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Army Headquarters
R1-4-B031
Russell Offices
PO Box 7902
CANBERRA BC ACT 2610

Telephone: (02) 6265 4258
Facsimile: (02) 6265 5446

Major BW Gaynor

Defence Force School of Intelligence
Building A058
Kokoda Barracks
CANUNGRA QLD 4275

Dear Major Gaynor

REDRESS OF GRIEVANCE DETERMINATION

1. Your application for Redress of Grievance (ROG) concerning the decision by the then Commanding Officer of the Defence Intelligence Training Centre (CO DIntTC) to refuse you permission to attend the 2014 *March for Babies* in uniform has been independently reviewed in accordance with Part 15 of the Defence Force Regulations 1952 and the *Complaints and Alternative Resolution Manual*, Chapter 6, *Redress of Grievance*. As redress you sought, *inter alia*, that you be given permission to attend the *March for Babies*.

2. Your ROG has been reviewed by the Inspector-General of the Australian Defence Force (IGADF) who exercises responsibility for the management of the formal grievance and complaint processes independently of the chain of command and line management. I have examined the documentation relating to your complaint which was referred automatically to the Service Chief level given the involvement of your then CO in the matter. I have formed my own independent view of your complaint based upon my review of the relevant information. As a ROG Delegate of the Chief of Army (CA), I have determined your complaint cannot be substantiated and that you have presented no grounds requiring redress. The reasons for my decision are explained below.

Regulatory and Policy Framework

3. Regulation 75 of the Defence Force Regulations 1952 (the Regulations) states, *inter alia*:

Making a complaint

- (1) Subject to sub regulation (2), a member may make a complaint under this Part if:
 - (a) the member considers that a decision, act or omission **in relation to the member's service** is adverse or detrimental to him or her; and
 - (b) the adverse or detrimental effect of that decision, act or omission is capable of being redressed by:
 - (i) a member of the Defence Force; or

- (ii) an employee of the Department; or
- (iii) an employee of the Defence Material Organisation.

4. 'Service' is defined at regulation 74 of the Regulations as:

service means service as:

- (a) a member of the Permanent Forces; or
- (b) a member of the Reserves who is:
 - (i) rendering continuous full-time service; or
 - (ii) on duty.

5. Defence Instruction (General) Personnel 21-1 *Political Activities of Defence Personnel* of 29 November 1994 (DI(G) PERS 21-1) (extant at the time of your request to your CO to attend the *March for Babies*) states:

- 6. Members of the Defence Force on continuous full-time duty may:
 - a. join a political party or organisation and take an active part in its affairs;
 - b. attend political meetings;
 - c. write letters to newspapers expressing their personal views about public issues, subject to compliance with the provisions of DI(G) ADMIN 08-1 - *Public Comment and Dissemination of Information by Members of the Defence Force* and provided they do not identify the Defence Force or any part of it with any political activity; and
 - d. express their personal opinions on a political party, candidate or an issue, but not as members of the Defence Force.

Where members of the Defence Force do engage in such activities, they should take pains to avoid giving the impression that such activities are being undertaken in other than a private capacity.

7. Some restrictions are necessary to ensure that a member's political activities remain compatible with the member's Service position and thereby preserve the Defence Force's impartiality in political matters. These restrictions are as follows:

...

- b. A member of the Defence Force, Permanent or Reserve, shall not, in any activity of a political nature:
 - (1) use their rank;
 - (2) wear their uniform (this includes wearing of party ribbons or emblems or other political badges on uniforms);

6. The *Army Dress Manual* (First Edition), although not cited by CO DIntTC, also provides guidance regarding the wearing of uniform to certain events. The Manual states:

Restrictions on wearing the uniform

- 2.9 The Australian Army uniform is not to be worn:
- a. at a meeting or demonstration held for a religious or political purpose other than official duties;
 - b. at a civil law court unless authorised by the commander or CO;
 - c. where contempt is likely to be directed at the uniform or member under the *Defence Act 1903*, section 84; and
 - d. when participating in non-official recognised activities, unless authorised in writing by a CO.

