

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE STANDING COMMITTEE
ON
FINANCE AND GOVERNMENT OPERATIONS

A.B.C. EMPLOYMENT CONTRACTS
AND THEIR CONFIDENTIALITY

DECEMBER 1986

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CHAPTER 1

INTRODUCTION

Background

1.1 On 16 May 1985 the Senate referred the following matter to the Committee for investigation and report:

Whether the claim by the Australian Broadcasting Corporation that certain information should not be made available to Estimates Committee C, on the ground of commercial confidentiality, is justified.¹

1.2 The subject matter of the inquiry arose during hearings held by Estimates Committee C on 15 April 1985. The Committee was taking evidence on additional estimates of expenditure for the Australian Broadcasting Corporation [ABC] for the financial year 1984-85. During examination of ABC officers in attendance, then Senator Peter Rae (Tasmania) asked several questions which sought to establish the salary paid to Ms Geraldine Doogue, then a compere/interviewer on the ABC 'The National' television news program.

1.3 At the hearing the Minister for Finance, Senator Peter Walsh, who was Minister representing the Minister for Communications, offered to seek the Minister's approval to make the information available to Estimates Committee C on the understanding that it would be 'in confidence'. The information sought by Senator Rae was regarded by the ABC officers who attended the Estimates hearing as commercially confidential.

1.4 Estimates Committee C was provided with supplementary written answers by the ABC to the questions asked by Senator Rae. The answers confirmed the stance of the ABC officers present at the hearing. The ABC's reply stated:

The matter has been discussed with the Minister for Communications, Mr Duffy, who has agreed to the ABC putting forward the following proposal to the Committee:

"We would be reluctant to make public the amount paid to a particular contract employee because such a disclosure could adversely affect the interests of the ABC in acquiring and retaining suitable persons having regard to the competition amongst TV stations for top 'on camera' personalities. However, we would provide such details to the Minister for his information."

"Our view is that by providing the Minister with this information, the ABC is demonstrating its preparedness to be accountable, while at the same time protecting its commercial competitiveness."²

1.5 In its subsequent report to the Senate on the additional estimates, Estimates Committee C drew attention to this matter and to criticism of the ABC made by Estimates Committee A in its May and October 1984 reports. (Estimates Committee A had examined the ABC estimates in 1984.) In its May 1984 report, Estimates Committee A commented on the ABC's attitude to provision of information at the Committee's hearings. The Committee recommended that the Senate re-affirm a statement of principle, adopted initially by the Senate in 1971 following criticism of the ABC by an Estimates Committee, concerning the financial accountability of statutory authorities to the Parliament.

1.6 On 31 May 1984 the Senate re-affirmed the statement, which reads:

That whilst it may be argued that Statutory Authorities are not accountable through the responsible Minister of State to Parliament for day-to-day operations, they may be called to account by Parliament itself at any time and that there are no areas of expenditure of public funds where these corporations have a discretion to withhold details or explanations from Parliament or its Committees unless the Parliament has expressly provided otherwise.³

1.7 Estimates Committee C also drew attention to a 'severe problem' it experienced in obtaining information on ABC activities regarded as necessary to enable the Estimates Committee to report adequately to the Senate and noted:

Whilst questions have been answered, the information contained in many instances has not appeared adequate to the Committee.⁴

This Committee has had a similar experience, which is the subject of comment in Chapter 4 of this Report.

1.8 When moving the referral of this matter to the Committee, the Chairman of Estimates Committee C, then Senator Cyril Primmer (Victoria), told the Senate that the ABC had declined to provide an answer to the question of what salary was paid to staff on 'The National' on the ground that the information was commercially confidential. Senator Primmer noted:

Estimates committees cannot receive information on a confidential basis. For this reason Estimates Committee C was unable to receive the material confidentially and to make a decision as to whether the claim for commercial confidentiality was justified. To overcome this problem the Committee decided

to move the motion for reference of the matter to the Senate Standing Committee on Finance and Government Operations to enable the matter to be determined.⁵

1.9 Senator Primmer also told the Senate that the ABC had assured him of its co-operation in such an enquiry, and that the ABC was willing to make the information available to a Committee which could accept evidence 'in camera'.

Conduct of the inquiry

1.10 The Committee decided that, before dealing with the specific matter arising from the Estimates Committee C report, it would inquire into certain general questions regarding contract employment. The Committee believed it should examine and determine whether contracts were justifiable, and whether claims of their confidentiality could be justified.

1.11 The ABC had made it clear that it would provide the information on Ms Doogue's salary in confidence. It appears that Estimates Committee C considered that this would satisfy the requirement of proper accountability. The Committee believes it does not need to know the amount in question to judge whether or not the figure should be made public. The amount in the Committee's view is irrelevant to the principle involved. The Committee does not know the amount and has not asked the ABC to provide it. There seems to be little point in the Committee's having such private information if it must keep it confidential.

1.12 The Committee wrote to relevant Ministers, the ABC and relevant unions to seek their views on the use of contract employment by statutory authorities and on the question of confidentiality of contracts. The replies are contained in the Evidence of the Committee's hearings.⁶ The Committee also sought and received from the ABC samples of employment contracts to assist the Committee in its inquiry.⁷

1.13 A public hearing was held on 25 November 1985 to explore the issues further with the ABC and union representatives. After more correspondence with the ABC, another public hearing was held on 21 March 1986. Further correspondence was necessary to clarify a number of matters raised at the second public hearing.

