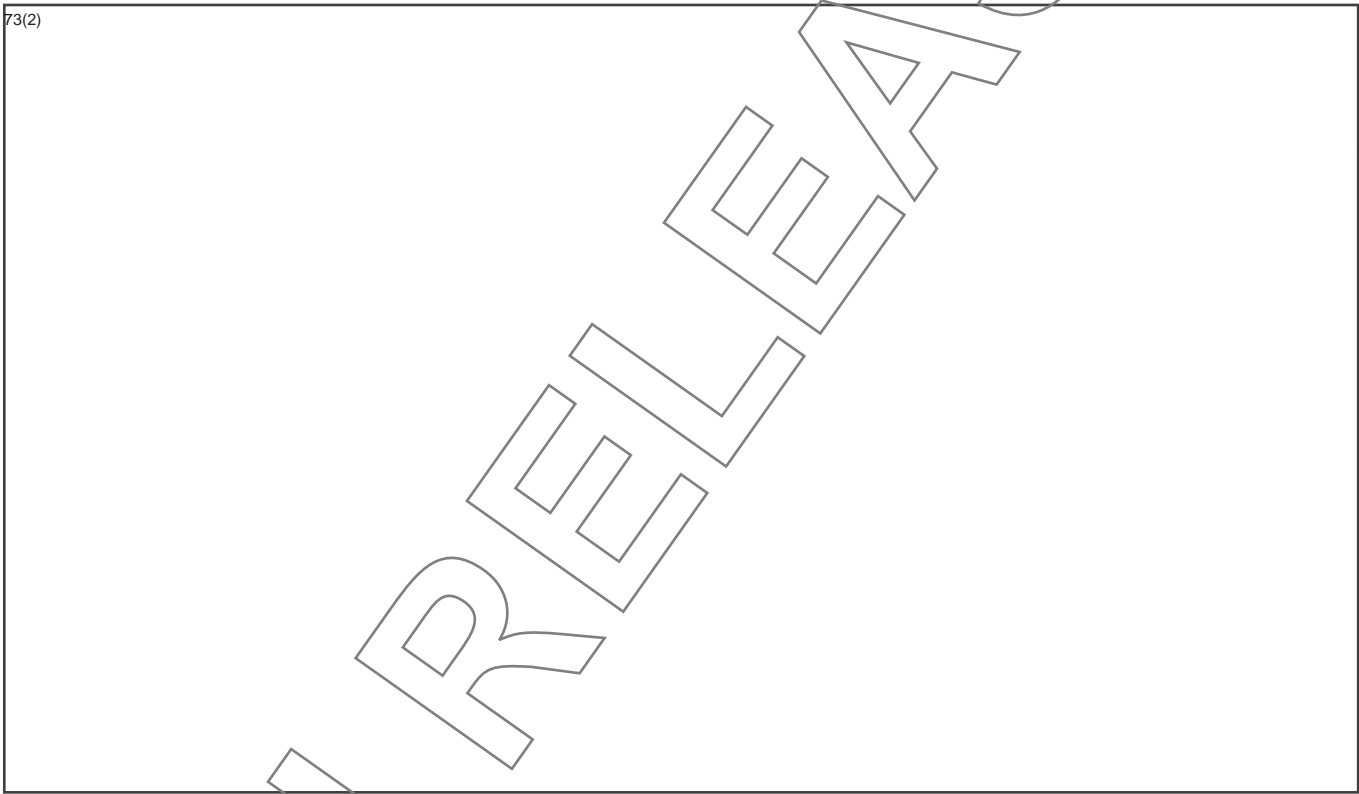


THE BACKGROUND

(1) AICCA has been in operation since 1978, when it first began service delivery under the auspices of the Aboriginal & Islander Community Health Service. It eventually became a corporation in it's own right and is currently registered under the Business & Consumer Affairs legislation.

(2) AICCA is funded annually by both the state department of Family Services and the federal department of Health & Human Resources, to provide a comprehensive child care and family support service to the Brisbane ATSI community.

