required to comply with the Education and Care Services National Law.

- (2) The reference to “that service” in subsection (1) is taken to include a reference to a business or enterprise in respect of which any provider, after 2 July 2018, has obtained service approval under the family assistance law.

Example: An operator, Mungo Shire Council, received funding under the Budget Based Funded program on 30 June 2018 in respect of Red Crayon Child Care Service. Mungo Shire Council decides it can no longer operate Red Crayon Child Care Service and KLP Pty Ltd takes over management of the service on 1 August 2018. The new provider applies for, and is granted, provider and service approval under the family assistance law effective from 1 August 2018 in respect of that service. From 2 July 2018 up to transfer of management on 1 August 2018, Mungo Shire Council is specified under subsection (1) in respect of Red Crayon Child Care Service and, from 1 August 2018, KLP Pty Ltd is specified in respect of Red Crayon Child Care Service.

- (3) For section 199F of the Family Assistance Administration Act, the following providers are specified in respect of the following child care services:

Item	This provider...	...is specified in respect of this/these child care service/s
1	MacDonnell Regional Council	(a) Areyonga Early Learning Centre (Lydia Dora Crèche) (b) Docker River Crèche (c) Papunya Crèche
2	Life Without Barriers (ACN 101 252 171)	Lajamanu Childcare Centre (Lajamanu Crèche)
3	Tiwi Islands Regional Council	Milikapiti Crèche
4	Deewin Kirim Aboriginal Corporation	Peppimenarti Crèche
5	Mungoorbada Aboriginal Corporation	Robinson River Crèche
6	Timber Creek School Council	Timber Creek Little Crocs Crèche
7	Victoria Daly Regional Council	Karuwalijawu (Yarralin) Crèche
8	Banyan Park Playcentre Incorporated	Banyan Park Playcentre

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- (4) For section 199F of the Family Assistance Administration Act, a provider is specified in respect of a service where the service was formed by an amalgamation or merger involving at least one of the services mentioned in, or covered by, subsection (1), (2) or (3) of this section.

20 Section 55 (items 10, 11 and 12)

After “FDC educator”, wherever occurring (including in the Note in item 12), insert “or IHC educator”.

21 Section 55 (item 10, column 1)

Replace all words beginning with “The information must include:” with:

The information must include:

- (c) the name and contact details of the new person; and
- (d) a declaration that the checks required by section 43 have been carried out as that section applies in relation to the new person, together with details of the new person’s working with children card, if applicable.

22 Subsection 60(2)

Replace the subsection with the following (and retain the Note at the end):

- (2) In subsection (1):

estimated number of children in care for the week means:

- (a) in respect of all service types, except an IHC service—the number of children for which the Secretary estimates the service has provided a session of care during a week in which the business continuity payment is to be made, determined by reference to any information held by the Secretary, including (without limitation) information in enrolment notices given under section 200A of the Family Assistance Administration Act; and
- (b) in respect of an IHC service—the Secretary’s best estimate of the children for whom individuals may be eligible for the sessions of care in that week, having regard to section 15A of these Rules.

23 After section 62

Insert:

62A Continuity of immunisation grace period during transition

- (1) Where all of the following apply:
 - (a) the Secretary has, before the commencement day, issued a notice to an individual under section 57E of the Family Assistance Administration Act that has caused a 63 day notice period as referred to in subparagraph 42(1)(c)(iii) of the Family Assistance Act (as in force immediately before the commencement day) to begin operating in relation to the individual and the child;
 - (b) the 63 day notice period is still underway on the day immediately before the commencement day;
 - (c) the child does not meet the immunisation requirements set out in section 6 of the Family Assistance Act on the commencement day; and

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- (d) the individual, in respect of the child, is taken to have made a claim for CCS under item 3 of Schedule 4 to the Jobs for Families Act;
- then, from the commencement day, the child is taken to meet the immunisation requirements for the purposes of subparagraph 85BA(1)(a)(iii) of the Family Assistance Act under this provision for the purposes of eligibility for CCS or ACCS until the 63 day notice period has expired.
- (2) To avoid doubt, where a child meets the immunisation requirements in respect of a session of care for a day under subsection (1), the immunisation grace period referred to in subsection 67CD(9) of the Family Assistance Administration Act, does not yet apply in respect of that day.

