

CHAPTER 4

THE CONTRACT BETWEEN THE ABC AND MS DOOGUE

4.1 The matter which led to the Committee's inquiry was the terms of the contract for Ms Doogue's services to the ABC as a compere/interviewer.

4.2 The Doogue contract was a contract for services between the ABC and Geraldine Doogue (Promotions) Pty Limited. It was for the period January 1985 to January 1986.¹ The contract examined by the Committee was the most recent for Ms Doogue's services entered into by the ABC, contracts also having been in effect for previous years. Each contract was negotiated with the ABC by a management agent who acted on Ms Doogue's behalf. The Committee discusses the procedures followed by the ABC in the negotiation of the contracts later in the Chapter.

The provisions of the Doogue contract

4.3 The Committee noted earlier that it did not believe it reasonable simply to ask the ABC to provide it 'in camera' with the amount Ms Doogue was paid, and then to judge whether or not the figure should be treated as commercially confidential. As the Committee noted in Chapter 1, there seemed little point in the Committee's having such information if it had to keep it confidential.

4.4 As noted in Chapter 2, the Committee was provided by the ABC with a number of sample employment contracts, following the Committee's examination of submissions made by the ABC and others invited to give the Committee their views. The Committee did not request from the ABC specific information concerning the

Doogue contract when it asked for these sample contracts, and the Doogue contract (or one like it) was not included amongst the sample employment contracts provided by the ABC.

4.5 At its first hearing on 25 November 1985, it was revealed to the Committee that the Doogue contract contained an unusual provision compared with other ABC employment contracts, that the company and Ms Doogue not reveal its contents.

4.6 Following the hearing, and having considered the evidence, the Committee wrote to the ABC early in 1986 and requested a copy of the Doogue contract. Following receipt of the contract the Committee decided to seek further information from the ABC in writing and to hold a second public hearing, in order that a number of questions concerning the terms of the contract (particularly relating to the method of payment) could be raised with the ABC. The Committee held this second hearing on 21 March 1986.

4.7 The Committee was satisfied initially to accept that the nine sample contracts provided to it by the ABC were, as requested, representative of employment contracts entered into by the ABC. Whilst the Committee did not ask for a copy of the Doogue contract, the nature of the Committee's inquiry should have prompted the ABC to advise the Committee that there were contracts (such as the Doogue contract) with clauses which were significantly different from those in the sample contracts provided. After having seen the Doogue contract, the Committee was surprised that this had not happened. Clearly, the nine contracts supplied were not as representative as the ABC apparently would have liked the Committee to believe.

The up-front payment clause

4.8 There were two clauses in the 1985 Doogue contract which were, in the Committee's view, very unusual when compared with the other contracts provided to the Committee as samples.

4.9 The first (clause 2 in the contract) provided for payment by the ABC to the Doogue company for the provision of Ms Doogue's services by a series of advance payments over the period of the contract, and read as follows:

2. In consideration of the above the ABC will pay Geraldine Doogue (Promotions) Pty Ltd an all-inclusive fee of [amount deleted] for the period of this contract together with a clothing and grooming allowance of [amount deleted] payable as to 50% of total fee on signature of the contract and the remaining 50% payable on or before 31 July 1985.²

This clause was described during the Committee's hearings as the 'up-front' payment clause.

4.10 The Committee first became aware of the existence of the up-front payment clause when a copy of the Doogue contract was provided to the Committee in response to its written request to the ABC in January 1986. The Committee notes that this and some previous Doogue contracts have been the only ABC employment contracts to contain such payment provisions.³ These previous Doogue contracts were similar to the contract negotiated in late 1984, except that the 'up-front' payment clauses provided for four advance payments, rather than the two in the 1985 contract.

4.11 The Committee's primary concern was why the terms of payment (whatever the sum payable) provided payment wholly in advance, and for such long periods in advance of the provision of services.

