



Migration (Daily Maintenance Amount for Persons in Detention) Determination (LIN 24/017) 2024

I, Linda Cappello, delegate of the Minister, make the following instrument.

Dated 25 June 2024

Linda Cappello
Commander / Senior Executive Band 1
Workforce Operational Policy and Practices
Australian Border Force

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1 Name

This instrument is the *Migration (Daily Maintenance Amount for Persons in Detention) Determination (LIN 24/017) 2024*.

2 Commencement

This instrument commences on 1 July 2024.

3 Authority

This instrument is made under subsection 262(2) of the *Migration Act 1958*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including *detention centre*, which is defined in subsection 273(4) of the Act.

In this instrument:

Act means the *Migration Act 1958*.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

6 Daily maintenance amount etc.

- (1) For the purposes of subsection 262(2) of the Act:
 - (a) the daily amount is determined to be \$538.79; and
 - (b) the period between 1 July 2024 and 30 June 2026 is specified.
- (2) For the purposes of subsection 262(2) of the Act, the following places are specified:
 - (a) each place approved by the Minister in writing under subparagraph (b)(v) of the definition of *immigration detention* in subsection 5(1) of the Act;
 - (b) each place that is a detention centre established and maintained under subsection 273(1) of the Act mentioned in an item in the following table.

Specified detention centres

Item	Detention centre
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1	Adelaide Immigration Detention Centre
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2	Brisbane Immigration Detention Centre
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3	Melbourne Immigration Detention Centre
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Specified detention centres

Item Detention centre

4	North West Point (Christmas Island) Immigration Detention Centre
5	Perth Immigration Detention Centre
6	Villawood Immigration Detention Centre
7	Yongah Hill Immigration Detention Centre

Schedule 1—Repeals

Migration (Daily Maintenance Amount for Persons in Detention) Determination Instrument (LIN 20/037) 2020

1 The whole of the instrument

Repeal the instrument

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

2 The whole of the instrument

Repeal the instrument.

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 24/017) 2024

- 1 The instrument, departmental reference LIN 24/017, is made under subsection 262(2) of the *Migration Act 1958* (the Migration Act).
- 2 The instrument repeals *Migration (Daily Maintenance Amount for Persons in Detention) Determination (LIN 22/031) 2022* (LIN 22/031) and *Migration (Daily Maintenance Amount for Persons in Detention) Determination Instrument (LIN 20/037) 2020* (LIN 20/037) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 LIN 24/017 commences on 1 July 2024. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of LIN 24/017 is to determine that **the daily amount for the keeping and maintaining of a person in immigration detention**, for the purposes of subsection 262(2) of the Migration Act, is \$538.79. This amount reflects the current minimum cost to the Commonwealth for keeping and maintaining a person in detention. This marks an increase from the previous amount of \$490.69. The instrument also specifies the relevant period for the purposes of subsection 262(2) as being 1 July 2024 to 30 June 2026 (inclusive).
- 5 LIN 24/017 specifies as places for the purposes of subsection 262(2) of the Migration Act each detention centre established under subsection 273(1) of the Act. This includes all centres listed in the previous instrument, as well as adding three additional centres that were previously listed as Immigration Transit Accommodation facilities, before transitioning to detention centres from 1 July 2023: Adelaide Immigration Detention Centre; Brisbane Immigration Detention Centre; and Melbourne Immigration Detention Centre. Their inclusion aims to ensure consistency across the Immigration Detention Network, with all facilities now established and administered under the same legislative framework.
- 6 LIN 24/017 also specifies as places for subsection 262(2) of the Migration Act all places approved by the Minister in writing under subparagraph (b)(v) of the definition of *immigration detention* in subsection 5(1) of the Migration Act.
- 7 Details of the instrument are in the **Attachment**.

Consultation

- 8 Having regard to section 17 of the Legislation Act, the Department did not consult with affected individuals or other stakeholders, as the new instrument does not substantially alter existing arrangements. As noted in paragraph 4, the increase in the amount determined for the purposes of subsection 262(2)

reflects the current minimum cost to the Commonwealth for keeping and maintaining a person in detention under the Migration Act.

Regulatory Impact Assessment

- 9 The Office of Impact Analysis (OIA) was consulted and considered that the preparation of an Impact Analysis was not required for this instrument, as the proposal was unlikely to have a more than a minor impact. The OIA reference number is OIA23-06004.