ENDNOTES

1. Australia, Senate, Journals of the Senate 1985-, no. 28, 16 May 1985, p. 260.
2. Australia, Senate, Replies to questions asked during Estimates Committee C examination of proposed Additional Expenditure for 1984-85, Canberra, May 1985, p. 22.
3. Australia, Senate, Debates 1984, vol. S.103, p. 2212.
4. Australia, Senate, Estimates Committee C: Report on Additional Expenditure for Year ending on 30 June 1985 (Senator C. Primmer, Chairman), Canberra, May 1985, p. 5.
5. Australia, Senate, Debates 1985, no. 8, p. 2040.
6. Evidence, pp. 3-58 and 88-93.
7. Evidence, pp. 59-87.

CHAPTER 2

CONTRACT EMPLOYMENT IN THE ABC

Introduction

2.1 The Committee draws attention to the distinction that is made at law between two types of employment contracts: the contract of service, and the contract for service.

2.2 To avoid confusion, and to avoid drawing constant attention to the distinction between the two types of employment contract, in this Report contracts of service will be referred to as contracts of employment. ('Contract employment' is used as a general term concerning both types of contract.)

2.3 A contract of employment is usually between an employer and an individual who enters such a contract in his or her personal capacity. A contract for service usually exists when an independent contractor, which is often a company, contracts to provide services, which are often those of an individual. Where an organisation (rather than an individual) is being engaged, such an arrangement necessarily does not constitute a contract of employment.

2.4 Included in the general powers of the ABC under the Australian Broadcasting Corporation Act 1983 is a general power to enter into contracts. A further specific power exists to engage persons to perform services for the corporation (section 25).

Contract employment in the ABC

2.5 The Committee sought the views of the ABC, unions with members employed by the ABC, and relevant ministers about contract employment.

2.6 The Committee first asked whether statutory authorities should have the general right to employ people under contract whether by individually negotiated salary or remuneration packages or by contracts for service.

2.7 In its reply, the ABC said that it was currently expected to carry out its statutory functions in a commercially competitive environment. As a result, while it did not consider itself a 'commercial' authority, it competed with commercial broadcasters and other organisations for the services of actors, producers and artists such as musicians. It therefore had to compete for the services of 'personalities' like Ms Doogue. If such people had popularity or 'image', which enabled them to demand greater remuneration and conditions than those allowed by award conditions, the ABC had to negotiate more generous remuneration and terms of employment than normally offered.¹

2.8 The ABC said that the use of contract employment was, in fact, not common in the organisation. Contract employment was used when the person engaged was to work for either a fixed period, such as one year, or was to undertake a specific task. Ms Helen McKenzie, the ABC's Head of Employee Relations, Television, told the Committee during evidence that:

The ABC is not attempting to achieve anything through use of contract employment, other than to have the particular services of the individuals that we want.²

2.9 The ABC staff unions which made submissions to the Committee held differing views on the use of contract employment by the ABC. The Australian Journalists' Association [AJA], Actors' Equity, the ABC Senior Executives' Association and the Musicians' Union generally acknowledged the need for contract employment by the ABC.³

2.10 Mr Neal Swancott of the AJA told the Committee that, while the AJA had no objection in principle to contract employment, it pointed out the difference between relatively long-term award employment conditions, and employment conditions providing for specific over-award allowances in lieu of penalty payments. The competitive nature of current affairs journalism, for example, meant that flexible terms of employment had been historically important to journalists who enjoyed popularity.⁴ Mr Swancott also pointed out that any contractual arrangements should include appropriate minimum award conditions and that 'in effect the contractual component must be over and above the award minimum protections'.⁵

2.11 The ABC Staff Union maintained that, to properly discharge its functions, the core of ABC employees should be tenured staff. It disputed that most of the functions performed by existing ABC staff could be performed either more economically or more effectively by contract employment.⁶ The ABC should therefore limit contract employment

... to circumstances which cannot be satisfied by established staff; for example, performance of special functions not normally required by the organisation, and replacement of established staff for temporary fixed terms.⁷

The Staff Union acknowledged that in the competitive media context, the hiring of 'personalities' did, however, require resort to contract employment.⁸

2.12 Another matter raised by the staff unions was the effect of contract employment on the service provided by the ABC. Mr Aarons of the ABC Staff Union noted that:

... one of the problems with contracts is that you might get quality in the individual but, if contracts become some form of substitute for that type of recruitment, training and development, then I think it is not only the ABC which is going to suffer but ... the whole broadcasting industry in Australia.⁹

2.13 Mr Swancott of the AJA supported the view that contract employment in the ABC may reduce the level of professionalism in ABC journalism.¹⁰

2.14 The Committee sought the views of the Minister for Communications (as Minister responsible for the ABC), the Minister for Finance (as Minister responsible for public service matters) and the Minister for Employment and Industrial Relations (as Minister responsible for the observance of industrial awards and agreements by Commonwealth agencies).

2.15 The Committee received replies from the Minister for Communications and the Minister for Employment and Industrial Relations. The Minister for Finance told the Committee that he believed he could not add to the views put to the Committee by his colleagues, and was satisfied that the views of his colleagues would comply with the Committee's requirements.

2.16 The Minister for Communications told the Committee he generally had no objection to statutory authorities, including the ABC, employing people on contract. The Minister said:

... I believe that statutory authorities should have the general right to employ people on contract. I see no reason for a differentiation between outright contract

employment and individually negotiated remuneration packages. In fact, the difference between the two types of contract is regarded as being marginal since either form must clearly take into account wages and salaries of the persons performing the work of the contract.¹¹

The Minister also noted that statutory authorities were established to carry out a variety of functions not appropriate to Departments of State. The way in which authorities carried out these functions may require the power and capacity to engage necessary personnel resources. The Minister also noted:

I would expect, however, that by far the majority of personnel resources would be employees. It would only be in special circumstances where management would need to offer contract employment.¹²

2.17 The Minister for Employment and Industrial Relations told the Committee that a range of factors such as 'the nature of the work, the skills involved, the length of the engagement, and the functions and powers of the employing authority' were relevant to the exercise of a statutory authority's power to employ under contract.¹³

2.18 As a further question, the Committee asked whether any distinction should be made between contract employment by commercial and other statutory authorities.

