

EXPLANATORY STATEMENT

Migration Act 1958

MIGRATION (LIN 18/022: DETERMINATION OF DAILY MAINTENANCE AMOUNTS FOR PERSONS IN DETENTION) INSTRUMENT 2018

(Subsection 262(2))

1. The instrument, LIN 18/022, is made under subsection 262(2) of the *Migration Act 1958* (the Act).
2. The instrument repeals IMMI 14/088, Determination of Daily Maintenance Amounts for Persons in Detention (IMMI 14/088) (F2014L01281) made under subsection 262(2) of the Act and 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 nominate the amount payable, on a daily basis, for keeping and maintaining a person in immigration detention at a specified place in a specified period.
4. The purpose of the instrument is to specify an increased daily amount for the purpose of subsection 262(2) of the Act. The amount calculated is based on an average across all facilities based on the bandwidth aligned with the operational capacity of each facility with a daily rate of \$489.11. The new rate has been approved by the Department of Home Affairs' Chief Finance Officer to reflect the current cost of keeping and maintaining a person in immigration detention. The amount recoverable includes:
 - a. the amount applicable to the person for the cost of keeping and maintaining the person while in immigration detention, as per paragraph 262(1)(c) of the Act;
 - b. the cost of transporting the person and the cost of securing the person between the vessel to the place of immigration detention, as per paragraph 262(1)(d) of the Act;
 - c. the cost of transporting the person and a person holding the person, between places of immigration detention, as per paragraph 262(1)(e) of the Act; and
 - d. if the person is, or is to be, removed from Australia at the expense of the Commonwealth, the cost of that removal, including transporting a person holding the person, as per paragraph 262(1)(g) of the Act.

5. The specified daily amount is to apply from the commencement of the instrument until 30 June 2019.
6. Consultation was not undertaken before the instrument was made as the changes are considered to be minor or machinery in nature. The instrument does not substantially alter arrangements in place on 13 October 2015 under IMMI 14/088. In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003*, consultation was deemed not necessary.
7. The Office of Best Practice Regulation (OBPR) have advised that a Regulatory Impact Statement is not required (OBPR Reference: 21690).
8. The officer (Senior Executive Service, Band One, ABF Governance Branch) who made the instrument was delegated the powers required to make the instrument in *Australian Border Force (Minister) Delegations and Authorisations 2018 (ABF (M) No. 1 of 2018)*.
9. Under 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.
10. The instrument commences on the day after registration on the Federal Register of Legislation.