



Defence Force Remuneration Tribunal Determination No. 6 of 2021, Officer Aviation Remuneration Structure Allowance – amendment

The Defence Force Remuneration Tribunal, make this Determination under section 58H of the *Defence Act 1903*. It relates to Matter 21 of 2020 – Air Force Officer Aviation Pay Structure Interim Report Back.

Dated 13 April 2021

Ingrid Asbury
President

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Adrian Morris
Member

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Major General Gerard Fogarty AO (Ret'd)
Member

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1 Name

1. This Determination is Defence Force Remuneration Tribunal Determination No. 6 of 2021, Officer Aviation Remuneration Structure Allowance – amendment.
2. This Determination may also be cited as DFRT Determination No. 6 of 2021.

2 Commencement

Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information	
Column 1	Column 2
Provisions	Commencement
1. The whole of this instrument	13 May 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

3 Authority

This instrument is made under section 58H of the *Defence Act 1903*.

4 Schedules

1. Defence Force Remuneration Tribunal Determination No. 12 of 2012, *Officer Aviation Remuneration Structure Allowance*, as amended,¹ is amended as set out in Schedule 1 of this Determination.

NOTE

1. DFRT Determination No. 12 of 2012 commenced on 1 January 2013 and has been amended by DFRT Determination No. 5 of 2016; Nos. 1 and 2 of 2017; No. 1 of 2018.

Schedule 1—Amendment

DFRT Determination No. 12 of 2012, Officer Aviation Remuneration Structure Allowance

1 Section 3 (Purpose)

Omit “specialist streams”, substitute “salary structures”.

2 Section 4 (Definitions)

Omit the section, substitute:

4 Definitions

This table defines terms used in this Determination.

Term	Definition
Aviation specialist	Has the same meaning prescribed by clause B.3.2 (Definitions) of DFRT Determination No. 15 of 2008, <i>Salaries</i> , as in force immediately before its repeal.
CDF	Means the Chief of the Defence Force.
Fast jet pilot	Means a pilot who has completed a conversion to F35, F/A18, E/A18, F111 or foreign equivalent.
Fixed wing pilot	Means a pilot who has successfully attained an operational captaincy on a fixed wing platform and is not a fast jet pilot or remote pilot.
Flexible service determination	Means a determination made under subsection 23(2) of the <i>Defence Act 1903</i> .
Nonworking period	Means a period under a flexible service determination that applies to a member that is not the member’s pattern of service.
Pattern of service	Means the hours of duty or the periods of duty prescribed under a flexible service determination.
Officer Aviation	Has the same meaning prescribed by section A.1.12 (Specialist officers) of DFRT Determination No. 2 of 2017, <i>Salaries</i> , as in force from time to time.

3 Section 7 (Conditions of eligibility)

Omit the section, substitute:

7 Conditions for eligibility

For any period when the member holds a combination under paragraph (a) and meets a set of circumstances under paragraph (b), that member is eligible for the Officer Aviation Remuneration Structure allowance.

- (a) The member has attained and remains suitable to hold any of the following qualification combinations in a RAAF flying squadron (in accordance with the Defence Aviation Safety Regulation):
 - (i) a fast jet pilot with Proficient (Category C) status.
 - (ii) a fixed wing pilot with Proficient (Category C) status.
- (b) The member is in any of the following circumstances:
 - (i) The member is in the fast jet pilot competency stream of the Command Pathway of the Officer Aviation Pay Structure and has held the rank of Squadron Leader or Wing Commander for less than four years commencing on their seniority date.
 - (ii) The member is in the fixed wing pilot competency stream of the Command Pathway of the Officer Aviation Pay Structure and Structure and has held the rank of Squadron Leader or Wing Commander for less than four years commencing on their seniority date.
 - (iii) The member has completed more than three years, but less than six years, as an aviation specialist.
 - (iv) The member has completed more than three years, but less than six years in the fast jet pilot competency stream of the Specialist Pathway of the Officer Aviation Pay Structure.
 - (v) The member has completed more than three years, but less than six years, as a combination of being an Aviation Specialist and in the fast jet pilot competency stream of the Specialist Pathway of the Officer Aviation Pay Structure.
 - (vi) The member has completed more than three years, but less than six years, in the fixed wing pilot competency stream of the Specialist Pathway of the Officer Aviation Pay Structure.
 - (vii) The member has completed more than three years, but less than six years, as a combination of being an Aviation Specialist and in the fixed wing pilot competency stream of the Specialist Pathway of the Officer Aviation Pay Structure.

4 Paragraph 8(b) (Events that end eligibility)

Omit the paragraph, substitute:

- (b) The member ceases to be a member of the Permanent Forces.

5 Subsection 12(3) (Pro-rata calculation of allowance)

Omit "part time leave without pay", substitute "a flexible service determination".

5 Subsection 12(3) (Pro-rata calculation of allowance)

Omit "clause 3.2.8", substitute "section 3.2.7AA"

Schedule 2—Transitional

1 Application

1. This schedule applies to a member who would have been eligible for the Officer Aviation Remuneration Structure allowance under DFRT Determination No. 12 of 2012, between 3 May 2018 and the commencement of this Determination had this Determination been in force at the time.
2. This schedule ceases to apply to a member from the day the member meets any of the circumstances provided in section 8 of DFRT Determination No. 12 of 2012, as amended by this Determination.

2 Benefit

1. For the period this schedule applies, the member is eligible for the Officer Aviation Remuneration Structure Allowance, as provided by DFRT Determination No. 12 of 2012, as in force from time to time.
2. For the purpose of subsection 1, the member is taken to have been paid the Allowance on the day they would have been paid it the under section 10 of DRFT Determination No. 12 of 2012, had it applied.