7. The *Army Dress Manual* also states:

Application of the Army Dress Manual

1.1 These orders are issued by the command of the Chief of Army (CA) and the *Army Dress Manual* constitutes a lawful general order. All Australian Army personnel are to ensure that the provisions of the *Army Dress Manual* are applied and obeyed as orders. Failure to do so is an offence under the *Defence Force Discipline Act 1982*.

8. Examination of your personnel record indicates that on 28 April 2014 (the date you applied to CO DIntTC to attend the *March for Babies*), 06 June 2014 (the date you submitted your ROG) and again on 11 October 2014 (the date of the march) your status was as a member of the Active Reserve. However, it has been verified that you were not paid for any Reserve attendances on any of the subject dates which would have seen you satisfy the definition of 'service' given above.

9. Accordingly, a degree of ambiguity can be said to exist regarding the precise nature of the matter complained of by you as it relates to the scope of the ROG process. On the one hand, you sought to wear Service uniform to a non-Service event unrelated to your duties in any way. You were not representing the Army in an official capacity nor were any of your service related interests, rights or legitimate expectations eroded by CO DIntTC's decision not to permit you to attend the *March for Babies*. These factors might suggest your grievance lies outside the scope of the ROG process. The nature of the event was completely unrelated to your Service and any decision not to approve your attendance at the *March for Babies* in uniform could not adversely impact your service in the Army.

10. On the other hand however, the wearing of a service uniform itself, the existence of policy regarding the wearing of uniform to non-Service events (as noted above) and the mere fact you were required to seek permission from your CO regarding the wearing of Service uniform outside the normally accepted work environment, could suggest the matter should be considered as Service related.

11. While, on balance, the issues you complained about may appropriately be considered as being outside the scope of the ROG process by virtue of your status on the relevant dates, ultimately the IGADF review into your ROG did not seek to resolve this issue as substantial discussion and legal opinion could be brought to bear on the opposing views briefly described above without reaching a concluded view. As such, the IGADF review report opined your complaint should be treated as within the scope of the ROG process. Accordingly, the grounds presented in your ROG are examined below.

12. **Assertion that uniformed political activity is occurring.** You make the claim that Defence Force personnel have been taking part in the *Sydney Gay and Lesbian Mardi Gras* (the *Mardi Gras*) which, in your view, is an event of a political nature. The participation of others in the *Mardi Gras* is a matter unrelated to your service. While I appreciate you may feel aggrieved about the participation of other Defence Force personnel in the *Mardi Gras* in uniform, it is not a matter about which you may submit a ROG.

13. **Assertion that DI(G) PERS 21-1 is not being enforced.** You argue that Defence Force personnel marching in the *Mardi Gras* in uniform are in breach of the Defence Instruction and those officers who authorised the participation of those personnel are, in your opinion, *'guilty of commanding or ordering a service offence to be committed'*.

14. The actions of other Defence Personnel and any questions regarding the appropriateness of their conduct in attending the *Mardi Gras* and who might have sanctioned that conduct are not matters relating to your service in the Defence Force. Accordingly, your claims in this regard are not matters about which you may submit a ROG.

15. **Assertion that the decision not to approve your attendance at the *March for Babies* was discriminatory.** You further claim you are being treated differently from other Defence Force personnel contending, effectively, that because other Defence Force personnel have been permitted to participate in the *Mardi Gras*, you should, equally, be permitted to attend the *March for Babies* in uniform.

16. From the available papers it is evident the basis of CO DIntTC's decision not to approve your attendance at the *March for Babies* in uniform was that the CO formed the view the *March for Babies* was an event of a political nature. The CO reached this opinion by considering information available on the website which indicated the purpose of the march was to *'express... profound disapproval with our Government's failure'* presumably in relation to the issue of abortion.

17. Based on his assessment of this information the CO indicated he formed the view the march was political in nature and that your attendance in uniform would be contrary to the policy contained in the relevant Defence Instruction. In my view, the CO's decision can reasonably be viewed as consistent with the content of DI(G) PERS 21-1, within the scope of the CO's command prerogative as your then superior officer and reasonable having regard to your individual circumstances.