73(2)



RTI RELEASE

STATEMENT OF REASONS PROVIDED PURSUANT TO SECTION 33 OF THE JUDICIAL REVIEW ACT 1991 IN RELATION TO MY DECISION MADE ON 23 NOVEMBER 1998 (TO TAKE EFFECT FROM 4 DECEMBER 1998) TO REFUSE TO MAKE FURTHER PAYMENTS OF DEPARTMENTAL GRANTS TO THE ABORIGINAL AND ISLANDER CHILD CARE AGENCY (AICCA)

Background

1. The Brisbane AICCA receives recurrent funding from both the Commonwealth Department of Family and Community Services (\$721,352 per annum) and the Department of Families, Youth and Community Care (\$423,000 per annum).
2. Services funded by the Commonwealth include:
 - Child placement and related family support services
 - Koolyngarra Child Care Centre, and
 - Emergency Relief.
3. Queensland Government funding is provided for:
 - work with young people with a crime prevention focus
 - early intervention with families at risk of entering the Department's statutory system
 - recruitment and support of care providers to provide shared family care to children in guardianship of the Director General
 - placement of children with care providers
 - support and expert advice to departmental staff while they investigate child protection issues with indigenous families
 - administration of emergency relief funds
4. On 19 October 1998, I issued a Show Cause letter to the President, Board of Directors, AICCA, pursuant to Section 15(5) of the *Family Services Act 1987*. The Show Cause letter was based on the findings of the joint Commonwealth/State financial audit dated 8 May 1998 and the advice provided by the Grant Controller, Graham Stewart of Harts Pty. Ltd.

NB: In correspondence from AICCA, representatives sometimes refer to the Board and sometimes to the Management Committee. For the purposes of this document the term Board of Directors is used to refer to the management body of AICCA.
5. The Board of Directors was requested to respond to two issues:
 - *"Serious financial mismanagement by the Board of Directors of the Aboriginal and Islander Child Care Agency"; and*
 - *"The Aboriginal and Islander Child Care Agency is insolvent".*
6. The membership of the Board of Directors of AICCA changed following a vote of no confidence in the former Board at a Special General Meeting on 30 October 1998.

7. Mr Les Malezer, the new President of the AICCA Board of Directors replied to the Show Cause Notice in correspondence dated 9 November 1998. Attached to the letter was a financial review of AICCA prepared by Drake and Murphy, Chartered Accountants.

Evidence or other material on which findings of fact were based:

In arriving at my decision I had before me for consideration the following material:

8. The following relevant section of the *Family Services Act 1987*.
- **Section 15** which deals with the administration of Grant Funds, the show cause process and the power to refuse further payments of the Grant.
9. The following relevant section of the *Financial Administration and Audit Act 1977*:
- **Section 36** which sets out the functions and duties of an accountable officer under that act.
10. Audit report from Hayward, Gesch, Dorge dated 1 December 1997.
11. Joint Financial Audit/Investigation of the Brisbane Aboriginal and Islander Child Care Agency prepared by Lance Parsons, Director, Commonwealth Department of Health and Family Services, Anthony Jayawardena, Assistant Director, Commonwealth Department of Health and Family Services and Bruce Hunt, Financial Coordinator, Department Families, Youth and Community Care, dated 8 May 1998.
12. Correspondence from Mr Sam Watson, Secretary, Board of Directors, AICCA, dated 24 June 1998 in which it is stated that "the Board would like to go on formal record as accepting full responsibility for the affairs of our Agency and the shortcomings that were noted by the auditor should be primarily attributed to our failure as Directors, to play a more direct part in the day to day administration of the Agency."
13. Correspondence from Mr Sam Watson, Secretary, Board of Directors, AICCA dated 15 July 1998, outlining strategies to be immediately implemented to address the debt and lack of financial controls in the Agency.
14. Correspondence from the Queensland Corrective Services Commission disputing the validity of any claim on the Commission by AICCA .
15. Two Creditors Position Reports for AICCA dated 5 October 1998 and 26 October 1998 prepared by Mr Graham Stewart, Grant Controller, AICCA.
16. Letter to Mr Cecil Fisher, President, Board of Directors, AICCA from Mr Ken Smith, Director General, Department of Families, Youth and Community Care dated 19 October 1998, calling on the Board of Directors to show cause as to why further payments of grants to AICCA should be made.
17. Letter to Mr Martin Watego, Vice-President, Board of Directors, AICCA, dated 30 October 1998 from John Dalglish, Regional Director, Brisbane South, Department of Families, Youth and Community Care outlining advice received from Mr Graham Stewart, Grant Controller, in his Creditor Position Report dated 26 October 1998.