24 After section 67

Insert:

67A Outstanding enrolment advances after the commencement day

When approval is cancelled after the commencement day

- (1) Notwithstanding the repeal of section 71G of the Family Assistance Administration Act by item 97 of Schedule 1 to the Jobs for Families Act, and to clarify the effect of item 10 of Schedule 4 to the Jobs for Families Act in relation to enrolment advances, if:
- (a) after the commencement day, the approval of a provider is cancelled or the approval of a provider is varied so that the provider is not approved in respect of one or more child care services under Part 8 of the Family Assistance Administration Act; and
 - (b) at the time of cancellation or variation of approval as referred to in paragraph (a), an amount (the **remaining amount**) of an enrolment advance that had been paid under section 219RA of the Family Assistance Administration Act, in relation to an enrolment at a child care service that no provider has approval in respect of as a result of the cancellation or variation, had not already been set off under section 219RC, or another provision, of the Family Assistance Administration Act (including as saved by subsection (3)),

then the remaining amount is a debt due to the Commonwealth by the provider as if subsection 71G(3) of the Family Assistance Administration Act, as in force immediately before the commencement day, had not been repealed (reading the reference to “the service” as a reference to the relevant provider).

- (2) To avoid doubt, a debt arising under subsection (1) may be recovered under the Family Assistance Administration Act as in force on and from the commencement day.

Setting off when provider still holds approval in respect of service

- (3) Notwithstanding the repeal of section 219RC of the Family Assistance Administration Act by item 205 of Schedule 1 to the Jobs for Families Act, and to further clarify the effect of item 10 of Schedule 4 to the Jobs for Families Act in relation to an enrolment advance:
- (a) after the commencement day, section 219RC of the Family Assistance Administration Act, as in force immediately before the commencement day, is to be taken to remain in force as if it had not been repealed; and

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- (b) the setting off described in subsections 219RC(1) and (4) (when enrolment ceases or when the enrolment began at least 4 years ago) is to apply after the commencement day in respect of one or more child care service payments that are to be made in respect of child care provided at any of the services of the relevant approved provider, when, as applicable:
- (i) enrolment had already ceased under the family assistance law as in force before the commencement day and setting off was underway immediately before the commencement day but the setting off had not recovered the entire enrolment advance (in which case setting off under subsection 219RC(1) continues to apply until the enrolment advance is recovered);
 - (ii) enrolment ceases under paragraph 200B(1)(b) of the Family Assistance Administration Act after the commencement day (in which case setting off under subsection 219RC(1) applies); or
 - (iii) at least 4 years have passed since the day the relevant enrolment began (in which case setting off under subsection 219RC(4) applies).
- (4) The reference to ***relevant approved provider*** in subsection (3) is a reference to the approved provider that obtained approval under item 9 of the Schedule 4 to the Jobs for Families Act after having been, before the commencement day, the “person who operates” the service in respect of which the relevant enrolment advance was initially paid as referred to in subsection 219RC(1) or (4) of the Family Assistance Administration Act as applicable.

25 After Division 3 of Part 7

Insert:

Division 4—Determining deemed claims for CCS

69 Deemed claims for CCS that cannot be determined before 24 September 2018

If, before 24 September 2018, the Secretary is unable to determine a deemed claim for CCS for an individual that was taken to have been made under item 3 of Schedule 4 to the Jobs for Families Act because the individual has not provided information requested by the Secretary for the purposes of determining the claim, then, on 24 September 2018, the claim is taken to have been refused under paragraph 67CC(1)(b) of the Family Assistance Administration Act.

Division 5—Backdating applications for ACCS (grandparent)

70 ACCS (grandparent) applications made on or before 23 September 2018

Notwithstanding subsection 67CD(5) of the Family Assistance Administration Act, if an application for ACCS (grandparent) is made by an individual under paragraph 67CD(4)(a) of the Family Assistance Administration Act on or before 23 September 2018 and the individual had, before the commencement day, received the special grandparent rate of child care benefit in relation to the child in respect of whom the application is made, the Secretary, if satisfied that the individual is entitled to ACCS (grandparent), may make a determination under subsection 67CD(4) of the Family Assistance Administration Act for a week that begins more than 28 days prior to the application, but no earlier than 2 July 2018.