2.19 After considering the replies it received, the Committee does not see it as necessary to distinguish between commercial authorities and other statutory authorities. As the ABC competes with other organisations for the services of certain categories of people with special skills or talents, it must occasionally, and in special circumstances, employ on contract as a means of efficiently carrying out its functions and managing its workforce. However, for normal full-time

employment the Committee does not believe the ABC should either encourage prospective employees to seek employment on contract or automatically agree to requests for employment on contract. Use of contract employment should be restricted to the engagement of persons to perform a particular task or for limited employment.

Guidelines and policy on contract employment in the ABC

2.20 The Committee asked each of the parties whose views were sought during the inquiry whether guidelines or a specific policy should exist to govern contract employment by statutory authorities.

2.21 The ABC told the Committee that it did not currently have any fixed guidelines for contract employment as industrial award conditions constituted adequate principles, and that any 'codification of these principles might not be able to accommodate the infinitely variable and constantly changing circumstances of broadcasting'.¹⁴ The ABC submitted that this approach was particularly relevant when applied to people in areas of the organisation involved in program making and presentation. For employment not directly associated with program making (e.g. the engagement of some management executives), the ABC's view was that 'fixed term contract employment makes possible a degree of flexibility and responsiveness to changing conditions which cannot be achieved by a rigid 'public service' employment system'.¹⁵

2.22 In evidence to the Committee, the ABC stated that the practice of contract employment by the ABC was necessary because a greater degree of flexibility than normal was required by the ABC in coming to mutually acceptable arrangements with particular individuals. Such an approach was subject to a policy

followed by the ABC which ensured that certain minimum conditions and entitlements were extended to all people engaged, both under normal award conditions and under contract.

2.23 As noted in Chapter 1, in the early stages of its inquiry the Committee asked the ABC to provide it with a representative sample of employment contracts entered into during recent years. The Committee believed it should be aware of the variations in such contracts, considering the differences in periods of employment, remuneration and other provisions resulting from the ABC's engagement of people with a range of skills and abilities. The Committee told the ABC that neither the names of the other parties nor the sums payable under the contracts were of interest and could be deleted. Nine contracts were sent to the Committee by the ABC, and were incorporated in Evidence.¹⁶

2.24 Of the nine contracts, eight were contracts of employment between the ABC and individuals. One contract for service, between an incorporated company and the ABC, required the provision of the services of an individual to the ABC.¹⁷ Payments made to the contracting company in this contract were payable in gross, making the company liable for the payment of taxation and certain other outgoings, such as insurance, normally the responsibility of an employer.

2.25 The ABC said that prior to any negotiation on possible engagement by the ABC some individuals had arranged their affairs to take advantage of a special legal status suggested to them by their financial advisers. As Ms McKenzie of the ABC put it:

... particular individuals have their own legal status, that they have determined for their own private purposes, whether with their accountants or for whatever reason, and that status is something that they present to

us as something that we have to co-operate with. If that individual did not have that status, the ABC would not need a contract either.¹⁸

2.26 The Committee was concerned to learn that the ABC might enter into contracts of any sort which may facilitate the avoidance of liability for income tax.

2.27 ABC officers were asked whether contracts for service, such as the sample contract provided to the Committee, facilitated tax avoidance. Mr Curtis Berry, then the ABC's Controller of Human Resources, told the Committee that the ABC rejected such a view:

There is a great difference between tax avoidance and tax minimisation. If those individuals have some scheme which they are working on, as long as they are a properly registered company, we take the view that they can enter into that arrangement. However, I would also say that in the last nine months or so we have actively counselled people against going on company contract, for some very obvious reasons which were mentioned earlier by Mr Swancott, but in the end it is a matter between those individuals and the Taxation Commissioner. That is a matter for the individual to resolve.¹⁹

2.28 When asked whether the ABC, as a Commonwealth statutory authority, had some responsibility not to be a party to such arrangements, Mr Berry said:

We do. Short of conducting a full-scale investigation into the particular company, it is very difficult for us to be satisfied about those arrangements one way or another. If the only way that that individual will be employed is under a company arrangement, and if we need that individual's services - as was pointed out by the Senators we are in the market to obtain the best possible services - then we would have to proceed on that basis.²⁰

2.29 The Committee was advised that at the time of the Committee's hearings there were approximately 40 to 50 contracts for service.²¹ The total ABC staff is 6960.

2.30 Ms McKenzie also advised that, if a company provided the services of an individual, the ABC believed it was not necessary to examine the taxation arrangements made by the company:

... our concern is that provided the contract is providing the ABC with what it wants, that it is a genuine contract insofar as what is expressed to be provided is what the parties are providing, then we do not see that it is our role to inquire further as to what the taxation situation may be of either the company or of the company's employees.²²

2.31 By comparison, ABC staff unions favoured clear guidelines for contract employment. The AJA specifically advocated that employment contracts must incorporate the relevant applicable award terms and conditions and that authorities should

... be under a standing direction - either statutory or administrative - to guard against contrived partnership or company arrangements which artificially disguise the "employment" nature of the contract, or any other arrangements which lack bona fides.²³

2.32 Mr Neal Swancott reiterated this view in his evidence to the Committee, stressing the AJA's view that statutory authorities should be directed that contracts for service must be distinguished from contracts of employment in any employment policy, because of the undesirable result contracts for service can have on observance of industrial awards.²⁴

2.33 The ABC Staff Union said that it recognised the occasional requirement for the ABC to be able to employ people under contract, but believed the ABC should develop clear guidelines which were not to the detriment of the ABC's primary functions. At the time of the Committee's hearings, the Staff Union was conducting negotiations on such guidelines with ABC management.²⁵ Mr Tom Molomby (who is a current member of the ABC Board of Directors, as well as an officer of the Staff Union) told the Committee that the Board of the ABC had not, to date, addressed the broad question of employment policy.²⁶

2.34 Both the Minister for Communications and the Minister for Employment and Industrial Relations believed that the management of each authority should adhere to the employment policy of the Government in engaging employees in preference to contractors, but that the employment guidelines developed by authorities should be reasonably flexible to allow for the specific and unique requirements of each authority.²⁷

The ABC employment profile

2.35 It was apparent from evidence at the Committee's hearings that precise details of the contract employment profile of the ABC was unavailable, and that the details that were available were incomplete and confusing.