18. Reply to the Director-General's show cause letter by Mr Les Malezer, President on behalf of the AICCA Board dated 9 November 1998.
19. AICCA Financial Review Report dated 6 November 1998 prepared by Drake & Murphy, Chartered Accountants.
20. Letter dated 9 November 1998 from Mr Les Malezer, President on behalf of the AICCA Board advising of the membership of the new Board.
21. Letter dated 5 November 1998, from Ms Kaye Whitta, Regional Manager, Commonwealth Child Care Program, Department of Family and Community Services to the Board of Directors, AICCA, outlining Senator the Hon., Jocelyn Newman's decision to withdraw funds from AICCA and advising that there was no agreement to sell Commonwealth funded vehicles to offset the debt of the organisation.
22. Report dated 18 November 1998 by Mr Steven Austen, Manager, Budget Section, Department Families Youth and Community Care, on his assessment of the Statement of Accounts for AICCA 1996/97, the Grant Controller's Creditor Position Reports and the AICCA Financial Review Report prepared by Drake & Murphy Chartered Accountants.
23. Recommendation dated 18 November 1998 from John Dalglish, Regional Director, Brisbane South, Department of Families, Youth and Community Care.

Findings on material questions of fact

24. AICCA has debts amounting to at least \$485,000.
25. The Grant Controller, Mr Graham Stewart and Drake and Murphy, Chartered Accountants, appear to substantively agree that AICCA's debt on a liquidation basis is \$582,000. Drake and Murphy and the Board further state that liabilities amount to \$485,000, if calculated on a going concern basis. The main difference between these figures is that it is assumed that no reserve is required to meet staff entitlements such as annual leave and long service leave entitlements if AICCA continued to operate.
26. The grant controller's assessment is a more correct view of the debt of the organisation. Drake and Murphy's assessment is a more correct view of the debts that were due immediately. The immediate debt is still \$60,000 more than the Department's annual grant to the organisation.
27. The Commonwealth has withdrawn recurrent funding from AICCA resulting in a loss of income to AICCA of \$721,352 per annum.
28. The former Board was previously responsible for addressing the debt.
29. It is not appropriate for the funding bodies to assume an operational management function with a service provider. However both funding agencies assisted the former Board by successfully negotiating the appointment of a Grant Controller and a Review Team to examine AICCA's operations.

30. AICCA members should have been alerted to concerns regarding the financial management of the agency as the last two (2) completed audit reports were qualified. Further, it is not usually the role of the funding body to inform members of concerns about their organisation. This responsibility is with the Board.
31. It is too early to assess the financial management skills of the new Board. However even if the new Board of Directors is competent the current level of debt of AICCA precludes any viable trading out strategy.
32. The Board has not disputed the finding of serious financial mismanagement set out in sections (1)(a)(b)(c) of the Show Cause letter of 19 October 1998.
33. AICCA has agreed that the debt is \$485,000 as stated in Mr Les Malezer's letter of 9 November 1998.
34. The fact that AICCA owes wages to its employees is not disputed and is acknowledged in the Drake and Murphy Report of 6 November 1998.
35. AICCA acknowledges that there has been financial mismanagement as stated in Mr Les Malezer's letter of 9 November 1998.
36. Between 8 May 1998 and 12 October 1998, AICCA's Board of Directors took no effective measures to decrease the level of debt.
37. The Minister for Family and Community Services has not agreed to the sale of the Commonwealth funded vehicles to offset the agency's debt. The Board was advised of this in Ms Kaye Whitta's letter dated 5 November 1998. New vehicles would need to be purchased or leased to maintain service delivery. It is not explained how this cost would be met.
38. The Department is not in a position to forgive the debts owed to ATSC (\$12,000) and the Queensland Corrective Services Commission (QCSC) (\$53,000). In relation to AICCA's counter claim that the QCSC owes an amount of \$57,000 this matter has been previously examined by the region. It is the commission's position that no money is owed to AICCA (correspondence attached).
39. In relation to the \$51,000 owed to the Department of Families, Youth and Community Care for an Access and Equity Child Care Grant, it is considered that this debt should not be written off as:
- although small amounts of money in unexpended grants can be forgiven, it would be unusual for this to occur with such a substantial amount of money and this type of assistance would not be offered to other organisations experiencing similar difficulties, and
 - this action would not be viewed favourably by the broader community sector, and
 - such action would set a precedent for the community sector in general.
40. In relation to other assets;