4.12 In the evidence provided to the Committee's second hearing, the ABC told the Committee that the inclusion of the clause had resulted from two beliefs, apparently held by ABC management: that Ms Doogue's services would be of advantage to

the ABC; and that 'because she was on the ascendancy and obviously became aware of her own importance' it was necessary to provide incentive to retain Ms Doogue's services. The Committee was also informed that the terms of the clause were proposed to the ABC by a management agent engaged by Ms Doogue.⁴

4.13 The apparent generosity of the terms of payment was of concern to the Committee. If an 'up-front' payment of, for example, 10% instead of 50% had been payable under the contract with the remaining 90% payable regularly in arrears, the advantage to the person whose services were to be provided, and the potential disadvantage to the ABC, would have been far less. The ABC told the Committee that, if it had not agreed to the clause, the total fee demanded by Ms Doogue may have been higher.⁵ The Committee accepts that this may have been so, but ought not to have cost the ABC more in total in view of the later times for payments.

4.14 The Committee asked what steps were taken by the ABC to protect the ABC's interests in the case of default due to failure to provide Ms Doogue's services for whatever reason. Ms McKenzie of the ABC told the Committee that, in addition to the generally available civil remedies, the contract provided (in clause 7) for reduction in payments proportional to the duration of the failure to provide services. However, the Committee points out that it did not clearly and unequivocally provide for repayment of advance payments. Failure to provide Ms Doogue's services due to accident or other unforeseen event, or a dispute leading to her withdrawal, if occurring soon after payment of one of the instalments, could have necessitated action to recover a very substantial sum. Termination of the contract was possible at the ABC's discretion in the case of failure to provide services for reasons of illness or otherwise.⁶ However, the ABC would not have been in a strong

position to recover what had already been paid, and any legal action would have been an unnecessary (and possibly substantial) cost.

4.15 The Committee sought to establish the course of negotiations between the ABC and Ms Doogue's agent which led to the agreement by the ABC to the contract. At the Committee's second hearing, the Committee was informed that Mr Alan Bateman (as then Acting Controller of Programs) had negotiated an earlier Doogue contract. The Committee wrote to Mr Bateman asking him a number of questions about the negotiation of the contract.⁷

4.16 Mr Bateman, who was no longer on the staff of the ABC, told the Committee he had negotiated the Doogue contract for 1984 with the agent engaged by Ms Doogue. At the time of negotiation of the contract, the ABC did not have a policy on the inclusion or exclusion of any particular terms negotiated by him on behalf of the ABC. Mr Bateman said

There was no policy except that contracts negotiated on an arm's length basis were acceptable to the ABC.⁸

4.17 The Committee also asked Mr Bateman why the 'up-front' payment clause and the non-disclosure clause (discussed in paragraphs 4.18 to 4.25) were included in the Doogue contract. Mr Bateman merely told the Committee that they were included as 'the product of the negotiations' and that no attempt had been made to resist the inclusion of the provisions in the contract he negotiated.⁹

The non-disclosure clause

4.18 The second unusual clause in the 1985 Doogue contract was clause 4 which provided

4. You agree that your Company and Miss Doogue will maintain the confidentiality of this Agreement and will not reveal its contents to any other person, firm or company.¹⁰

This clause was described during the hearing as the non-disclosure clause.

4.19 The Committee asked the ABC officers who attended its first hearing (when this clause, but not the whole contract, was first provided) why this clause was included in the contract, and whether it was the reason for the ABC's apparent reluctance to provide the information requested by Estimates Committee C at its hearings early in 1985. The ABC told the Committee that a non-disclosure clause was inserted only in 'exceptional contracts'.¹¹

4.20 When a member of the Committee pointed out to the ABC that the clause did not appear to impose an obligation upon the ABC not to disclose information to other persons or bodies, the ABC replied that where such a term appeared in a contract, the ABC believed that there was an implied obligation on it not to disclose the terms of the contract.¹²

4.21 Ms McKenzie of the ABC told the Committee in evidence that:

In some cases it is an expressed requirement of the individual not to disclose the amount that the ABC is paying. Obviously the obverse to that is that the ABC should not disclose that as well.¹³

However, the Committee points out that 'the obverse' is not explicitly stated in the wording of the clause.

