# EXPLANATORY STATEMENT

## Defence Determination, Conditions of Service Amendment (Post index locations) Determination 2018 (No. 37)

This Determination amends Defence Determination 2016/19, *Conditions of service* (the Principal Determination), made under section 58B of the *Defence Act 1903* (the Defence Act) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA Act).

Determinations made under section 58B of the Defence Act are disallowable legislative instruments subject to the *Legislation Act 2003*. These instruments are also subject to the interpretation principles in the AIA Act.

Chapter 12 of the Principle Determination sets out an overview of overseas conditions of service for members of the Australian Defence Force (ADF).

This Determination has the following purposes.

* To omit Turin as a specific post index location and replace it with a general location for Italy.
* To provide Cyprus as a post index location.
* To provide a transitional provision for members posted to Pisa, Italy before the commencement of this Determination. It permits these members to receive benefits as the rate adjusted by the post index for the general location for Italy.

The retrospective effect of this Determination does not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on a person. As indexation of a benefit will not reduce the benefit below the amount set by the Principle Determination.

Section 1 of this Determination sets out the manner in which this Determination may be cited.

Section 2 provides that this instrument commences on 1 November 2018.

Section 3 provides that this instrument has authority under section 58B of the *Defence Act 1903*.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 amends provisions relating to post index locations for ADF members.

Sections 1 and 2 amend Annex 12.3.B of the Principal Determination, which is used to determine which post index will be applied to benefits payable to members. The post index is based on their posting index location and shows the relative cost of living at a posting location when compared with Australia. It is applied to a range of overseas allowances. Section 1 omits and substitutes post index locations for all Italian locations. A general post index location for Italy is provided, specific locations 'Genoa' and 'Rome' are re-inserted and 'Turin' is omitted, which will be captured by the general post index for Italy. Note, the general post index for 'Italy' is currently higher than the post index formerly used for members posted to 'Turin', which means they are advantaged by this change. Section 2 inserts a post index location for Cyprus.

Schedule 2 provides a transitional provision for members posted to Pisa, Italy.

Section 1 provides a transitional provision for members posted to Pisa, Italy between 3 August 2018 and the commencement of this Determination. Prior to this Determination, Pisa was not captured by the post index locations for which the data service provider provided a post index value. As a result, a member posted to Pisa could not have their salary or allowances adjusted to compensate for the higher cost of living in Pisa compared to Australia. The member was only eligible to be paid an unadjusted amount of salary and allowances (post index equal to 100). The transitional provides members posted to Pisa with the amount of benefit they would have received had a post index location been provided for Pisa from the date they began their posting there (3 August 2018). Schedule 1 inserts a general post index for Italy which means a member posted to Pisa will have their salary and allowances increased by the post index provided by the data service provider for Italy.

**Consultation**

Navy, Army and Air force, the Directorate of Attaché and Overseas Management, and the relevant overseas posts were consulted in the preparation of this Determination. The rule-maker was satisfied that further internal or external consultation was not required.

**Authority:** Section 58B of the
*Defence Act 1903*

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

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This Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Determination**

This Determination has the following purposes.

* To omit Turin as a specific post index location and replace it with a general location for Italy.'
* To provide Cyprus as a post index location.
* To provide a transitional provision for members posted to Pisa, Italy before the commencement of this Determination. It permits these members to receive benefits as the rate adjusted by the post index for the general location for Italy.

**Human rights implications**

Post indexes

*Right to the enjoyment of just and favourable conditions of work*

The protection of a person's right to remuneration engages Article 7 of the International Covenant on Economic, Social and Cultural Rights. Article 7 guarantees just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

*Legitimate objective:* Defence members are posted to perform duty in overseas locations. This could cause the member and their family economic hardship if the location has a high cost of living. The purpose of a post index is to show the relative cost of living at a posting location compared with Australia. This is then used to calculate various overseas allowances.

*Reasonable, necessary and proportionate:* This Determination provides a general post index location for Italy for members posted to locations outside of those for which specific indices are provided. It also provides a post index location for Cyprus. This ensures that a member's salary and some allowances are adjusted to meet the increased cost of living in those locations.

**Conclusion**

This Determination is compatible with human rights because it advances the protection of human rights.

Louise Judith Memmolo, Acting Assistant Secretary People Policy and Employment Conditions