

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration (Daily maintenance amount for persons in detention) Determination (LIN 22/031) 2022

- 1 The instrument, Departmental reference LIN 22/031, is made under subsection 262(2) of the *Migration Act 1958* (the Act).
- 2 The instrument commences on 1 July 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 3 The *Migration Amendment (Abolishing Detention Debt) Act 2009* (C2009A00085) (the Amendment Act) created a liability for ‘certain persons’ and third parties to the Commonwealth (liable persons) for the cost of keeping, maintaining and removing ‘certain persons’ in immigration detention.
- 4 Under section 262 of the Act, ‘certain persons’ refers to persons convicted of an offence against the Act. Such offences are stated in Division 12 of Part 2 of the Act and relate to bringing unauthorised arrivals into Australia, and laws related to the control of fishing in force in the Commonwealth or a State or Territory. In effect, ‘certain persons’ are convicted people smugglers and convicted illegal foreign fishers.
- 5 Liable persons are convicted people smugglers or convicted illegal foreign fishers, and the master, owner, agent and charterer of the vessel on which they travelled to Australia (see paragraph 262(1)(c) of the Act). This group is liable for immigration detention costs as a deterrent against people smuggling and illegal fishing and in recognition of the seriousness of the offences.
- 6 The Amendment Act enables the Minister, under subsection 262(2) of the Act, to determine a daily amount for keeping and maintaining ‘certain persons’ while in immigration detention at a specified place in a specified period.
- 7 For subsection 262(2) of the Act, the purpose of the instrument is to:
 - determine the daily amount for a person in immigration detention, which reflects the current minimum cost to the Commonwealth of keeping and maintaining a person per day;
 - specify each place for which the daily amount applies, which must be a place used to keep the person in immigration detention; and
 - specify the period during which the daily amount applies for the specified places.
- 8 The instrument updates the matters specified in *Migration (Daily Maintenance Amount for Persons in Detention) Determination Instrument (LIN 20/037) 2020* (F2020L01342), which ceases to determine a daily maintenance amount for a period after 30 June 2022.

Consultation

- 9 No consultation was undertaken as the amendments do not substantially alter existing arrangements. This accords with subsection 17(1) of the Legislation Act.
- 10 The Office of Best Practice Regulation (OBPR) was consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 21-01289.

Details of the instrument

- 11 Section 1 sets out the name of the instrument.
- 12 Section 2 provides for the commencement of the instrument on 1 July 2022. The previous instrument, LIN 20/037, expired on 30 June 2022.
- 13 Paragraph 3(a) specifies that the determined daily amount is \$490.69. The amount has been approved by the Chief Finance Officer of the Department, and applies to the places specified in paragraphs 3(b) and (c) of the instrument. It is calculated based on the direct costs to the Commonwealth of keeping and maintaining a person in immigration detention. The costs include facility-based corporate overheads, catering, cleaning, facilities management, security and escorting services, visitor management, health services, and activities and programs.
- 14 The amount specified 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, as required by subsection 262(3) of the Act.
- 15 Paragraph 3(b) provides that the specified places are detention centres (see subsection 273(1) and subparagraph (b)(i) of the definition of *immigration detention* in subsection 5(1) of the Act).
- 16 Paragraph 3(c) further provides that the specified places are places approved by the Minister in writing under subparagraph (b)(v) of the definition of *immigration detention* in subsection 5(1) of the Act.
- 17 Paragraph 3(d) provides that the specified period ends on 30 June 2024. This is a suitable timeframe after which the Department will review and update its costs.
- 18 If a person is detained over a period where LIN 20/037 and the instrument (LIN 22/031) were in force, the requirement payment will be calculated based on the rates specified for those respective periods. This means that liable persons will be liable to pay \$456.23 for each day a certain person is detained before 1 July 2022 and \$490.69 for each day they are detained on or after 1 July 2022.

Parliamentary scrutiny etc.

- 19 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is prescribed in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, as the instrument is made under Part 2 of the Act.
- 20 The instrument was made by a delegate of the Minister in accordance with subsection 262(2) of the Act.

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