18. I accept you may feel your beliefs and certain values may have been injured when compared to the treatment of other Service personnel approved to attend other events. However, those previous decisions relating to the uniformed attendance by other Service personnel at the *Mardi Gras* (in particular) are matters unrelated to your service in the

Defence Force, as is any perceived inequity you claim to have experienced as a consequence. Both aspects of your complaint are therefore considered not to be matters amenable to regulation 75 of Reference B.

19. Accordingly, I have determined your ground regarding CO DIntTC's decision not to approve your uniformed attendance at the *March for Babies* or that it was discriminatory are unsubstantiated. The remainder of your complaint regarding the comparative treatment of others (and thus inequity towards yourself) cannot be considered under the ROG process as decisions on the wearing of uniform for other service members are in no way decisions about which you may submit a ROG.

20. **Assertion that CO DIntTC's decision has had an adverse impact on your service in the Defence Force.** The bases for your claim that your service in the Defence Force has been adversely impacted as a consequence of CO DIntTC's decision not to permit you to attend the *March for Babies* in uniform are summarised as:

- a. you have been denied an opportunity to express your views with the same political freedom as other serving personnel;
- b. the decision to permit some Defence Force personnel to attend a political event of their choosing (ie: the *Mardi Gras*) raises the perception that all Defence Force personnel, including you, embrace or are required to share those views; and
- c. the above represents a degree of coercion which you argue is reinforced by CO DIntTC's '*unfair and unreasonable decision to force me to adhere to rules that others are exempted from obeying*'.

21. In my view, the contentions you raise carry little weight. The bases of your overall claim are, essentially, comparative in nature and as noted previously in this Report, it is not open to you to complain about the treatment of others as a framework for any discussion of your own circumstances. Moreover, your argument that CO DIntTC's decision was unfair and unreasonable cannot be considered as having any substance having regard to the previous discussion of the nature of the decision itself. In my view, CO DIntTC's decision to refuse you permission to attend the *March for Babies* in uniform was consistent with policy having regard to your own circumstances. It was neither unfair nor unreasonable when considered in isolation and against the applicable policy in place at the time.

22. **Residual elements of the ROG.** You also sought several other outcomes as part of the submission of your ROG. Specifically, you sought confirmation of a point of contact for the coordination of requests to attend future *March for Babies* and other like events; confirmation of the rights of Defence Force personnel regarding involvement in or with political activities; and, confirmation DI(G) PERS 21-1 is no longer being enforced.

23. The outcomes you seek are matters amenable to the intervention of your chain of command in the first instance if so required, and are not matters warranting examination as part of the finalisation of your ROG.

Conclusion

24. In conclusion, some ambiguity may be considered to surround the issue of the scope of the ROG system as it applies to your grievance. Rather than becoming entrenched in a protracted examination of this issue (for potentially little gain), the IGADF review focussed on the substantive CO DIntTC decision at the heart of your complaint and briefly examined the other grounds you raised. Inquiry into that decision and consideration of your individual circumstances found the CO's decision to be supported by policy, within the scope of CO DIntTC's command prerogative and therefore a decision reasonably open, in all the circumstances. The comparative treatment of other personnel approved to attend other non-Service events in uniform is not a matter related to your service and therefore not an issue that can or should be addressed via the ROG process.

25. My determination on this matter finalises your ROG at the Service Chief level. It is open to you to refer your complaint to the Chief of the Defence Force if you so wish. However, if you have a complaint about the administrative processes associated with my decision or the handling of your ROG, or if you consider that the process has been too slow, you may request the Defence Force Ombudsman (DFO) to investigate the matter. A brochure explaining the role of the DFO is enclosed. If you decide to pursue this option, you should contact the DFO personally.

Yours sincerely



BC Cook, ADC
Brigadier
ROG Delegate of the Chief of Army

22 April 2016

Enclosure:

1. Brochure *Defence Force Ombudsman Complaints*