EXPLANATORY STATEMENT

Defence Force Remuneration Tribunal Determination No. 6 of 2021, Officer Aviation Remuneration Structure Allowance — amendment

This Determination amends Defence Force Remuneration Tribunal (DFRT) Determination No. 12 of 2012, *Officer Aviation Remuneration Structure Allowance* (the Principal Determination), made under section 58H of the *Defence Act 1903* (the Act) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA Act). The Principal Determination sets out provisions dealing with an allowance for Officer Aviation members in the Australian Defence Force (ADF).

The purpose of this Determination is to change the eligibility of the Officer Aviation Remuneration Structure Allowance (the allowance) from specified members in the career and legacy streams of the Officer Aviation Remuneration Structure to a similar cohort in the Officer Aviation Pay Structure.

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

Section 2 of this Determination provides that the Determination commences on 13 May 2021.

Section 3 provides that this instrument has authority under section 58H 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 sets out amendments to DFRT Determination No. 12 of 2012, *Officer Aviation Remuneration Structure Allowance*.

Section 1 amends section 3 of the Principal Determination which provides the purpose statement for the allowance. The amendment removes reference to 'specialist streams' and substitutes with a broader term 'salary structures' so as to include specified members in the Officer Aviation Pay Structure. The fundamental purpose (i.e. to regulate workforce flow and distribution of that workforce) of the allowance remains unchanged.

Section 2 omits and substitutes section 4 of the Principal Determination which provides the definitions for terms used throughout the Principal Determination. Specifically, the following amendments have been made:

- The terms *Career stream* and *Legacy stream* have been omitted as the eligibility rules in which these terms were used have been removed and replaced by section 3 of this Determination.
- *Fast jet pilot* has been amended to broadly apply to any pilot who has completed a conversion to the specified military fast jet platforms (E/A18 has been added to the list), and no longer references a specialisation or specialist structure. References to specialisation and specialist structure have been removed as they dealt with expressly in the eligibility conditions of section 7 of the Principal Determination, as amended by section 3 of this Determination.
- *Fixed wing pilot* has also been amended to remove reference to a specialisation or specialist structure and is now dealt with expressly in the eligibility conditions of section 7 of the Principal Determination, as amended by section 3 of this Determination. The definition has been further amended to exclude remote pilots.
- *Officer Aviation* has been amended to have the same meaning as prescribed by section A.1.12 (Specialist officers) of DFRT Determination No. 2 of 2017, *Salaries*, as in force from time to time. This provides consistency of meaning between the Principal Determination and DFRT Determination No. 2 of 2017.

Section 3 omits and substitutes section 7 of the Principal Determination which provides the new conditions of eligibility for a member to receive the allowance. Specifically, the following amendments have been made:

- The conditions prescribed by subparagraph (b)(i) were previously based on a member in the career or legacy stream. Since the targeted members in both of these streams have transitioned to the Officer Aviation Pay Structure, this condition is no longer relevant. The new subparagraphs (b)(i) and (b)(ii) reference members in the fast jet pilot competency stream and fixed wing pilot competency stream of the Command Pathway of the Officer Aviation Pay Structure, which are the same targeted cohort of Air Force pilots that were previously captured.
- The condition at subparagraph (b)(ii) has been retained and have been remade at subparagraph (b)(iii). The time period provided is the same as the previous rule, however expressed differently. The provision applies to a member who has completed three or more years, but has not started their 7th year.
- As many aviation specialists have transitioned to the Officer Aviation Pay Structure, new conditions are made at subparagraph (b)(iv) – (vii) (similar in substance to the condition at the previous subparagraph (b)(ii)) which provide eligibility for Air Force pilots in the Specialist Pathway of the Officer Aviation Pay Structure.
- Subparagraphs (b)(v) and (b)(vii) provide for those aviation specialists who have transitioned to the Officer Aviation Pay Structure since 3 May 2018 (the date on which the Officer Aviation Pay Structure was implemented). The required period of time may be made up of a combination of time spent as an aviation specialist and as an Officer Aviation member in the Specialist Pathway of the Officer Aviation Pay Structure. The provision applies to a member who has completed three or more years, but has not started their 7th year.
- The previous paragraph (c) has been removed as the condition to which it refers has been repealed from the Defence Determination 2016/19.

Section 4 omits and substitutes paragraph (b) in section 8 of the Principal Determination, which specifies events that end a member's eligibility for the allowance. The section has been amended to specify that where a member ceases to be a member of the Permanent Force, they will no longer be eligible to receive the allowance.

Sections 5 and 6 amend section 12 of the Principal Determination which provides circumstances under which a pro-rata calculation of the allowance may be required. Section 5 removes reference to *part-time leave without pay* and replaces it with reference to a *flexible service determination*, which is the current mechanism for providing part-time work in the ADF. In section 6, the cross reference to the calculation method which applies for members on a flexible service determination has been amended to refer to section 3.2.7AA of the Defence Determination 2016/19, *Conditions of Service*.

Schedule 2 sets out transitional arrangements.

Section 1 provides the application of the transitional arrangement for members between 3 May 2018 (the date on which the Officer Aviation Pay Structure was implemented) and the commencement of this Determination, including when a member's eligibility starts and ends.

Section 2 provides that for a period a member has met the eligibility criteria under section 1, they are eligible to receive the allowance. It further provides that a member is taken to have been paid the allowance on that day that would have applied under the Principal Determination.

The retrospective application 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 such person.

Authority: Section 58H of the
Defence Act 1903