2.36 For example, at the Committee's first hearing, the number of contract employees currently engaged by the ABC was unclear, a figure of approximately 350 being given.²⁸ In later material provided to the Committee, the ABC advised that there were approximately 285, and that this figure did not take account of short term contracts, or a wide range of contracts for the provision of musical works, standard-form contracts with actors and writers, overseas artists (concerts) and touring artists (concerts).²⁹

2.37 The ABC Staff Union also commented to the Committee that this apparent lack of detailed knowledge on the ABC's part resulted in difficulties in discussion between it and the ABC on development of an ABC contract employment policy.³⁰ The Committee believes that the ABC needs to have accurate knowledge of the numbers and types of employment contracts that are current, so as to ensure that the problems revealed in this inquiry can be avoided in the future.

2.38 Mr Neal Swancott of the AJA also gave the Committee views on the possible long term effect of a lack of clear ABC policy on contract employment. He considered that the contractual arrangements that the ABC had negotiated, particularly in the area of current affairs journalism, might lead to the proliferation of contract employment at the expense of other employees, and to unnecessary division of the ABC's work-force, and a reduction in the professional standards of the ABC.³¹

2.39 An aspect of the confusion over contract ABC employment policy was also highlighted by the use of 'R form' contracts, which are contracts designed for the service of individuals who once only, occasionally, or periodically perform specific jobs for the ABC (for example, short radio talks). The Staff Union indicated that these contracts were 'being used on a continual basis to employ people for months and years on end'.³² The Staff Union also maintained that such a system meant that people who were performing the services of employees could effectively have their services terminated by refusal of the ABC to allow them to sign another R-form with no due processes.³³

2.40 The ABC told the Committee at the first hearing that the use of R form contracts had caused confusion in personnel administration. Ms McKenzie told the Committee:

We recognise that people have been signing the wrong forms for years, probably for various historical reasons, but that should not deprive them of their employment entitlements.³⁴

2.41 In written evidence to the Committee the ABC advised the following details of R form contracts for 1984-85:³⁵

- Average number of payments per week	926
- Persons/companies paid on more than 12 occasions during the year	711
- <u>Multiple</u> payments with <u>total</u> payments in excess of \$5000 for the year	380

2.42 The Committee was told that a review of contract employment had been going on for several years. Ms McKenzie's assessment to the Committee was that the improvement and revision of the ABC's administration in the area (and attaining standardisation of contractual procedures) would require considerable time.³⁶

2.43 The Committee has noted its attitude to contract employment by the ABC in general earlier in this Chapter. The fact that the ABC is reviewing its policy on contract employment is welcome but the Committee believes that implementation of better controls and standardisation of contractual arrangements should be effected as soon as possible to avoid the difficulties raised during this inquiry.

Conclusions

2.44 In general, the Committee does not disapprove of contracts of employment by a statutory authority, particularly when it will facilitate and improve the functions and

responsibilities of the authority. However, the Committee believes that contract employment should not be used for normal full-time employment and that contracts, limited to contracts of employment, should be used only for limited employment or for the engagement of persons to perform particular tasks.

2.45 The ABC has been given the power to enter into employment contracts by the Parliament and the Committee believes that the ability to engage people under contract on occasions allows the ABC to obtain the services of people from specialised areas or for fixed terms.

2.46 There are several aspects of the current ABC policy on contract employment which need to be reviewed by the ABC. For example, the Committee believes that contracts should be used with discretion. A contract should not be entered into merely because it is demanded by the person whose services are sought by the ABC. All other options should be considered before the ABC agrees to enter a contract.

2.47 The Committee believes that contracts for service are not a desirable form of arranging employment. The Committee believes that contracts for service can distort the normal employment relationship and may allow a person whose services are obtained under a contract for service to gain a number of tax and other financial advantages not available to salaried employees, or those engaged under contracts of employment. The facilitation of such arrangements by a Commonwealth authority is undesirable.

2.48 In the Committee's view, it is necessary for the ABC to introduce clear guidelines on contract employment which address these matters as soon as possible.

ENDNOTES

1. Evidence, p. 4.
2. Evidence, p. 158.
3. Evidence, pp. 8, 13, 18 and 91.
4. Evidence, p. 100.
5. Evidence, p. 101.
6. Evidence, p. 88.
7. Evidence, p. 89.
8. Evidence, p. 89.
9. Evidence, pp. 123-24.
10. Evidence, p. 103.
11. Evidence, p. 17.
12. Evidence, p. 18.
13. Evidence, p. 22.
14. Evidence, p. 4.
15. Evidence, p. 4.
16. Evidence, pp. 59-87.
17. Evidence, pp. 76-78.
18. Evidence, p. 158.
19. Evidence, p. 159.
20. Evidence, p. 159.
21. Evidence, p. 159.
22. Evidence, p. 164.
23. Evidence, p. 9.
24. Evidence, p. 98.
25. Evidence, p. 89.
26. Evidence, p. 126.

27. Evidence, pp. 18 and 22.
28. Evidence, p. 159.
29. Evidence, pp. 195-96.
30. Evidence, pp. 135-37.
31. Evidence, pp. 103-04.
32. Evidence, p. 137.
33. Evidence, p. 139.
34. Evidence, p. 162.
35. Evidence, p. 197.
36. Evidence, pp. 240-41.

