

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 7291 of 1997

IN THE MATTER OF an application by The
Police Citizens Youth Club (Inc.)
Launceston for an interpretation of the
Health and Fitness Centres Award

re appropriate award to apply to the
operation of the Police Citizens Youth Club
(Inc.) Launceston

PRESIDENT

HOBART, 18 November 1997

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Could I have appearances please.

MR D. HOLDEN: I appear on behalf of the Police Citizens Youth Club Incorporated, Launceston; HOLDEN, D., accompanied by **CRAMP, J.**

PRESIDENT: Yes, thanks, Mr Holden.

5 **MS P. SHELLEY:** I appear on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Tasmanian Branch, and with me is **MARTIN CLIFFORD** and my name is PAULINE SHELLEY.

PRESIDENT: Thank you, Ms Shelley. Well, Mr Holden, tell me all about the problem.

10 MR HOLDEN: Do you want me to stand?

PRESIDENT: Please.

MR HOLDEN: Mr President, this matter is somewhat unusual and hopefully is not one of the normal adversarial type of disputes that come before the commission. The applicant simply wishes to formalise award coverage, not for the purpose of
15 imposing any changing employment conditions or salaries on any of the people currently employees of the organisation. The applicant has sought advice in a number of areas as to get proper guidance but has been singularly unsuccessful in finding a conclusion. And I'm not even saying an unsatisfactory conclusion; there's just been no real movement towards a conclusion.

20 And it's important that the applicant receive authoritative advice and direction that it can rely on because it's funding requirements make it mandatory that it apply the employment conditions of an appropriate award. The application really has as its genesis and was provoked due to the applicant becoming involved in an unfortunate industrial dispute. And I also point out the applicant in this matter does not possess
25 considerable industrial experience and advice or - and certainly doesn't claim sophistication in industrial relations knowledge.

After examining its options and its failure to receive advice, the applicant determined the best possible way of resolving its difficulties was to have the industrial - Tasmanian Industrial Commission interpret the scope of the Health and
30 Fitness Award and hopefully determine that is an appropriate award to cover the operations of the organisation.

The applicant is committed to ensuring it complies with its legal obligations. This application is not directed at disadvantaging employees. None of the applicant's employees have expressed an interest in being represented in this hearing, nor will
35 the employees be disadvantaged in any way irrespective of the outcome of this application.

If the commission determines there is not an appropriate award, the applicant will seek to look to making the appropriate arrangements which will meet the government requirements in its provision of funding. However, the applicant does
40 hope that the commission will in fact find that the Health and Fitness Centres Award is an appropriate award.

The applicant provides a service to young citizens of Launceston. The services are provided - are directed towards making better citizens but the predominant provision of service is that of physical exercise and sport.

The applicant employees a small administrative staff who are seconded to the applicant organisation and are paid under public service provisions.

5 The other employees - I believe there may be two cleaners, who of course are subject to the Miscellaneous Cleaners Award - and the employees who are the subject of this application are, in the main, young people who work as casual employees and who supervise, instruct and coach young people in various sports and physical activities.

I've said the majority are juniors; there may be one or two adults, and as I've said, the employer is committed to ensuring they are paid according to the award, if that is the case.

10 There will be

PRESIDENT: Can you be more specific about the numbers of employees?

MR HOLDEN: I believe it's in the range of about 25 instructors -

MR CRAMP: Say about 30.

15 MR HOLDEN: Sorry, Mr Cramp advises me that it's about 30. The hours of work do vary from almost non existent up to maybe 10 a week.

MR CRAMP: Twelve a week.

MR HOLDEN: Some - one or two of them may do 12 a week but -

PRESIDENT: So it's up to 12 hours per week.

20 MR HOLDEN: Yes. None of them are employed in the nature of full time employment. In fact a number of them are in fact students who earn some money by spending a couple of hours per week or more coaching young people.

PRESIDENT: Yes. And it's these instructors who are the subject of the application?

MR HOLDEN: Yes. There is more -

PRESIDENT: So what about the other employees? Where -

25 MR HOLDEN: The cleaners?

PRESIDENT: Mm.

30 MR HOLDEN: The applicant will pay the cleaners under the Miscellaneous Cleaners Award or this award which - you know, to ensure that the cleaners are paid appropriately. I think currently they're being paid under the Cleaners Award and Mr Cramp assures me that's correct.

PRESIDENT: Yes. And does the - do you think the award covers cleaners?

35 MR HOLDEN: It could be argued if one wished to, that it could be seen to cover cleaners because the scope of the award is that it applies to the industry of health and fitness where the business of the employer is conducted in gymnasiums, fitness centres, health and weight control establishments and the classification contained in the award simply refer to health and fitness centre employees which, in effect, could be all-embracing.

And the applicant is not intent on getting into an argument as to whether the cleaners are subject to this award or not. They're not -

PRESIDENT: But I mean that's a - that's the natural corollary isn't it, because it will happen if it's declared that this award applies.

5 MR HOLDEN: Surely the commission has the jurisdiction to determine that it would apply to certain employees and the cleaners could be appropriately subject to the Cleaners Award which - or some arrangement can be worked out which ensures that people employed as cleaners would get the benefit of the appropriate award - and by that I mean the Cleaners Award, to ensure that they weren't disadvantaged.

10 PRESIDENT: Look, I'll reserve judgment on that. My initial reaction is that that might be a bit difficult.

MR HOLDEN: Well, in this day and age of flexibility in industrial relations -

PRESIDENT: Yes, I mean I -

MR HOLDEN: - I must admit the difficulty escapes me.

15 PRESIDENT: What I'm saying is, I think they'll need to be - there would need to be something more specific in the award to do that.

MR HOLDEN: Or it can be done -

PRESIDENT: By agreement.

MR HOLDEN: - at the workplace level.