- Any benefits from the sale of existing Woolloongabba premises as suggested in the Drake and Murphy report would be offset by the need to meet rental costs probably at commercial rates. The Aboriginal and Torres Strait Islander Commission holds a caveat over this building and the Board of Directors has not indicated or demonstrated that this Commission would be willing to sell the premises to pay off a proportion of the debt.
 - AICCA had free and unencumbered assets of approximately \$53,000 as at 30 June 1997. Even if these assets were sold the debt would not be substantially reduced and AICCA would have to replace these assets to maintain operations, ie. office furniture and fittings.
41. As the Commonwealth Department of Family and Community Services has withdrawn Commonwealth funding from AICCA the full debt would need to be recovered from State grants. On a two year basis, this would equate to a repayment of at least \$242,500 per year or about 57% of the Department's annual funding allocation. This could not occur without seriously reducing the level of service delivery.
 42. Even if the decision by the Commonwealth to defund was rescinded, given the level of debt for the agency, service delivery would have to be reduced. Savings in recurrent costs would not reduce a debt of that size to any significant level without affecting service delivery.
 43. Any new sponsor of the Child Care Centre would not be liable to assume responsibility for the current debt. The Board has not indicated that they have located a new sponsor.
 44. The new Board has not provided a credible cost reduction strategy to address the debt while maintaining services, particularly in view of the Commonwealth Department of Family and Community Services' decision to withdraw funding.
 45. The new Board has not demonstrated that AICCA is able to meet debts as they fall due.
 46. The Board's proposal to continue trading would mean that the full debt would need to be repaid from State Government funding, which would seriously compromise the viability of those particular services.

Reasons for the Decision

47. I am not satisfied that AICCA is able to meet its debts as they fall due.
48. The amount of the debts owed by AICCA of at least \$485,000 cannot be repaid using the income currently received by AICCA without affecting the level of service delivery to clients of AICCA.
49. As the accountable officer for the Department of Families, Youth and Community Care under the Financial Administration and Audit Act 1977 I have responsibility under section 36 of that act to ensure that as far as is possible having regard to the limits of my power and control reasonable value is obtained for moneys expended. I am not satisfied that AICCA can provide reasonable value for the money granted to it to the extent that its debts impose a burden on the operation of the agency which is likely to adversely affect its ability to provide a consistent level of service to clients of the agency.

50. Section 36 of the Financial Administration and Audit Act 1977 also imposes upon me as the accountable officer for the Department a responsibility to manage the department efficiently effectively and economically and to avoid waste. I do not believe that it is reasonable to continue to make further payments of departmental grants to AICCA as there is an unacceptable risk that some of the money paid may be used to pay the debts of the agency rather than to provide the services for which the grants are made. In the circumstances it would be more effective to make the grants to another organisation which is not suffering from the financial hardship of AICCA and has a grant from the Commonwealth for a similar purpose.
51. As the Commonwealth has withdrawn recurrent funding of \$721,352 per annum to AICCA the scale of operations will of necessity have to be substantially reduced with a resultant loss of economy of scale of the operation. This coupled with the high level of debt of AICCA and the failure of the new Board of Directors to present a credible cost reduction strategy to enable repayment of the debt whilst maintaining a consistent and acceptable level of service leads me to conclude that there is an unacceptable risk involved in making further payments of departmental grants to AICCA. Those unacceptable risks are firstly the potential for reduction in service delivery and secondly the loss of some grant money in the not unlikely event that the agency ceases to operate due to the consequences of its heavy level of debt.