CHAPTER 3

CONFIDENTIALITY OF CONTRACTS

3.1 The Committee noted earlier that it did not believe it was reasonable simply to request the amount of Ms Doogue's fee from the ABC at an 'in camera' hearing. Knowledge of the amount paid to Ms Doogue would be an inadequate basis from which to draw any conclusion as to whether it was desirable that such information should reasonably be regarded as commercially confidential. In order to reach a conclusion, the Committee sought from the ABC, relevant ministers and relevant unions their views on the the confidentiality of ABC contracts.

3.2 The Committee asked initially whether the terms and conditions of contracts should be kept confidential during negotiations. Replies to this question indicated that, in general, it was considered important that confidentiality be maintained during the negotiation of all employment contracts. The ABC's submission on the matter reflects the general replies:

In almost all negotiations, the parties explore possibilities and examine propositions which they may not wish to be held to once terms and conditions are finally agreed upon. Public knowledge of pre-contract negotiations could cause embarrassment and could be detrimental to the financial position of one party or the other - or both.¹

3.3 The Committee accepts that disclosure of terms and conditions of contracts of employment or for services during the course of negotiations is undesirable, due to the possible

effect on the personal privacy of individuals or the commercial interests of prospective contractors. The Committee accordingly makes no further comment on this matter.

3.4 A second question asked by the Committee was whether details of contracts should remain confidential after the contract has been finalised and whether this confidentiality should extend to ministers and/or parliamentary committees.

3.5 The ABC told the Committee that details of contracts involving employment should remain confidential after agreement, particularly when the contract was for the employment of 'personalities':

To protect their "image" and to retain their bargaining position for the future, many artists insist upon confidentiality as to their earnings under a contract. Further, in the competition amongst broadcasters for individuals with rare talent, the disclosure of the price of an individual's contract could result in the ABC being outbid by commercial operators seeking similar talent. The principle should be that confidentiality is always observed by the employer.²

3.6 Ms McKenzie of the ABC told the Committee:

There has been a general practice within the ABC that particular contents of contracts are not discussed and are not disclosed. Obviously, that is not an absolute statement that they will never be disclosed but it has certainly been the practice that those things are consciously restricted to the particular people who need to know the contents and they do not go further than that. It is applied to all aspects of the contract, just as a general practice.³

3.7 In the case of parliamentary committees, the ABC told the Committee that any claim that contractual details were commercially confidential 'must, of course, be reconciled with the ABC's accountability to Parliament'. However, the ABC said that it found it difficult to reconcile its obligations to keep certain commercial information confidential and its obligations of accountability to the Parliament when giving evidence before Estimates Committees, as the Senate Standing Orders did not allow Estimates Committees to receive information in confidence. The ABC was concerned that there was a perception that it was reluctant to account fully to the Parliament.⁴

3.8 At the Committee's second hearing, the ABC was questioned further on its view of the rights of parliamentary committees to insist on the provision of commercially confidential information by statutory authorities.

Senator VANSTONE - While the ABC at Estimates Committee hearing obviously had the view that it was entitled to not provide information on the basis of market confidentiality, from your point of view do you now understand the ABC's position to be that it understands that there is no area into which an Estimates Committee cannot inquire?

Ms Ercole - Yes, I think that it was only the public nature of the disclosure that we were concerned about because we always had an understanding and said that we were prepared to disclose in committee. There was never any conflict about that in any of our minds. It was just the public nature of the disclosure, and I guess at that stage, too, we were particularly sensitive because the ABC seemed to be on the front pages of the paper with very damaging publicity and we just did not want anything else but we were always prepared to disclose that to the Committee.

Senator VANSTONE - Does the ABC now accept that it is not the ABC's decision as to whether information, as a consequence of a parliamentary inquiry, will be publicly released?

Ms Ercole - Yes.

Senator VANSTONE - It would not happen again that the ABC would say: "You can have it in camera but unless we have an undertaking that it is in camera, we will not provide it". That is not going to happen again?

Ms Ercole - No, obviously we accept that Parliament is entitled to do as it sees fit. We would hope that we would not be in this sort of situation again, and that we would be always able to----

Senator VANSTONE - I raise that question because I know a number of people raise with me the prospect of a statutory body telling Parliament on what terms it will give Parliament information, and presumably the ABC cannot override the responsibility of a committee to decide whether it will release the information or not.

Ms Ercole - We accept totally----5

The Committee has quoted this section of evidence at length to illustrate the ABC's clear acceptance that it should co-operate fully with the Parliament and its committees on the provision of information, and will do so in the future.

3.9 The views of the ABC staff unions on this question varied. The Australian Journalists' Association, the ABC Staff Union, the Musicians' Union and the ABC Senior Executives' Association accepted that, where the Budget was the sole source of monies available to an authority which entered into contracts of this type, details of contracts should be publicly available, and should certainly be made available to the Parliament.⁶ This view was not shared by Actors' Equity which asserted that an inherent traditional aspect of contracts between actors and their employers was confidentiality. However, Equity conceded that whether this tradition was desirable in the case of contracts funded with public money was a matter for the Committee.⁷

3.10 As with the questions dealt with in Chapter 2, the Committee asked relevant ministers their views on the question. The Minister for Communications told the Committee that contracts of employment 'by and large, should remain confidential after the contract has been finalised'.⁸

3.11 The Minister went on to say that 'the confidentiality of the details in a contract should not necessarily deny the information from a Minister or a Parliamentary Committee'. However, the Minister stated that it was incumbent upon both to respect the confidentiality of any information which may be personal, may have a value to the contractor's competitors, or be detrimental to the activities of a statutory authority such as the ABC.⁹