20 PRESIDENT: Yes.

MR HOLDEN: And the applicant in this matter would probably prefer to do it that way because they would not wish to impose something that arises out of this matter onto other organisations if it was possible to disadvantage those organisations.

PRESIDENT: Yes. Yes.

25 MR HOLDEN: I really have nothing else to say, Mr President. I believe the nature of the work of employees at the applicant's place of work is properly covered by this award. I believe the commission can make an interpretation that this is the appropriate award and I commend that course of action to the commission.

30 PRESIDENT: Describe the - if you would for me, the work of the instructors. What do they do?

MR HOLDEN: All right. With your permission, I'll let Mr Cramp do that because he's the one who is there on a day to day basis.

PRESIDENT: Yes, all right. Yes, thanks, Mr Cramp.

35 MR CRAMP: Thank you, Mr President. Our instructors or coaches with the club, it is generally gymnastic based. The vast majority of people are kids attending the club, attend with out gymnastics, and the ages of the kids vary from - attending - from five years to about, oh, 18. Some two or 300 children come through there each week.

The - and as such we have a large number of coaches and assistant coaches and they are all female, school girls, from high school up to matric age and university.

PRESIDENT: They're all female?

MR CRAMP: Yes, yes, yes.

5 PRESIDENT: So but that isn't - that isn't a -

MR CRAMP: One male - our one male - sorry?

PRESIDENT: That isn't a requirement?

MR CRAMP: Oh, no, no, just our one male coach is left. We have other sports such as trampolining, where we have a male coach.

10 PRESIDENT: Yes, just describe the types of activities.

MR CRAMP: The different sports that we have?

PRESIDENT: Yes.

MR CRAMP: Judo, karate; with the karate and aikido we have voluntary coaches that - they refuse to accept money. We have a program which we loosely call an after school program - after school care program and in that program we have a number of kids who are either dropped off at the club to play sport in the basketball stadium; it might be indoor hockey, basketball or netball training and coaching and those kids - it varies; one day there may be five there and the next day there may be 20.

20 PRESIDENT: And ages? Are those -

MR CRAMP: Oh, well, that age is about - probably about prep up to Grade 6. So it's basically a primary school aged activity.

PRESIDENT: Yes. So it's - yes, it's the gymnastics, basketball, indoor hockey and netball. And when I say - and the -

25 MR CRAMP: Trampolining, yes.

PRESIDENT: Yes.

MR CRAMP: The other activities are more late night activities where - oh, I beg your pardon, there's dancing - I'd overlooked dancing. And -

PRESIDENT: What sort of dancing? Are there aerobics?

30 MR CRAMP: Classical ballet.

PRESIDENT: Classical ballet.

MR CRAMP: Yes, it doesn't - classical ballet, jazz ballet, modern dance - that style, we have two adult teachers with us for about a month, and there is no award - according to those teachers, there is no award that covers dance teachers. When I was trying to strike up a wage with them, they said, well there's no award. You know, and one of them has a run a dance studio.

35

That's basically it, and the kids in the primary school activity - after school care activity - also do trampoline work.

PRESIDENT: And what would be the weighting of the dance type activities compared with gymnastic and sporting activities?

5 MR CRAMP: Well, dance has troughed considerably; we had some 300 a month coming through at a peak three years ago; it's down to 70 students a month at the moment. We're re-establishing the dance and it's -

PRESIDENT: Yes, so -

10 MR CRAMP: - and that's building up. So that - there's no reason why that couldn't go to, say, 100 or 200 a month.

PRESIDENT: And the others? What would that be?

MR CRAMP: Oh, well the others are considerably - considerably less; perhaps, well, we average 55 children a day in the five to 12 year old bracket

PRESIDENT: Right.

15 MR CRAMP: That's right across the board including gym, dance and the after school program.

PRESIDENT: Mm.

20 MR CRAMP: But that average depends on the term; the winter term we have more children. The average may sneak up to 55 a day - oh, 65 a day. It's never ever been much higher than that.

PRESIDENT: So that's in the primary school age groups.

MR CRAMP: Yes, that's right; between the age - between the hours of 3.00pm and 6.00pm.

PRESIDENT: Yes. And what about over 12 - over primary school age?

25 MR CRAMP: Right. Well, the over primary school age activities basically start at six o'clock at night or half past 5.00 - in that vicinity, and by and large it's gymnastics with a trickle of judo exponents two days a week with may be five or 10 attending each lesson.

PRESIDENT: So in total per day?

30 MR CRAMP: For judo?

PRESIDENT: For over 12 years of age type classes - the evening classes.

MR CRAMP: I can't pluck those figures out so readily because I know they're - I suppose you'd be looking at maybe 20 a day.

PRESIDENT: Twenty a day. So that would be generally high school age.

35 MR CRAMP: Yes,.

PRESIDENT: And that's after 5.30.

MR CRAMP: That's right. And as well, in that time frame there are adults that may be doing the marshal arts.

PRESIDENT: Right. I see.

MR CRAMP: That would be about a 50-50. Yes, well that about - I suppose that
5 would average about 10 a day.

PRESIDENT: Ten a day of adults.

MR CRAMP: Yes.

PRESIDENT: And - but the instructors are teaching them -

MR CRAMP: As well.

10 PRESIDENT: As well.

MR CRAMP: Yes.

PRESIDENT: we've got all up for the instructors to look after in that post primary school age grouping, about 30 a day; that's high school kids and adults.

MR CRAMP: Yes. I haven't mentioned any of the more structured sports such as
15 basketball, volleyball, badminton or netball because we've had a noise problem - noise emission problem with the council and it effectively stifled our rosters. They've stopped our basketball rosters and the traffic because of a complaint from a neighbour. We've rectified that but we've unable to start our rosters again.

PRESIDENT: Well, tell me, what happens there; do you have paid employees
20 looking after those sports?

MR CRAMP: Oh, yes, well, the teams would come along with their own coach. All we'd normally have there in fact would be an umpire - we'd be paying an umpire.