Division 6—Arrangements and enrolments of children prior to the commencement day

71 Pre-commencement arrangements taken to be complying written arrangements

- (1) Where, before the commencement day, the operator (the **relevant operator**) of an approved child care service (the **relevant service**) had notified the Secretary of an enrolment of a child (the **relevant child**) by an individual under section 219A of the Family Assistance Administration Act (as in force immediately before the commencement day) following the entry into an arrangement (the **old arrangement**) for the provision of child care to the child by the service (as referred to in subsection 219A(2)) and the enrolment had not ceased under section 219AD of the Family Assistance Administration Act, then, from 2 July 2018 until 23 September 2018 (including those days), the family assistance law is modified so that:
 - (a) the old arrangement is taken to be a complying written arrangement for the purposes of paragraph 85BA(1)(b) of the Family Assistance Act;
 - (b) an enrolment notice under section 200A of the Family Assistance Administration Act must be provided (including as generated by the Secretary based on information known by the Secretary) in relation to the old arrangement as if the enrolment commenced on 2 July 2018; and
 - (c) the relevant child is taken to be enrolled for care by the relevant service for the purposes of section 200B of the Family Assistance Administration Act.
- (2) Where subsection (1) applies:
 - (a) between 2 July 2018 and 23 September 2018 (including those days), the approved provider who had been the relevant operator is required to report any sessions of care provided to the child because the precondition in paragraph 204B(1)(a) of the Family Assistance Administration Act (about a provider having given an enrolment notice) will be taken to have been met;

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- (b) between 2 July 2018 and 23 September 2018 (including those days), the requirement to provide updates in relation to enrolled children in section 200D of the Family Assistance Administration Act applies in relation to any updates to information provided in the notice referred to in paragraph (1)(b);
 - (c) in relation to any sessions of care that are provided between 2 July 2018 and 23 September 2018 (including those days), the liability to pay referred to in paragraph 85BA(1)(b) of the Family Assistance Act must arise under the old arrangement in order for that provision to be satisfied;
 - (d) on 24 September 2018, the enrolment referred to in paragraph (1)(c) of this section is taken to have ceased under paragraph 200B(1)(b) of the Family Assistance Administration Act, unless the old arrangement is a complying written arrangement (within the meaning of subsection 200B(3) of the Family Assistance Administration Act) or the arrangement on its terms has already ended;
 - (e) if the old arrangement was a complying written arrangement and the child remains enrolled for care with the relevant service on 24 September 2018 (because the enrolment is not taken to have ceased under paragraph 200B(1)(b) of the Family Assistance Administration Act), then, by no later than 24 September 2018, the provider must give to the Secretary any details about the enrolment that would have been required to be included in a notice under section 200A of the Family Assistance Administration Act in respect of the enrolment, but which were not included in the notice referred to in paragraph (1)(b);
 - (f) if paragraph (e) applies, but the details referred to in that paragraph are not given, the enrolment is taken to have ceased under paragraph 200B(1)(b) of the Family Assistance Administration Act; and
 - (g) from 24 September 2018 onwards, the individual may only be eligible for CCS or ACCS for a session of care provided by an approved child care service to a child where they, or their partner, have entered into a complying written arrangement as referred to in paragraph 85BA(1)(b) of the Family Assistance Act (including where the old arrangement is a complying written arrangement).

Division 7—Certain notices and reports taken to have been given

72 Enrolment notices given late

- (1) Paragraph 200A(4)(c) of the Family Assistance Administration Act is modified so that an enrolment notice is taken to have been given, even if it is given later than the period within which it would otherwise be required to be given under either subparagraph 200A(4)(c)(i) or (ii), so long as it is given to the Secretary:
 - (a) in accordance with paragraphs 200A(4)(a), (b), (d) and (e); and
 - (b) within 2 years after the commencement day.
- (2) Subsection (1) has the following effects:
 - (a) where an enrolment notice is taken to be given in accordance with that subsection, once it is provided, the approved provider has an obligation to provide an attendance report in relation to the child for each session of care provided to the child in accordance with subsection 204B(1) of the Family Assistance Administration Act;
 - (b) because of paragraph (a), the precondition referred to in paragraphs 67CD(1)(b) and 67CH(1)(b) of the Family Assistance Administration Act can be met allowing

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- for CCS or ACCS to be calculated for a week in respect of any reported session of care; and
 - (c) the obligation in section 200D of the Family Assistance Administration Act (to update details provided in enrolment notices) applies in respect of details contained in a notice taken to have been given under subsection (1) as if the notice were given under section 200A of the Family Assistance Administration Act.
- (3) However subsection (1) does not rectify a breach of section 200A of the Family Assistance Administration Act for the purposes of enforcing the offence or civil penalty provisions referred to in subsection 200A(5) or (6) or for the purposes of imposing a sanction under section 195H of the Family Assistance Administration Act.