3.12 A preliminary view put to the Committee by the Minister for Employment and Industrial Relations was that:

In general, whether final details of the terms and conditions of a contract should be disclosed will depend on the balance of privacy and commercial in confidence considerations, the reporting requirements applying to a particular body and the public interest in the accountability of public enterprises.¹⁰

When he conveyed this preliminary view to the Committee, the Minister advised that he had requested a detailed opinion from the Attorney-General's Department on the Committee's questions about confidentiality. This opinion was subsequently provided to the Minister, who forwarded it to the Committee in May 1986, and is reproduced in the Evidence of the inquiry.¹¹

3.13 In the opinion, the Attorney-General's Department observed that, in the absence of any statutory requirement relating to reporting or disclosure, the Committee's question raised questions of public policy rather than of law.¹²

3.14 The opinion also dealt extensively with the matter of material being kept confidential from a minister or a parliamentary committee. Having discussed the power of the Parliament and its committees to insist on answers to questions put to witnesses regarding contracts which may be generally regarded as commercially confidential, the Department said:

In deciding whether to press for information about commercial contracts, a House or a committee would no doubt balance considerations of commercial confidentiality (including any claims that disclosure would prejudice private or commercial interests) against the public interest in having access to the information (including, for example, the need for that information for the purposes of parliamentary scrutiny of expenditure).¹³

3.15 The Department also drew the Minister's attention to the resolution of the Senate (reproduced in paragraph 1.6 of this Report) which clearly affirmed the Senate's belief that there were no areas of expenditure of public funds where statutory authorities, such as the ABC, had a discretion to withhold details from the Parliament or its committees, unless the Parliament had expressly provided otherwise in the legislation establishing the authority.¹⁴

3.16 A final question asked by the Committee relating to confidentiality sought views on the principles that should be applied to determine whether contracts are commercially confidential.

3.17 The ABC told the Committee that the principle underlying commercial confidentiality was:

... whether any of the parties [to the contract] would suffer damage as a result of the terms and conditions of a contract being made public.

However, the ABC also stated:

On the other hand, the ABC is keenly aware that it must be, and must be seen to be, accountable to Parliament.¹⁵

3.18 The ABC staff unions (again with the exception of Actors' Equity) reiterated the view noted earlier in this Chapter [paragraph 3.9] that, as public monies were used in funding the ABC and therefore in providing funds for contracts, information on the allocation and disbursement of public funds should as a rule be available to the Parliament on request.

3.19 The Minister for Communications told the Committee he believed that such a question could not be answered as a matter of principle; rather it was a matter of judgement whether there was a good reason in the public interest for the information published to be regarded as commercially confidential.¹⁶

3.20 The Attorney-General's Department's opinion suggested that the basic issue to be addressed by the question was how a balance between a proper and desirable level of commercial confidentiality of material which may come before a minister, an authority - or the Parliament - may be achieved given the the competing requirement of achieving a proper and acceptable level of financial accountability. The opinion also drew attention to the requirements for bringing an action for breach of confidence at law, and to certain provisions of the Freedom of Information Act 1982, which limit disclosure of business and commercial documents in the possession of agencies (which do not include the ABC) that are the subject of the Act.¹⁷

Conclusions

3.21 Whether the terms of contracts involving Commonwealth authorities should be kept confidential has always been a matter of considerable importance to the Parliament. The situation of particular concern is where an authority receives all, or practically all, its funding from the Budget such as is the case with the ABC. The Committee believes strongly that the provision of powers to enter contracts in an authority's enabling legislation does not imply that the authority can presume that the Parliament or its committees will not insist on disclosure of details of such contracts.

3.22 In the Committee's view, as a basic matter of accountability, it is desirable that details of contracts not be confidential. Claims of confidentiality which do not discriminate as to the material that is to be regarded as secret, raises suspicions of extravagance or incompetence in the expenditure of public monies.

3.23 The Committee emphasises that when the Parliament seeks information concerning contracts which are claimed to be commercially confidential, proper regard should be had for genuine personal and commercial interests (such as privacy or competitiveness) that may be affected by publication.

3.24 It is the Committee's opinion, however, that it is an important principle that the actual remuneration for providing services to an authority (whether as employee or contractor) should be available to the Parliament when requested. Whether a person is paid under the terms of a Remuneration Tribunal determination or an applicable industrial award, or is a contractor, does not appear relevant to the Committee. Estimates Committees were established for the specific purpose of examining the expenditure programs undertaken by departments of

the Commonwealth and statutory authorities. Accordingly, authorities must be prepared to account to Estimates Committees for all aspects of their financial management and administration, even when the information sought may be regarded as private or commercially confidential. This aspect of statutory authority accountability should be made clear at the time an authority enters into negotiations for any type of contract and should be made clear in the terms of contracts entered into.

ENDNOTES

1. Evidence, p. 4.
2. Evidence, p. 5.
3. Evidence, pp. 248-49.
4. Evidence, p. 5.
5. Evidence, pp. 235-36.
6. Evidence, pp. 9, 89 and 92.
7. Evidence, p. 14.
8. Evidence, p. 18.
9. Evidence, p. 18.
10. Evidence, p. 23.
11. Evidence, pp. 268-73.
12. Evidence, p. 269.
13. Evidence, p. 271.
14. Evidence, p. 271.
15. Evidence, p. 5.
16. Evidence, p. 18.
17. Evidence, pp. 271-72.

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.

CHAPTER 5

ACCOUNTABILITY OF THE ABC TO THE PARLIAMENT AND ITS COMMITTEES

5.1 This Committee has always maintained that statutory authorities, being created by Parliament, are fully accountable to the Parliament. The ABC, although required to operate in a highly competitive field, receives practically all its revenue from the Commonwealth Budget. The ABC must therefore expect, and respond to, the same degree of scrutiny as any Commonwealth statutory authority and be prepared to report fully on its operations whether to Estimates Committees or to a committee such as Finance and Government Operations.