Parliamentary scrutiny

- 10 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is a legislative instrument made under Part 2 of the Migration Act, which is prescribed under paragraph (a) of item 20 of the table in regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* as an instrument not subject to disallowance.
- 11 As the instrument is exempt from disallowance, under paragraph 15J(2)(f) of the Legislation Act a Statement of Compatibility with Human Rights is not required.
- 12 The instrument was made by a delegate of the Minister in accordance with subsection 262(2) of the Act.

Details of the instrument

Relevant provisions in the Migration Act 1958

- 1 LIN 22/031 commenced on 1 July 2022 and specified the daily amount applicable to a person for the cost of keeping and maintaining the person in immigration detention at a specified place from 1 July 2022 to 30 June 2024. A replacement instrument, commencing on 1 July 2024, will continue to support and allow the calculation of a current and correct daily maintenance amount for immigration detention payable by the persons referred to in paragraph 262(1)(c) of the *Migration Act 1958* (Migration Act).
- 2 Schedule 1 of Part 1 of the *Migration Amendment (Abolishing Detention Debt) Act 2009* (the Amendment Act) commenced on 9 November 2009 to (among other things) amend the Migration Act to create 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.
- 3 Under section 262 of the Migration Act, these were 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 the control of fishing in force in the Commonwealth or a State or Territory.
- 4 Liable persons include convicted people smugglers, 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 Migration 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.
- 5 Under subsection 262(2) of the Act, the Minister may, by legislative instrument, determine a daily amount for keeping and maintaining a person in immigration detention at a specified place in a specified period.
- 6 The instrument updates the matters specified in *Migration (Daily Maintenance Amount for Persons in Detention) Determination Instrument (LIN 22/031) 2022*, for the period from 1 July 2024 to 30 June 2026.

Details of the instrument

- 7 Section 1 sets out the name of the instrument.
- 8 Section 2 provides for the commencement of the instrument on 1 July 2024. This is immediately after the end of the period specified in the previous instrument, LIN 22/031, which ceased on 30 June 2024.
- 9 Section 3 states that the instrument is made under subsection 262(2) of the Act
- 10 Section 4 sets out definitions used or referred to in the instrument.
- 11 Section 5 relevantly provides that Schedule 1 repeals the instruments in that Schedule.
- 12 Section 6 of the instrument determines the daily amount and specifies the places and period for the purposes subsection 262(1) of the Migration Act.
- 13 Paragraph 6(1)(a) determines that the daily amount is \$538.79. The Department of Home Affairs has calculated the daily amount 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. The Chief Finance Officer of the Department of Home Affairs has approved this amount to apply to each place specified in paragraphs 6(2)(a) and (b) of the instrument.

- 14 The daily 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 Migration Act.
- 15 Paragraph 6(1)(b) specifies the period for subsection 262(2) of the Migration Act as beginning on 1 July 2024 and ending on 30 June 2026. The Department considers this a suitable timeframe after which it will review and update its costs.
- 16 As an example, if a person is detained over a period where both LIN 22/031 and this instrument (LIN 24/017) were in force, the required payment will be calculated based on the rates specified for those respective periods. This means that certain persons will be liable to pay \$490.69 for each day that person was detained before 1 July 2024 and \$538.79 for each day that person is detained on or after 1 July 2024.
- 17 Paragraph 6(2)(a) specifies as places for subsection 262(2) of the Migration Act all places approved by the Minister in writing under subparagraph (b)(v) of the definition of *immigration detention* in subsection 5(1) of the Act.
- 18 Paragraph 6(2)(b) further specifies in an item of the table each place that is a detention centre established and maintained under subsection 273(1) of the Act. The table in paragraph 6(2)(b) lists the specified detention centres as:
 - Adelaide Immigration Detention Centre
 - Brisbane Immigration Detention Centre
 - Melbourne Immigration Detention Centre
 - North West Point (Christmas Island) Immigration Detention Centre
 - Perth Immigration Detention Centre
 - Villawood Immigration Detention Centre
 - Yongah Hill Immigration Detention Centre
- 19 Schedule 1 to the instrument provides, in conjunction with section 5, for repeal of the instruments set out in that Schedule.
- 20 Item 1 of Schedule 1 to the instrument provides that the whole of *Migration (Daily maintenance amount for persons in detention) Determination (LIN 22/031) 2022* is repealed.
- 21 Item 2 of Schedule 1 to the instrument provides that the whole of *Migration (Daily Maintenance Amount for Persons in Detention) Determination Instrument (LIN 20/037) 2020* is repealed.