73 Attendance reports given late

- (1) Paragraph 204B(2)(d) of the Family Assistance Administration Act is modified so that a report about children for whom care is provided is taken to be have been given, even if it is given later than the period within which it would otherwise be required to be given under subparagraph 204B(2)(d)(i), (ii) or (iii), so long as it is given to the Secretary:
- (a) in accordance with paragraphs 204B(2)(a), (b) and (c); and
 - (b) within 2 years after the commencement day.
- (2) Subsection (1) has the following effects:
- (a) where the report is taken to have been given in accordance with that subsection, once it is provided, the precondition referred to in paragraphs 67CD(1)(b) and 67CH(1)(b) of the Family Assistance Administration Act is also taken to be met, allowing for CCS or ACCS to be calculated for a week in respect of any reported session of care; and
 - (b) the Secretary is able to deal with any inaccurate report under section 204C of the Family Assistance Administration Act that was taken to have been given in accordance with subsection (1), as if it were given under section 204B of the Family Assistance Administration Act.
- (3) However subsection (1) does not rectify a breach of section 204B of the Family Assistance Administration Act for the purposes of enforcing the offence or civil penalty provisions referred to in subsection 204B(4) or (5) or for the purposes of imposing a sanction under section 195H of the Family Assistance Administration Act.

Division 8—Compliance processes after the commencement day in respect of prior conduct

74 Notices intending to impose a sanction

- (1) Where the Secretary has, before the commencement day, issued a notice under section 201 of the Family Assistance Administration Act to the operator of an approved child care service in relation to which no decision had been made under section 200 before the commencement day (as in force immediately before the commencement day), the Secretary may decide to impose a sanction on the approved provider in respect of the child care service under section 195H of the Family Assistance Administration Act after the commencement day as if the notice had been issued under section 199A of the Family Assistance Administration Act.

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- (2) To avoid doubt, the breach of any condition for continued approval that was referred to in the notice is to be taken as a sufficient basis on which the Secretary is able to be satisfied in relation to the non-compliance referred to in section 195H, as if the condition applied as a condition for continued approval under Division 2 of Part 8 of the Family Assistance Administration Act on and from the commencement day.

75 Sanctions after the commencement day in respect of prior breaches

A sanction may be imposed on (and a notice under section 199A of the Family Assistance Administration Act may be given to) an approved provider in respect of a child care service on and from the commencement day under section 195H of the Family Assistance Administration Act on the basis of a breach of a condition for continued approval that applied in respect of the operator of the child care service under the family assistance law as saved by subitem 10(1) of Schedule 4 to the Jobs for Families Act.

Division 9—Continuation of conditions for continued approval

76 Conditions for continued approval that applied prior to commencement day

- (1) Where, before the commencement day, the Secretary had imposed a condition for the continued approval of an approved child care service (the *relevant service*) under subsection 199(2) of the Family Assistance Administration Act (as that provision stood immediately before the commencement day) then, on and from the commencement day, that condition is taken to apply as a condition for continued approval of the approved provider in respect of the relevant child care service as if it were imposed under section 195F of the Family Assistance Administration Act in respect of the relevant child care service.
- (2) To avoid doubt, subsection (1) means that the Secretary is able to make a decision to impose a sanction under section 195H of the Family Assistance Administration Act on and from the commencement day on the basis of non-compliance with a condition for continued approval referred to in that subsection.
- (3) The obligation to provide a notice under subsection 195F(3) of the Family Assistance Administration Act does not apply in relation to conditions for continued approval referred to in subsection (1).

Division 10—Modifications to working with children card requirements

77 Working with children card details required in relation to certain individuals

- (1) Section 195D of the Family Assistance Administration Act is modified so that, within 2 years after the commencement day, details of working with children cards are only required to be given to the Secretary in respect of the following individuals:
- (a) an individual who is a person with management and control of the approved provider (within the meaning of section 194F of the Family Assistance Administration Act);
 - (b) an FDC educator; and
 - (c) an IHC educator.
- (2) To avoid doubt:

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- (a) subsection (1) means that any reference in these Rules or the Secretary's rules to the requirement in section 195D of the Family Assistance Administration Act is taken to be a reference to that section as modified; and
 - (b) subsection (1) does not alter any legal requirement to hold a working with children card under a law of a State or Territory and, even where details are not required to be given to the Secretary, where an individual who is required to hold a working with children card is involved in providing child care by a child care service and does not hold a card, the approved provider will be in breach of the condition for continued approval referred to in subsection 195A(4) of the Family Assistance Administration Act.