PRESIDENT: Yes but - and would that person be an employee of yours or just on a contract sort of basis?

25 MR CRAMP: He'd come under - he'd be paid per hour as an employee.

PRESIDENT: As an employee?

MR CRAMP: Yes. It's generally - I'm a basketball coach - a qualified Level 1 and I will umpire in my own time and we also have a junior who umpires as well, so the only wage goes out for him. Like it's part of my duties to liaise and work with the
30 kids. I suppose you could say I'm the most overpaid basketball umpire in Launceston because I work under another award.

PRESIDENT: Right.

MR HOLDEN: Don't knock it.

PRESIDENT: And how many - when you're operating at full capacity with those
35 rosters, how many people would you be employing?

MR CRAMP: It's very difficult, sir, because we'd only just started a roster for some 10 teams and we had to abandon it.

PRESIDENT: But you say you -

MR CRAMP: But again, we still only employ the one person.

PRESIDENT: Yes.

MR CRAMP: Yes.

5 PRESIDENT: But that's likely to be resurrected.

MR CRAMP: Oh, yes, most emphatically.

PRESIDENT: Yes, yes. But in any event it's only one -

MR CRAMP: Exactly, yes.

10 PRESIDENT: - one person. Yes. Well, I think that will probably do me for the moment, Mr Cramp. I'd like to hear from the other side and there could well be a lot of questions they might want to ask you, in which case if you'd make yourself available for that purpose.

MR CRAMP: Thank you, sir.

PRESIDENT: Yes. Good. Ms Shelley.

15 MS SHELLEY: Thank you. Well what we concur that those employees who are actually engaged in as gym instructors or fitness instructors or whatever would be appropriately covered by the Health and Fitness Centre Award, but there are two other classifications of employees that we don't believe should be covered by that award and who are appropriately covered by two other awards of the commission.
20 One of those of course is cleaners who we would say would be covered by the common rule Miscellaneous Workers Award because those people are not involved in the industry of health and fitness; they're actually involved in the industry of cleaning and the common rule award that should apply there. But the other category of employee that we're more concerned about are those who work in the out
25 of school hours care program and vacation care programs who are currently being paid under the Child Care and Childrens Services Award, and that's the award that has application in Police and Citizens Youth Clubs throughout Tasmania and has always been applied.

30 Now I might say that there's a considerable pay differential. For example, an out of school hours care supervisor, under the Child Care and Childrens Service Award would get \$183.80 a week more than they would if the Health and Fitness Centre Award were to be applied. And whilst Mr Holden did say this was not an adversarial situation, I note that he said no current employees would be disadvantaged.

35 Now we've recently had a dismissal situation that has been settled, and what's outstanding is a matter of underpayment of wages, and it's an amount of approximately \$3,000 I believe we're claiming as underpayment for not applying the correct Child Care and Children's Services Award rates.

40 Now I guess if there were a finding that the fitness - Health and Fitness Award paid, and this person is no longer a current employee, then that's a neat way of getting out of the back pay claim.

Now I point out that Mr Cramp himself differentiated between the programs when he was talking to you a few minutes ago, and he talked about the gym, dance, and after school program. And I think the after school program does have to be seen quite

differently and the before school program and the vacation care program. They are generally funded by the Commonwealth Government as part of their children's services program, and while there are a broad range of activities that may be undertaken wherever the out of school hours care program might be conducted, it could be in a neighbourhood centre, it could be in a Police and Citizens Youth Club, it could be attached to a child care centre; many of them take place within schools but we would never argue that therefore because they're conducted within schools that they should be covered by any sort of educational award. Nor would we argue that the place where something takes place determines what award takes place.

Out of school hours care programs are conducted throughout Australia in halls, barns, schools, citizens clubs, wherever, but that doesn't mean that changes the award.

The scope - the scope clause of the Health and Fitness Award says that in order to have application, they must be in the industry of health and fitness, and as far as the out of school hours care program was concerned, they're in the industry of child care, and be conducted - and conduct their business in gymnasium and fitness centres.

Now I believe the second criteria is met but not the first one because it's not the industry of health and fitness; it's the industry of child care. And that is specifically catered for in the Child Care and Childrens Services Award, and the scope in that award says it's - this award is established in respect of the industry of providing care for children in child care establishments not subject to the Independent Schools (Non Teaching) Staff Award or the Disability Service Providers Award. And if you turn to the definitions under the Child Care and Children's Services Award:

'Child care establishment' shall mean, without limiting the generality of the term, Family Day Care Services, Community/Neighbourhood Houses, Back-up Care, Long Day-Care Centres, Occasional Care Services, Out of School Hours Care Services, Vacation Care Programs, Part-time Child Care Centres, Play Sessions, Playgroups and Playgroup Support Services.

And I would submit that by occasional care services, out of school hours care services and vacation care programs all fit within that definition of child care establishment.

In addition there's a further definition in the - within clause 7 that says:

'Out of school hours care services' shall be services which provide child care for children of school age before and after school and during school vacation periods.

So clearly, those people who are employed at the Launceston Police and Citizens Youth Club in the provision of out of school hours care are actually in the industry of child care as defined under the Child Care and Childrens Services Award.

So in conclusion, I'll just reiterate that we agree that the Health and Fitness Centres Award applies to those people who are in the industry of health and fitness, and where the business of the employer is conducted in a gymnasium and fitness centre I suppose there could be some argument about whether it is a gymnasium and a fitness centre, but I believe it is the appropriate award, and I'm - for those people - and I'm not, you know, going to go necessarily down that track. But for cleaners, there is a common rule award which applies for people who are in the industry of cleaning where there's not a specific classification for cleaning under the award, and I don't believe that there is, and that the people who work in the out of school hours

program very clearly fall within the scope of the Child Care and Childrens Services Award.

PRESIDENT: Even if they carry out instruction in gymnastics?