Dated this 23rd day of November 1998

Ken Smith
Director-General
Department of Families, Youth and Community Care



Department of Families
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26 November 1998

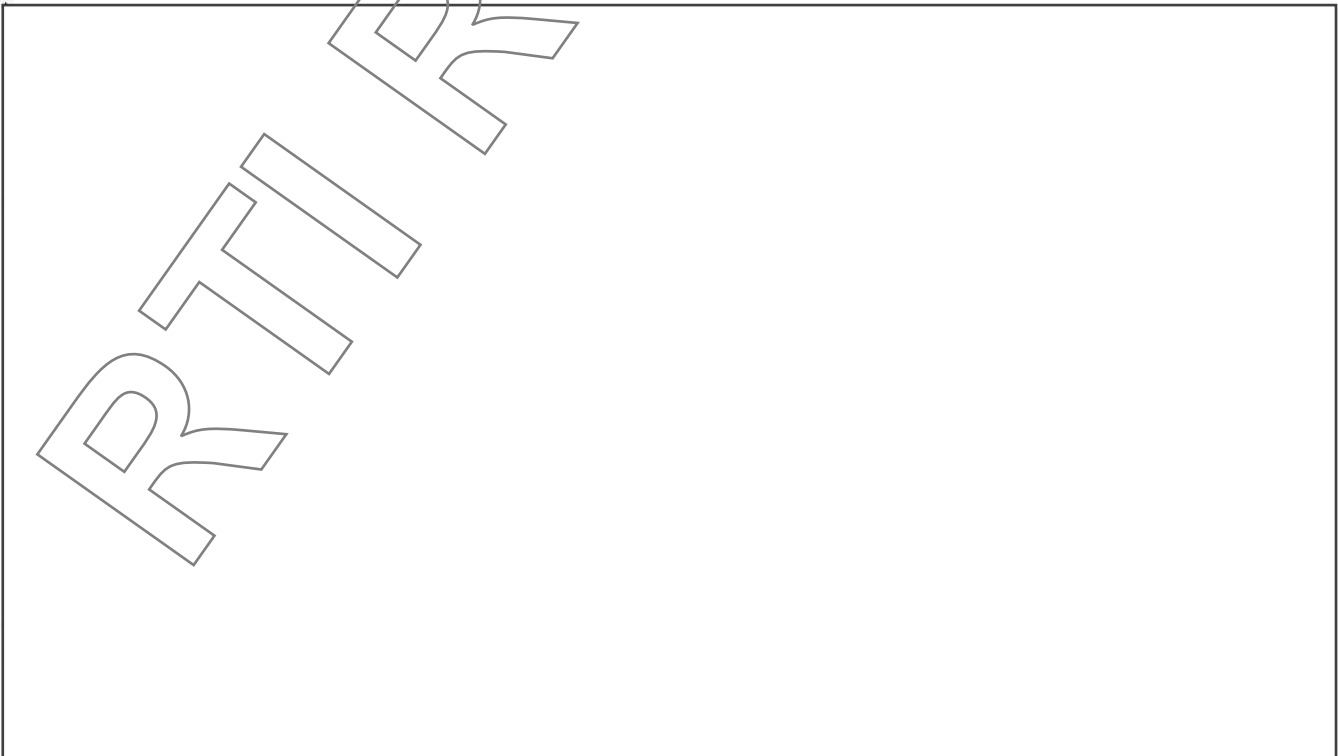
Mr Ken Jurotte
Chief Executive Officer
Aboriginal and Torres Strait Islanders
Corporation (QEA) for Legal Services
PO Box 35
ROMA STREET
BRISBANE QLD 4003

Dear Mr Jurotte,

73(2)



As you are aware, both the Commonwealth Department of Family and Community Services and the Department of Families Youth and Community Care have decided to withdraw funds from AICCA as of close of business 4 December 1998. In relation to the Commonwealth decision, this is subject to the outcome of Ministerial approval.



73(2)

NOT RELEASED

Yours sincerely

John Dalglish
John Dalglish
Regional Director
Brisbane South Region

Kaye Whitta
Kaye Whitta
Regional Manager
Commonwealth Child Care Program

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Registered Trustee in Bankruptcy

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RAD:DB:ABISCH2

8 February 1999

Mr Tim Carberry
Acting Senior Legal Officer
Department of Families, Youth and Community Care
GPO Box 806
BRISBANE Q 4001

Dear Mr Carberry

**ABORIGINAL & ISLANDER CHILD CARE AGENCY INC
(IN LIQUIDATION) - "AICCA"**

73(2)

Yours faithfully


ROSS A DUUS
Liquidator

R

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