

## **Migration Act 1958 - Determination under subsection 262(2) - Daily Maintenance Amounts for Persons in Detention - October 2013**

*FRLI: F2013L01785*

*Portfolio: Immigration and Border Protection*

*Tabled: House of Representatives and Senate, 12 November 2013*

### **Summary of committee concerns**

2.37 The committee seeks further information as to how this instrument operates before determining the instrument's compatibility with human rights.

### **Overview**

2.38 This instrument nominates the amount of \$240 to be charged, on a daily basis, for keeping and maintaining a person in immigration detention between 13 October 2013 and 13 October 2014.

2.39 This instrument revokes the previous determination which nominated \$184.05 per day for keeping and maintaining a person in immigration detention between 12 October 2012 and 12 October 2013.

### **Compatibility with human rights**

#### ***Statement of compatibility***

2.40 The committee notes that this instrument is exempt from the requirement to provide a statement of compatibility as it is not defined as a disallowable legislative instrument within the meaning of section 42 of the *Legislative Instruments Act 2003*.<sup>24</sup>

2.41 As a matter of best practice, however, the committee considers that legislative instruments relating to the treatment of persons deprived of their liberty should be accompanied by a statement of compatibility.

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24 Section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires statements of compatibility only for legislative instruments within the meaning of section 42 of the *Legislative Instruments Act 2003*. The committee's scrutiny mandate, however, is not limited to the section 42 definition and extends to all legislative instruments: see section 7(a) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

***Committee view on compatibility***

2.42 The committee requires further information to understand the effect and operation of this instrument before being able to assess its compatibility with human rights.

2.43 The committee considers that charging individuals who are being held in mandatory detention may give rise to issues of compatibility with the right of humane treatment in detention<sup>25</sup> and the right to equality and non-discrimination.<sup>26</sup>

**2.44 The committee intends to write to the Minister for Immigration and Border Protection to request that a statement of compatibility be provided for this instrument and to seek further information in relation to:**

- the basis for increasing the nominated amount for keeping and maintaining a person in immigration detention;
- who is required to pay the nominated amount;
- the consequences of not paying the nominated amount; and
- the number of occasions that recovery of these amounts has been sought and the results of such efforts.

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25 Article 10 of the International Covenant on Civil and Political Rights (ICCPR).

26 Article 26 of the ICCPR and other relevant treaties.