5 MS SHELLEY: I would believe so. I mean there would be a variety. There's a
variety of different emphases depending upon who is conducting the out of school
hours care program. For example, those that are conducted within - as - what
they're called is attached services - those that are attached to a child care centre
10 would probably have more of an emphasis on perhaps more structured activities
that go towards cognitive development, for example. But those are conducted in
schools - and there's hundreds of those, make more use of the school facilities and
would do things that are provided in schools and might use the libraries and have
maybe a bit of an emphasis on quiet time and on reading. Those that are conducted
15 in places where sport, maybe an emphasis would use those facilities as well, but the
main purpose of them, and this is what is required under the funding, is there
actually has to be a supervised program. So the essential thing is that it's a
supervised program. It doesn't need to have any formality about it as long as it
meets the funding requirements in terms of supervision of the program.

And I suppose there could be some unfunded ones as well, but as long as it's the -
as long as it meets the definition of what a child care establishment is, and that is
20 out of school hours care when it falls within the Child Care and Childrens Services
Award, whether they're doing gymnastics, basket weaving, reading time, or
whatever.

PRESIDENT: Can you - do you know whether the funding for after school care
comes from any central source?

25 MS SHELLEY: Well, I'm unsure what the circumstances are in case of the - in the
case of this particular employer.

PRESIDENT: And I'm not talking now about the - I'm not talking about this
particular employer.

30 MS SHELLEY: Okay. Well, it comes - generally it comes from the Commonwealth
Government through the Childrens Services Program, however there is some money
also that - through state governments at various times. For example, Neighbourhood
and Community Houses which are funded by the state government may have and do
sometimes directly fund out of school hours care programs, as some employers
35 provide out of school hours care programs as well. I mean there's an enormous
range of places in which it can take place and be funded, and no doubt there are
others that take - also take place in a range of places and aren't funded. But funding
is not a requirement under the terms of the award; it's simply that it be an out of
school hours care program.

40 In other words, a place where the parents are not but the children are, in the hours
before school and after school.

PRESIDENT: Yes. It's a fairly broad brush, isn't it?

45 MS SHELLEY: Well, those people I suppose within the child care industry are very
clear about what an out of school hours care program is, and there are very specific
- there are very specific guidelines established through the Commonwealth
Government - standards for outside school hours care - and they go to things like
supervision, ratio of children to adults and so on. Now they're not mandate at
present under the state governments licensing guidelines for child care services
because currently the act that applies which is the Child Welfare Act - I think it's

1960 - does not actually require them to be licensed for the purposes of child care if you're over six years of age. So whilst they're not mandated under legislation, there are still standards that relate. So there is an understanding within the industry of what out of school hours care actually is. And as I say they are conducted in a number of Police and Citizens clubs and council chambers and you name it, and to now there's been no question that the Child Care and Childrens Services Award is not the appropriate award.

PRESIDENT: So to your knowledge -

MS SHELLEY: You're just about jumping out of your skin there.

MR HOLDEN: At that, yes.

PRESIDENT: To your knowledge - are the Police and Citizens clubs - apply the Children and Child Care -

MS SHELLEY: Yes, to my own personal knowledge that is the case.

PRESIDENT: Can you tell me where?

MS SHELLEY: Well in Hobart, I think there's one - gosh, where is it - it might be in Glenorchy - well, anyway, somewhere - they regularly ring up and check wage movements and I send out forms to them and -

PRESIDENT: And that's just -

MS SHELLEY: - wage rates -

PRESIDENT: - is that one organisation or a number?

MS SHELLEY: I was just - there's one that regularly on my mailing list and frequently rings me up to check that wage rates haven't moved but there's an Out of School Hours Care Association and most organisations that apply - that actually provide out of school hours care, including Police and Citizens Clubs, are covered by that association, and we actually negotiated this classification within the Child Care and Childrens Services Award and where they fitted within the wage structure with the Out of School Hours Care Association when we were restructuring this award. So they were actually part of the negotiations and it eventually, after a long time in arbitration ended up being a consent award and the Out of School Hours Care Association were part of that consent matter.

PRESIDENT: And what are the qualifications for employees under that award?

MS SHELLEY: Okay. With the out of school hours care classification, as the supervisor is at Level 4A within the award, and that's the \$522.90 starting rate, now it is true to say that in the out of school hours care sector of the child care industry there are a lot of people who are actually working as supervisors who don't have the designated qualification that's contained within that classification so there's a deeming provision within that. So there are both qualified and unqualified people who work at Level 4A which is the supervisors level. But in effect they really would be required to have either the associate diploma in social science's child care, which as of next year will be known as the diploma, or a three or four year qualification.

But as I say there's a deeming provision, and people in the out of school hours sector are often deemed to have that qualification even though they don't have it, and that was again at the request of the employers because they say that there's a lot of people in out of school hours care that are really suited to the job and have got

years of experience but don't have the classification and they want to keep them there.

For people who don't have the supervisory role, they would be either at Levels 1, 2 or 3, depending upon their qualification. Level 1 is an unqualified person, Level 2 is a person with one year's - one year qualification or who is deemed to be equivalent. Level 3 is the starting point - Level 3, second increment is the starting point for somebody with the associate diploma. Level 4 is a progression; Level 4A is where the three or four year qualifications kick in, and as I say, 1 to 3 where non supervisory people would be placed, and Level - or up to 4, and Level 4A would be supervisors in out of school hours care and that specifically says within the Child Care and Childrens Services Award, that as a supervisor of an out of school hours care - well, it actually says, Level 4A shall be and lists a number of these and one of them is 'OR a supervisor of an Out of School Hours Care program'.

And at Level -

PRESIDENT: So what is a supervisor at that -

MS SHELLEY: A supervisor is a person who accepts responsibility for being in charge of other staff under the terms of the award. So if they were merely in charge of the children they would be paid according to their qualification, and yes, that's the way it works.

