EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 362

Issued by the authority of the Minister for Minister for Early Childhood Education, Childcare and Youth

Subject -  

Child Care Legislation Amendment Act 1998

Child Care (Transitional) Repeal Regulations 2009

Authority

Section 4 of the Child Care Legislation Amendment Act 1998 (the Amendment Act), provides that regulations may deal with transitional matters relating to amendments made by Schedule 1 of the Amendment Act and that the Governor-General may make regulations for this purpose.

Purpose and operation

As part of the 2008 stocktake of Commonwealth regulations, various departments were requested to repeal outstanding redundant regulations identified during the stocktake. The Child Care (Transitional) Regulations 1998 (the Principal Regulations) were identified as redundant regulations requiring repeal. The purpose of the Child Care (Transitional) Repeal Regulations 2009 (the Repeal Regulations) is to repeal the Principal Regulations.

The sole purpose for which the Principal Regulations were made was to ensure the Child Care (Eligible Child Care Centres) Guidelines (the Guidelines) continued in force after the repeal of its enabling provision by the Child Care Legislation Amendment Act 1998 (the Amendment Act).

The then, Minister for Family Services (the Minister) made Guidelines pursuant to the Minister’s guideline-making power under section 4C of the Act. Section 4C of the Act permits the Minister to make guidelines to specify criteria for determining whether a child care centre is an ‘eligible child care centre’ for the purposes of the Act.

The enactment of the Child Care Legislation Amendment Act 1998 (the Amendment Act) implemented a number of 1997 Budget initiatives and amended a number of Acts including the Act. Section 4 of the Amendment Act provides that regulations may deal with transitional matters relating to amendments made by Schedule 1 of the Amendment Act and that Governor-General may make regulations for this purpose.

Item 5 of Schedule 1 of the Amendment Act repealed and substituted the Minister’s guideline-making power under section 4C of the Act. The unintended consequence of the repeal of section 4C of the Act was that the enabling provision of the Guidelines was also repealed. To ensure the Guidelines continued in force after the repeal of section 4C of the Act, the Governor-General made the Principal Regulations.

Since the enactment of the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 the Guidelines have no
longer been in force; consequently the Principal Regulations have since then been redundant and require repeal.

The Repeal Regulations are a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Commencement
The Repeal Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Consultation
Consultation was not undertaken and was not considered necessary as the instrument is of a machinery nature does not alter existing arrangements.