5.2 The ABC has been reminded of this obligation by the Senate on two occasions and by the Dix Committee. The actions of the ABC prompted the debate and affirmation by the Senate of the statement of principle regarding accountability for expenditure by statutory authorities to the Parliament. In 1971, the Minister responsible for the ABC declined to answer questions concerning television sporting broadcasting put to the ABC by Estimates Committee C.¹ In 1984, the ABC failed to inform Estimates Committee B of major organisational changes it had undertaken.² The statement read:

That whilst it may be argued that Statutory Authorities are not accountable through the responsible Minister of State to Parliament for day-to-day operations, they may be called to account by Parliament itself at any time and that there are no areas of expenditure of public funds where these corporations have a discretion to withhold details or explanations from Parliament or its Committees unless the Parliament has expressly provided otherwise.³

5.3 The 1981 Report by the Committee of Review of the ABC (the Dix Report) also made reference to the accountability of the ABC to Parliament. Paragraph 49 of the Report read:

The ABC will always be dependent on Government in that it receives practically all of its income from parliamentary appropriation. We support this method of funding the organisation since it safeguards it in many ways from the potential influence of sectional interests. Funding by parliamentary appropriation must be accompanied by a variety of administrative controls. Compliance with these controls is irksome, but we cannot agree with those who believe that the ABC's independence and integrity are threatened each time it is obliged to have a relationship with other government bodies. Precisely because it is largely dependent on the public purse for its income, the ABC must be financially accountable in ways in which its commercial competitors are not.⁴

5.4 The problems of accountability that are raised by this inquiry unfortunately reflect recurring and apparently persistent problems that the Parliament, and the Senate Estimates Committees in particular, have experienced in obtaining full and accurate information on the administration and financial management of the ABC. There appears to have been little improvement in this situation since the enactment of the Australian Broadcasting Corporation Act in 1983. The Committee has noted, with disappointment, that two recent reports to the Senate, from the Standing Committee on Education and the Arts, and from Estimates Committee C, have drawn attention to the ABC's inability to comply with these basic standards of accountability expected by the Parliament.⁵

5.5 The ABC's continued difficulties before Estimates Committees are of particular concern. As government becomes more complex and the number and scope of government activities

increase, the Parliament must use all avenues available to it to ensure that public monies are being properly expended, to gather information about government activities and to ensure the accountability of government to the Parliament. One of the avenues available to the Parliament for this purpose is the Senate Estimates Committee system. The twice a year hearings of Estimates Committees provide the Senate with regular access to Senate Ministers, public servants and officers of statutory authorities. Estimates Committees can, and do, seek information on any matter connected with money which departments and authorities are seeking from the Parliament.

5.6 While the Committee understands the difficulties that may be experienced when Estimates Committees request information on confidential matters, because of restrictions imposed by the Standing Orders, it remains a general principle that information cannot and should not be withheld from the Parliament or its committees by an authority, unless a specific provision to that effect is contained in an authority's enabling legislation. The Committee believes that it is appropriate to reproduce the opinion received by the Standing Committee on Education and the Arts from the Attorney-General's Department concerning the position of the statutory authorities and scrutiny by the Parliament:

... it is, in my view, abundantly clear that statutory provisions freeing an authority from day to day ministerial direction in no way put that authority beyond the reach of parliamentary scrutiny, particularly in the context of a parliamentary inquiry into the administration and execution of that authority's constituting legislation.⁶

5.7 As a final matter concerning the access to information by Parliament and its Committees, the Committee believes that although no information should be kept from the Parliament, committees should treat claims of confidentiality with

discretion. Most committees, except of course Estimates Committees, are able to receive information 'in camera'. This mechanism is not intended to keep valuable information from parliamentary and public scrutiny, but is intended to ensure that confidential information may remain confidential in those cases in which it can be justified. The Committee also believes that parliamentary committees should ensure that their powers to gain information are not used capriciously. Committees should not be used for 'fishing expeditions' but, in order to maintain the integrity of and respect for committees, all committee requests should be based on a genuine need for information.

5.8 The ABC has told the Committee that no information sought by a parliamentary committee relating to its administration, financial management or expenditure will, in future, be refused. This approach is to be welcomed and is one which should also be observed by other statutory authorities. The Committee expects that the ABC will give careful consideration to this Report, and take steps to ensure that its administration of contract employment and the Parliament's knowledge of it, is improved.

ENDNOTES

1. Australia, Senate, Debates 1971, vol. s. 50, pp. 2303-2323.
2. Australia, Senate, Debates 1984, vol. s. 103, p. 2212.
3. Australia, Senate, Debates 1984, vol. s. 103, p. 2212.
4. Committee of Review of the Australian Broadcasting Commission (Dix Committee), The ABC in Review: National Broadcasting in the 1980's, AGPS, Canberra, 1981.
5. Australia, Parliament, Particulars of Proposed Expenditure in respect of the year ending 30 June 1987: Report from Senate Estimates Committee C (Senator Childs, Chairman), Canberra, 1986.

Australia, Parliament, Examination of Annual Reports, The ABC's Radio Racing Service in Queensland: Seventh Report from the Senate Standing Committee on Education and the Arts (Senator Mal Colston, Chairman), Canberra, 1986.
6. *ibid.*, p. 65.