And there's another out of school hours care classification at Level 6 which doesn't apply in these circumstances - or it may, but I'm not sure of that - which is a person who's in charge of - who - no, sorry - a person who coordinates more than one out of school hours care program.

I know that - also, a number of councils conduct out of school hours care programs and they apply the Local Government Community Services Award, but that is a mirror of what's in the Child Care and Childrens Services Award. So under the Local Government Community Services Award where out of school hours care programs - it may be sporting programs, gym programs, or whatever, that are conducted by councils in, say, council chamber halls or whatever, they have exactly the same classifications that we have in the Child Care and Childrens Services Award - in fact they copied it and they apply where they run it.

PRESIDENT: And what's the definition of a child?

MS SHELLEY: The definition of a child - okay, well the children's services program covers children from nought to 12. Now the out of school hours care program that would be being run as Mr Cramp himself said in - when he was speaking earlier, is primary school age children. They're Prep to Grade 6 and they - I'm quoting his words but that's about right, yes.

PRESIDENT: Yes. So that's - that seemed to be around about -

MS SHELLEY: Mm - it's prior to school age, yes.

PRESIDENT: - two thirds of the clientele. All right. Mr Holden, I like your idea of a non adversarial hearing.

MR HOLDEN: Occasionally I'm wrong. There doesn't appear to be any argument about the cleaners.

PRESIDENT: No, you don't have a different view.

MR HOLDEN: No. The issues raised by Ms Shelley I dispute. These people are not providing care; they are coaching and there is a significant difference. None of these employees have any child care qualifications, and if you look at the classifications in the Child Care Award it refers at Level 1, even a trainee, a person at this level would
5 work under close supervision and at the completion of 12 months would have attained the competencies identified in the Child Care Traineeship Training Plan. There has been no suggestion that these people study a child care traineeship training program - none of them have done so.

PRESIDENT: What about the scope?

10 MR HOLDEN: Well, let me first address the scope of the Health and Fitness Centre; there are two references: (a) gymnasiums and fitness centres; (b) health and weight control establishments; it not necessary that both of those apply. Now it can be argued quite strongly that the place of work in this matter fits both a gymnasium
15 or a fitness centre because they are physical activities which are carried on at these places for both young children and for adults, as Mr Cramp has said. It is certainly - it does seem to have a preponderance towards younger people but you will notice that the title of the organisation is 'Citizens Club' - it includes the word 'citizens'; it certainly doesn't exclude adults.

The services provided - and Mr Cramp tells me they also have a full weight
20 gymnasium which is in fact their main money earner in -

PRESIDENT: A what?

MR HOLDEN: A full weights gymnasium; I take that to mean a gymnasium with the full listing of weights that are normally carried in a gymnasium or a health and fitness centre.

25 PRESIDENT: Right.

MR HOLDEN: If you go on looking at the classifications in Child Care Award, they of increase after Level 1. For instance, a Child Services Worker Level 1 - it says:

- shall be an unqualified person -

30 - which appears to me to be the only reliance that could be placed on including these people as child care workers -

or a person undertaking part time study leading to relevant care qualifications specified in this clause.

35 And from thereon the qualifications improve up through the level. So what we are claiming is these employees have never ever sought to meet the requirements of the classifications contained in that award. There has never been any efforts in terms of this organisation to have them meet those qualifications, yet in terms of other areas, some of them do have qualifications in terms of they are qualified coaches in the area of gymnastics. In fact, I doubt very much whether you could coach or supervise
40 gymnastic courses if you weren't qualified, as I believe you'd be taking on quite a dangerous task.

45 So we reject that the Child Care Award does apply, and certainly the applicant does not accept Ms Shelley's assertion that the Child Care Award has applied in the past and certainly no proof has been put forward. Assertions have been made but nothing more. If the person who was involved in the industrial dispute does wish to proceed against the applicant in this matter for back underpayment prior to his termination, I have no doubt that what applied - the commission would rule on

what applied at - during his period of employment and at the time of his termination. Any decision in this matter would have prospective effect; it certainly would not necessarily have retrospective effect.

PRESIDENT: Well, that depends how I declare it, if I declare anything.

5 MR HOLDEN: Well, I certainly wouldn't be arguing about that.

PRESIDENT: You're not seeking retrospectivity?

MR HOLDEN: Not - well, as I say, we don't seek to disadvantage anyone so we have no reason to seek retrospectivity.

10 The out of school hours care program is simply, in my view, a choice of words used by Mr Cramp. I don't think it is officially listed as a out of school hours program. The funding for this organisation, I understand comes in a block and I think it's based on the number of - the number of people who attend.

PRESIDENT: And what does that - what do you mean by that? I'm sorry.

MR HOLDEN: Well, the number of clients that they have.

15 PRESIDENT: And the funding comes from?

MR HOLDEN: The federal government.

MR CRAMP: Yes, per - I think it's - I'm not sure how many cents it works out to per child but it rolls out to about 20,000 - 22,000 a year, so -

20 PRESIDENT: Yes. And do you know - sorry, Mr Holden, but do you know, Mr Cramp, where the funds come from in terms of the Commonwealth source?

MR CRAMP: The Family Health Services in Hobart, of Commonwealth Government, where we have the - that we're registered with, with our contract and there's a small portion that comes from the state body.

PRESIDENT: When you say the state body, what do you mean?

25 MR CRAMP: Well, I'm not quite sure which state body it is, but there's a small component of that overall figure.

PRESIDENT: Is that an annual grant is it, or -

MR CRAMP: Per child.

PRESIDENT: Per child amount.

30 MR CRAMP: Yes.

PRESIDENT: I see.

MR CRAMP: So it's - and that's in that component. It's not in addition to that fee, it's in that fee; one pays the other then they pay us.

PRESIDENT: Oh, I see. Okay.

