

EXPLANATORY STATEMENT

Migration Act 1958

Migration (Daily Maintenance Amount for Persons in Detention) Determination Instrument

(LIN 20/037) 2020

(subsection 262(2))

1. The instrument, LIN 20/037, is made under subsection 262(2) of the *Migration Act 1958* (the Act).
2. The instrument repeals *Migration (LIN 18/022: Determination of Daily Maintenance Amounts for Persons in Detention) Instrument 2018* (LIN 18/022) (F2018L01196) made under subsection 262(2) of the Act in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. The instrument operates to determine the daily amount applicable to a person for the cost of keeping and maintaining the person in immigration detention at a specified place for a specified period. Subsection 262(3) of the Act requires the amount to be no more than the cost to the Commonwealth of detaining a person at that place for that period.
4. The purpose of the instrument is to update the information contained in the previous instrument LIN 18/022, with the daily maintenance amount being specified as \$456.23 for the period from the commencement date of the instrument to 30 June 2022 inclusive. The decrease in the daily maintenance amount is \$32.88.
5. The specified amount, approved by the Chief Finance Officer of the Department of Home Affairs, reflects the current minimum cost to the Commonwealth of keeping and maintaining a person in a place of immigration detention established under subsection 273(1) of the Act and in accordance with subparagraph (b)(i) of the definition of *immigration detention* in subsection 5(1) of the Act and all other places approved by the Minister in writing under subparagraph (b)(v) of the definition of *immigration detention* in subsection 5(1) of the Act .
6. The minimum cost was calculated based on the direct costs to the Commonwealth including but not limited to security and escorting services, catering, cleaning, facilities management, visitor management, facility based corporate overheads, and costs of health activities and programs. The calculated amount in the instrument does not include indirect, variable, or associated departmental costs. Therefore, the specified amount is no more than the actual cost to the Commonwealth of detaining a person in a specified place during the specified period, in accordance with the requirement in subsection 262(3) of the Act.

7. The instrument also differs from LIN 18/022 in that it does not specify the Maribyrnong Immigration Detention Centre (MIDC) (Maidstone, VIC). The MIDC no longer operates as a detention facility, and was not accounted for in the calculations of the new amount.
8. In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003*, consultation was deemed unnecessary. The instrument is of a minor or machinery nature and does not substantially alter existing arrangements.
9. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25928).
10. The maker of the instrument (Senior Executive Service, Band One, Australian Border Force) was appropriately delegated by *Australian Border Force (Minister) Delegations and Authorisations 2018 (ABF (M) No. 1 of 2018)*, signed on 15 February 2019.
11. Under paragraph (a) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
12. The instrument commences on the day after it is registered on the Federal Register of Legislation.