4.22 At the Committee's second hearing, the Committee sought more detail on the implications of the non-disclosure clause and why it was not raised with the Estimates Committee by ABC officers, or referred to in supplementary written answers provided to that Committee after its hearing. The ABC told the Committee that, as it considered commercial confidentiality was the prime reason for not revealing the information to the Estimates Committee, it had not thought it relevant to advise the Estimates Committee of the clause. Ms Ercole told the Committee:

Having looked at this, I am not sure why we did not disclose that [i.e. the existence of the clause] at the time. All I can think is that we were answering such a bulk [of questions] that we did not realise that it was going to be of such specific importance. It was an oversight, I am sure. There was not any ulterior motive in that.¹⁴

4.23 When asked by the Committee whether such a view indicated that no-one in the ABC realised the clause had not been revealed to the Estimates Committee, the ABC replied that it had not considered revealing the existence of the non-disclosure clause until this Committee had started its proceedings.¹⁵

4.24 The Committee also asked the ABC whether it was reluctant to provide information to an Estimates Committee about employment contracts, notwithstanding the existence of a non-disclosure clause in the contract. Ms Ercole of the ABC told the Committee that the Parliament and its committees were able and entitled to request and receive whatever information was relevant regarding expenditure, notwithstanding the existence of a non-disclosure clause in any contract.¹⁶

4.25 Advice on the number of ABC employment contracts with non-disclosure clauses was also sought by the Committee. The ABC found it difficult to give the Committee an accurate answer to this question, due to an apparent lack of detailed knowledge on the contracts entered into by the ABC. It advised that, in January 1986, there were two current contracts which contained such clauses, including a contract for the year 1986 which contained the following words:

You agree that you will maintain the confidentiality of this agreement and will not reveal its contents to any other person, firm or company save your professional advisers. The ABC makes the same undertaking, subject to the requirements imposed on it as a statutory authority.¹⁷

The last sentence of the clause had been added as a result of the issues explored by the Estimates Committees and this Committee.

Conclusions

4.26 The Committee was gravely disturbed that a contract such as the Doogue contract with such unusual and unjustifiable terms should have been entered into by the ABC. It is not relevant that such contractual conditions might be common in commercial broadcasting companies. This view is based on the fact that the ABC is almost entirely funded from the Budget, and must be responsible for the allocation of funds appropriated for its use by the Parliament.

4.27 In particular, the Committee believes that it was highly irresponsible of the ABC to enter into a contract which provided for the payment for services so far in advance of their being provided. The Committee considers that no similar provision should ever be even contemplated again.

4.28 The Committee also considers that the Parliament did not intend to give the ABC the power to enter into contracts containing terms which could lead to any doubt whatsoever in the mind of the ABC that the Parliament, or its committees, were entitled to have full disclosure of their provisions.

4.29 The Committee understands the ABC's desire to obtain Ms Doogue's services, but it firmly believes that the ABC should have taken a stronger negotiating stand and attempted to resist the imposition of the 'up-front' payment clause when first proposed and in the subsequent years.

ENDNOTES

1. Evidence, pp. 198-200.
2. Evidence, p. 198.
3. Evidence, pp. 203 and 204.
4. Evidence, p. 203.
5. Evidence, p. 212.
6. Evidence, pp. 212-13.
7. Evidence, pp. 261-63.
8. Evidence, p. 264.
9. Evidence, p. 265.
10. Evidence, p. 198.
11. Evidence, p. 169.
12. Evidence, p. 170.
13. Evidence, p. 166.
14. Evidence, p. 219.
15. Evidence, p. 220.
16. Evidence, pp. 235-36.
17. Evidence, p. 195.