MR CRAMP: So it's not compulsory that, you know, we use - that we use this service and we could disregard the service and not receive that funding and increase our fees, but - and work under the other award - the this award, but the -

5 PRESIDENT: Yes, at the risk of stopping Mr Holden in full flight, the - Mr Cramp, the -

MR CRAMP: Oh, sorry, sir.

PRESIDENT: - the business of your organisation, is it a non profit making organisation?

10 MR CRAMP: Non profit, sir. Yes, we're registered - we are a registered benevolent institution and as such untaxable. The - with the gymnastics coaches - and they must be qualified coaches - they must do their Level 00, Level 1, Level 2, Level 3 before they can coach, and some of the girls we pay are as assistant coaches, but the federal gymnastics body stipulates that we only have eight in a group for safety reasons because it's a very active sport -

15 PRESIDENT: Yes.

MR CRAMP: - and for there, sir, Ms Shelley was talking about 15 from the other award; well immediately we're paying, you know, double the wage just to comply with that 15 - well, the 15 opposed to the eight - the point I'm making is that it would just, you know, under that award it would be completely inappropriate; we'd had to double or treble our fees and -

20 PRESIDENT: Yes, and what are the fees that you charge?

MR CRAMP: Well, because the Police Department pays my wage and my assistant's wage and the wage of the public servant and picks up a lot of the charges for the building - some of the maintenance for the building - we're able to charge just a minimum payment for many of the activities. It ranges from a dollar to about \$3.

PRESIDENT: Per session.

MR CRAMP: Yes. Whereas a similar sort of thing in other organisations that are six, seven, eight, \$9 for the after school care, that's why so many are allegedly going - closing up - can't afford to operate.

30 PRESIDENT: All right. Thank you. Yes, Mr Holden.

MR HOLDEN: Mr President, the basis of our submission is that, as I said, that they're not providing care, they're providing instruction and there's a distinct difference. It is health and fitness instruction. They're not seeking to guide the minds of people into educational areas. Well, of course, they are trying to provide better citizens for the future. We feel that the Child Care Award is inappropriate. The Health and Fitness Centre Award does meet the requirements and in fact the union in this matter concede that in respect of a number of the persons involved, and when - the facts of life are that irrespective of whether they're doing it in the afternoon or in the evening they're doing basically the same thing.

40 Now it seems passing strange to me that if you're an admin and clerical worker in the afternoon writing, you become something else in the evening doing exactly the same work and I submit the Health and Fitness Centre Award is the appropriate award, and as I've said we're certainly prepared to look at the issue of those people

who Ms Shelley says in terms of cleaning classifications should be under the all-embracing common rule Cleaners Award.

PRESIDENT: Yes, all right. Yes?

5 MS SHELLEY: I understand from Mr Clifford - and this is subsequent to the position I put before you earlier, that the after school hours care program actually takes place in a discrete area that is downstairs and is in fact away from the places where the gymnasium instruction that Mr Holden is referring to takes place; that there's actually - that the after school hours care takes place downstairs on the basketball courts, not upstairs where the gymnasium instruction is taking place. Mr
10 Cramp confirmed that the money comes through Health and Family Services, and as I said, that's the children's services program which funds out of school hours care as part of the children's services program. This is not the Child Care Award incidentally; it's the Child Care and Childrens Services Award.

15 MR HOLDEN: Well, I'll call on Mr Cramp to answer the specifics of it, but the very fact is, this organisation is not providing services exclusively to children and the after school program includes adults. But I'll ask Mr Cramp to address the issue of where it takes place.

PRESIDENT: Yes, thanks, Mr Cramp.

20 MR CRAMP: Thank you, sir. The after school program at our police youth club includes the whole building; the trampoline gymnasium, the girls gymnastics gymnasium, the basketball gymnasium and that is where the activities take place, not in any secluded corner or anything like that. Well I can't say it any clearer than that, sir.

PRESIDENT: Mm.

25 MR CRAMP: It involves -

PRESIDENT: Well, tell me what happens; the children roll up after school?

MR CRAMP: Yes.

PRESIDENT: They come into the gym?

MR CRAMP: Yes, together -

30 PRESIDENT: And they are greeted, are they, by anybody?

MR CRAMP: We have a mix of adults and children coming in all day long.

PRESIDENT: All day long?

MR CRAMP: Yes. The schools - we open from 9.00am till 9.00pm.

PRESIDENT: Yes.

35 MR CRAMP: During the day schools will bring class groups, whether it's primary school or high school or college.

PRESIDENT: Yes.

MR CRAMP: So colleges have dropped out somewhat now since the event of the new college close by, but they come into our premises where they do weight gym

work, they play basketball matches and they use our gymnastics stadium for gymnastics applicable programs, and the trampoline as well - the trampoline gymnasium.

5 At three o'clock in the afternoon - or from three o'clock in the afternoon, there are a mixture of people, mostly children with their parents, but adults using the weight
10 gym will come to the front counter, sign in to the programs and attend their specific program. Naturally, most of the adult programs are at work - are at night - because of the working nature of most of the people that attend our place. We do have a lot of unemployed and shift workers coming there. The children are signed on,
15 registered through the computer and go to their various activities. It could be recreational gymnastics, it could be trampolining, it could be basketball, and it could be, you know, the netball or whatever program is being conducted. There's the loose - loose group of kids that float in; they might be brought down from the shelter - the women's shelter - and it's a fluctuating group of children which can vary
20 between five kiddies a night and at the very best about 20 and they are our - they enjoy the activities of indoor hockey, maybe indoor soccer and basketball and netball coaching and training. That's - they might do any - all five of those components and trampolining work as well, not in any secluded spot.

20 PRESIDENT: How long would they be - what would be the normal length of time that the - an individual might spend on the establishment?