CHAPTER 6

SUMMARY OF CONCLUSIONS

The Committee's main conclusions are as follows:

Contract employment

- . In general, the Committee does not disapprove of contracts of employment by a statutory authority, particularly when it will facilitate and improve the functions and responsibilities of the authority. However, the Committee believes that contract employment should not be used for normal full-time employment and that contracts, limited to contracts of employment, should be used only for limited employment or for the engagement of persons to perform particular tasks (paragraph 2.44)
- . The ABC has been given the power to enter into employment contracts by the Parliament and the Committee believes that the ability to engage people under contract on occasions allows the ABC to obtain the services of people from specialised areas or for fixed terms (paragraph 2.45)
- . Contracts should be used with discretion and a contract should not be entered into merely because it is demanded by the person whose services are sought by the ABC. All other options should be considered before the ABC agrees to enter a contract (paragraph 2.46)

- . Contracts for service are not a desirable form of arranging employment. The Committee believes that contracts for service can distort the normal employment relationship and may allow a person whose services are obtained under a contract for service to gain a number of tax and other financial advantages not available to salaried employees, or those engaged under contracts of employment. The facilitation of such arrangements by a Commonwealth authority is undesirable (paragraph 2.47)

- . It is necessary for the ABC to introduce clear guidelines on contract employment which address these matters as soon as possible (paragraph 2.48)

Confidentiality of contracts

- . The provision of powers to enter contracts in an authority's enabling legislation does not imply that the authority can presume that the Parliament or its committees will not insist on disclosure of details of such contracts (paragraph 3.21)

- . As a basic matter of accountability, it is desirable that details of contracts not be confidential (paragraph 3.22)

- . When the Parliament seeks information concerning contracts which are claimed to be commercially confidential, proper regard should be had for genuine personal and commercial interests (such as privacy or competitiveness) that may be affected by publication (paragraph 3.23)

- . The actual remuneration for providing services to an authority (whether as employee or contractor) should be available to the Parliament when requested. Whether a person is paid under the terms of a Remuneration Tribunal determination or an applicable industrial award, or is a contractor, does not appear relevant to the Committee. Estimates Committees were established for the specific purpose of examining the expenditure programs undertaken by departments of the Commonwealth and statutory authorities. Accordingly, authorities must be prepared to account to Estimates Committees for all aspects of their financial management and administration, even when the information sought may be regarded as private or commercially confidential. This aspect of statutory authority accountability should be made clear at the time an authority enters into negotiations for any type of contract and should be made clear in the terms of contracts entered into (paragraph 3.24)

Ms Doogue's Contract

- . 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 (paragraph 4.27)
- . 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 (paragraph 4.28)

- . The ABC's desire to obtain Ms Doogue's services is understandable, but 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 (paragraph 4.29)

Accountability of the ABC to the Parliament and its committees

- . The ABC must expect, and respond to, the same degree of scrutiny as any Commonwealth statutory authority and be prepared to report fully on its operations whether to Estimates Committees or to a Committee such as Finance and Government Operations (paragraph 5.1)

John Coates
(CHAIR)

QUALIFYING STATEMENT

Senators Short and Vanstone wish to qualify their concurrence with this report in the following terms.

We believe that the central issue in this report is the question of whether or not the Australian Broadcasting Corporation's claim that certain information should not be made available to Estimates Committee C, on the ground of commercial confidentiality, was justified.

The trigger for this reference to the Committee was the refusal of the A.B.C. to provide information to the Committee on the salary of Ms Geraldine Doogue. While the A.B.C. initially used the blanket claim of 'Market Confidentiality' to support its refusal to provide information, it soon became clear that Ms. Doogue's services were retained by virtue of a contract for service and that the nature of that contract would be central to the Committee's enquiries.

We believe that it was necessary to make some enquiries into the use of contract employment by the A.B.C. as a means of gaining a clearer perspective on the reference. At no stage did we hold the view that the committee's enquiries with respect to contract employment were anything other than that.

The report as it stands, is open to being interpreted as making a policy decision by advocating that the A.B.C. use as little contract employment as possible. We do not believe it was the function of the Committee with respect to this reference to make such a decision and would not necessarily support such a decision in any event.

Accordingly we would have preferred the following paragraph in place of paragraph 2.46. Such a replacement would then require the deletion of all words including and after "However" in each of paragraphs 2.19 and 2.44.

SUGGESTED REPLACEMENT FOR PARAGRAPH 2.46

The Committee accepts the need for the A.B.C. to use contract employment in a variety of circumstances and does not seek to make a policy decision with respect to the use of contract employment. Rather, the Committee points out that the A.B.C. should have a clear policy with respect to the use of contract employment and that policy should be apparent from a clear set of guidelines to be used by all those associated with employing personnel for the A.B.C.

It follows that we believe the report is inappropriately named. It is not a report solely about employment contracts in the A.B.C. Rather it is primarily about the accountability of the A.B.C. to Parliament. The trigger and vehicle for some conclusions being drawn about accountability simply happened to be a particular contract.

Senator J. Short

Senator A. Vanstone

APPENDIX

LIST OF WITNESSES

Aarons, Mark	President, NSW Branch, ABC Staff Union
Berry, Curtis	Controller, Human Resources, Australian Broadcasting Corporation
Cleary, John	Federal President, ABC Staff Union
Ercole, Jeanne	Director, Human Resources, Australian Broadcasting Corporation
McKenzie, Helen	Head of Employee Relations, Television, Australian Broadcasting Corporation
Molomby, Tom	Committee Member, NSW Branch, ABC Staff Union
Swancott, Neal	Federal Secretary, Australian Journalists' Association

LIST OF ORGANISATIONS AND INDIVIDUALS WHO ASSISTED THE COMMITTEE'S INQUIRY

Actors Equity of Australia

Australian Broadcasting Corporation

Australian Broadcasting Corporation Staff Union

Australian Journalists' Association

Minister for Communications, Michael Duffy, M.P.

Minister for Employment and Industrial Relations, Ralph Willis, M.P.

Musicians' Union of Australia, Federal Office

Senior Executive Association of the Australian Broadcasting Corporation