25 MR CRAMP: We - approximately - I think by - the parents - the time that school is out and the parents get them there it averages out about 3.30 to about 5.30 and we have a bus program - or we have had a bus program going in the past where we - where I've driven and others have driven to different schools picking up students -
30 primary school age - and bringing them back to the club. We run that at a great loss. Many times the bus will come back with one or none on it. It goes as far as Rocherlea and they come back to the - they may go into dance and they go into the - which is still in the - loosely called the after school care program, that three hour - that three hour bracket, 3.00pm to 6.00pm.

30 PRESIDENT: That three hour block.

35 MR CRAMP: Yes. And some may overlap; they may go into a program at five o'clock, go into one at 3.30, stay on and go into another one at 5.00 through to 7.00 or 6.00. Yes, that's - it's sometimes a dumping ground for kiddies but we're there to support them and give them coaching and activities. We have a number of ADS students - Attention Definite Syndrome - usually - maybe one or two. Two is the
40 most we've ever had and they - their parents put them in the program for the active side of our sport and I've got letters from the parents commending us on our active program which is helping control the children.

PRESIDENT: Mm, all right. Nothing further you wanted to say?

40 MR HOLDEN: I can only conclude by saying it is a health and fitness program and not a child care organisation.

PRESIDENT: Yes. One last shot, Ms Shelley.

45 MS SHELLEY: Right. I think it's a sort of fairly risky strategy on the part of the Police and Citizens Club because they're operating from 3.00 to 6.00pm a program that they call the Out of School Hours Care Program, as Mr Cramp has just said, during which they support the children. Children used to be collected from the schools by the bus or they come with their parents. It's funded under the federal government Out of School Hours Care Program. I think if they're now saying it's not the Out of School Hours Care Program, because out of school hours care is covered

by an award that pays more money, then maybe they shouldn't be getting funding from the federal government to run an out of school hours care program.

Clearly, it fits that definition; it fits the award definition; it's ... the time for the age group and funded through the Out of School Hours Care Program through federal government funding, therefore Out of School Hours Care Program per se, is covered by the Child Care and Childrens Services Award.

PRESIDENT: Yes, but it's not the entirety of their function, is it?

MS SHELLEY: Not the entirety of the function?

PRESIDENT: Of their function. I mean they do - the business is broader than just that.

MS SHELLEY: Well, I'm not saying that the business is not broader than just that.

PRESIDENT: And it's - I guess the question is how do I - what means do I use to determine what the industry is that fits this particular employer, and is the industry as described in the scope of the Health and Fitness Centres Award broad enough to cover the total activities of the business and -

MS SHELLEY: Well, I've - yes -

PRESIDENT: - and similarly whether the activities of the business are such that they fit more comfortably within the Children and Child Care Services.

MS SHELLEY: I believe - I'm in no way saying that all of the employees who are working there are covered by the Child Care and Childrens Services Award. What I am saying is that those who work in the out of school hours care part of the operation are covered by the Child Care and Childrens Services Award. A multiplicity of awards may well - may well apply. Certainly I believe that the Miscellaneous Workers Award applies in respect of the cleaners and I believe that the Child Care and Childrens Services Award applies in respect of the Out of School Hours Care Program.

I'm in no way saying that those people who might be working upstairs doing weight training are working in the Out of School Hours Care Program but those people who are employed, as people have been there for years, including the person that we've recently had the dispute about, they're confined to working with the children in the Out of School Hours Care Program and those people are clearly, in my view, covered by the Child Care and Childrens Services Award.

Now if they might have a group of people working some hours of the day upstairs in gymnastics coaching and some hours of the day with the specific group of children aged - primary school age children are coming there to participate in the outside school hours care program, well the act provides for people to be covered at different times of the day by different awards, I mean if that's happening. Now in the case of our guy, he was always working in the Out of School Hours Care Program.

So I believe that where they are working in the Out of School Hours Care Program they are covered by the Child Care and Childrens Services Award. Where they are clearly working in health and fitness and not in the outside school hours care program then they're covered by the Health and Fitness Award. If they are cleaners they are covered by the Miscellaneous Workers Award, and that is no different to any number of other organisations that will be applying different awards according to the specific circumstances of that employee.

PRESIDENT: Really are they applying different awards to the same people at different times of the day.

MS SHELLEY: Well, I don't know that they are you see, because I would think that - I mean we're not being asked for you to determine a wage claim in relation to
5 the Launceston Police and Citizens Youth Club, we're being asked for an interpretation that this award applies basically to -

PRESIDENT: And virtually you've said yes.

MS SHELLEY: - to it - you know, to the industry of health and fitness and I don't
10 believe that the Out of School Hours Care Program is part of - is part of the health and fitness program. But I'm not - I'm not - I don't believe that in most cases it would be the case that - that a number of different awards were paid to the one person. I mean it may - it may in some cases but generally speaking, in the Police and Citizens Youth Clubs and elsewhere, people are employed for those hours in the
15 Out of School Hours Care Program and that is the case and it was the case with this employer and we've had dealings with them and that is the case. They have been employed to work in the outside school hours care programs conducted within the building that is operated by the health and fitness - sorry, by the Police and Citizens Youth Club. So they could be - yes, the fact that it's conducted within that building does not mean that they're not actually engaged in the industry of children's
20 services.

MR HOLDEN: Mr President, I'm going to insist on my right of final comment.

PRESIDENT: Oh, look, I was going to invite you.

MR HOLDEN: Oh, thank you. Ms Shelley is wrong. We are not seeking that you
25 rule that the industry covering all the Police and Citizens clubs in this state are subject to this award. We are not even necessarily claiming that any of the - those organisations outside the one that is an applicant in this matter perform the same functions as the Launceston one. In fact, no evidence has been led to say that at all. The evidence in this matter is what happens at Launceston.

PRESIDENT: I don't think there's any dispute about that really.

MR HOLDEN: No. To give you an - to give you an example, the Police and Citizens
30 Boys Club in Launceston do not provide table tennis coaching even though they have a table tennis table, but the level of interest in table tennis in Hobart is, I know, so high that that could be a very well run sport for them. There may be totally different interests in Hobart and they may run totally different. There is no tie up to
35 the extent that they all operate under the same arrangements. This application simply applies to Launceston Police and Citizens Boys Club - sorry, Police and Citizens Club and we're certainly not saying it would apply to others. They could sort their own affairs out.

PRESIDENT: Yes. I didn't really glean from what Ms Shelley said that that was
40 what she was trying to argue, that the - I had to declare that the award was going to apply to all Police and Citizens Clubs, but if I missed that point, I apologise. But it certainly wasn't my understanding of what was said.

In terms of the employment of the people, it's been alleged that employees of the
45 Police and Citizens Club are employed for specific programs, and one of them is the after school program and people are just employed for that. Can I have a response from your side on that, Mr Holden?

MR HOLDEN: I am not sufficiently well informed on that. Mr Cramp would have to respond.

PRESIDENT: Yes. Would you respond please, Mr Cramp?

MR CRAMP: Yes, sir. Could you run that question over me again?

5 PRESIDENT: Do you employ people solely for the after school program, as you call it?

MR CRAMP: Again, we - these people are casuals, but they are regular casuals - employees.

PRESIDENT: But you engage people -

10 MR CRAMP: Yes.

PRESIDENT: - for say, just from 3.00 till 6.00 to be involved in the after school program and nothing else?

MR CRAMP: No, they can roll on to other programs. If the program is extended -

PRESIDENT: But no, they can - but do they? Do you -

15 MR CRAMP: Yes, they do. Yes, our gym coaches -

PRESIDENT: Is that a circumstance of -

MS SHELLEY: There are some they don't.

PRESIDENT: - the way you employ those people? That they all roll on or -

MS SHELLEY: No, they don't all roll on.

20 PRESIDENT: Okay, so what proportion don't - or doesn't?

MR CRAMP: Oh, about maybe a sixth; there may be -

PRESIDENT: So, what, you've got -

MR CRAMP: - there may be three - three or four.

25 PRESIDENT: Three or four people who are engaged solely for the after school program.

MR CRAMP: I don't like to say solely because they may take a break and come back. One of the boys is our judo coach; he's involved in the after - the 3.00 to 6.00 program and he continues with judo. There would be - there would be three or four that are only in that time frame.

30 PRESIDENT: Yes, right. So three or four of them are solely engaged for the after school program.

MR CRAMP: Yes.

MR HOLDEN: That would involve their availability and when the programs are being -

PRESIDENT: Yes.

MR HOLDEN: - run.

PRESIDENT: I accept that.

MR HOLDEN: I would imagine -

5 MR CRAMP: All of their own volition

MR HOLDEN: But I'm sure some are - that only work in there most of the time.

PRESIDENT: Mm. Yes, have a seat. I'm thinking. This could take a long while. All right. Yes. Is there anything anybody wants to add at this stage? I may - there are a few things I have to examine here and I may end up having to come back and have a
10 look at the operations of the club.

MR HOLDEN: If you do that, I take it you would make arrangements with Mr Cramp to ensure that some activities are going on.

PRESIDENT: Yes. Yes, and I'd want to involve the other organisation.

MR HOLDEN: Just for the commission's interest, it the nature of the grant does
15 actually provide for there to be more than one award in force; it - and I quote the words: The staff must receive rates of pay and conditions in accordance with appropriate awards.

PRESIDENT: Well, have you given any thought to - or have you at any stage considered that the organisation might have been covered by the, was it the Child
20 Care and Childrens Services Award?

MR HOLDEN: We looked at that award and for the reasons I've explained, determined that it wasn't the appropriate award -

PRESIDENT: Right.

MR HOLDEN: -and Mr Cramp took advice from certain senior government
25 industrial relations people and government departments and nobody there was prepared to give him a definitive answer.

PRESIDENT: I can understand why.

MR HOLDEN: And that's why it's now here, and if it isn't resolved here it will be resolved in a different way.

30 PRESIDENT: Yes. Yes. It might end up being the most sensible way when it's all boiled down. All right. Well, I'll adjourn the matter sine die. I'll have to come back to you. I'd like you to, if you would, Mr Holden, have a look at the options that have been talked about this morning which seem to me to be a potential for the cleaning -
35 sorry, the cleaning classification out of the Miscellaneous Workers Award to apply with the possibility of Child Care and Childrens Services applying to the after - those engaged in the after school program and Health and Fitness in respect to the others, and have a look at that and see what it does to the administration of your organisation. It may be that that's a simple way to go and - or the creation of an agreement to do those things.

40 MR HOLDEN: If you wish, I can respond now.

PRESIDENT: Well do.

MR HOLDEN: The four matters you've referred to, number one is not in dispute; that's in respect of the cleaners. The applicant in this matter will oppose the Child Care Award. In terms of the Health and Fitness it would seek to have all of the
5 people who coach or supervise the people covered by that. Alternatively they will talk to the employees about an overarching agreement.

PRESIDENT: Mm.

MR HOLDEN: And basically that's always been the simplest option for the
10 organisation. However, having regard to the funding requirements and having been involved in a recent dispute and the, how shall I say, lack of clarity which has been obvious, they thought that the best way was to try to have the commission provide straight line, if you want, guidance -

PRESIDENT: Yes.

MR HOLDEN: - as to where it was going to go.

15 PRESIDENT: Well, you can -

MR HOLDEN: The option of a variety of awards really, because people move, because there are adults involved, it's -

PRESIDENT: I agree - I agree with you.

MR HOLDEN: - it's just not an option.

20 PRESIDENT: I agree with you, but you can see the risks that you might run -

MR HOLDEN: No.

PRESIDENT: - if we - well, if it goes to declaration, there are a couple of
25 alternatives for me. I don't know yet which way I'll come down. You might be able to sort things out in the interim and prevent me from making a declaration. However I'll adjourn the matter sine die. Thanks very much.

HEARING ADJOURNED SINE DIE