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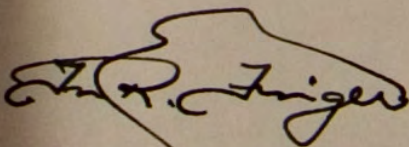
CABINET DECISION

NO. 1070

Submission No.: 916
Title: AVIATION - REGIONAL AIRLINE DEVELOPMENT.

Cabinet -

- a) noted the implications arising from the Memorandum of Understanding;
- b) approved high priority for the drafting of appropriate amending legislation to provide for Regular Public Transport licensing issues to be determined by the Minister; and
- c) approved its introduction during the February sittings of the Legislative Assembly.



(M.R. FINGER),
Secretary to Cabinet.

10 February, 1980.

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FOR CABINET

SUBMISSION No: 916

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|--|--|
| Title: | AVIATION : REGIONAL AIRLINE DEVELOPMENTS |
| Minister | Honourable R.M. Steele, Minister for Transport and Works. |
| Purpose: | To define progress in assumption of State-type aviation powers and related developments in establishment of NORTHERN AIRLINES, and to outline necessary changes to existing legislation. |
| Relation to existing policy: | Consistent with Cabinet Decision 1047 and Northern Territory Aviation Act 1979. |
| Timing/ legislative priority: | High priority to enable passage of amendments to Aviation Act during February session of Legislative Assembly. |
| Announcement of decision, tabling, etc: | No announcement necessary. |
| Acting required before announcement: | Not applicable. |
| Staffing implications, numbers and costs, etc: | Nil |
| Total cost: | Nil |

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Department/Authority Department of Transport and Works

COMMENT ON CABINET SUBMISSION No.

TITLE: AVIATION - REGIONAL AIRLINE DEVELOPMENTS

COMMENTS:

I have examined the proposed Submission and make the following comments:-

Clause 5 - Action to prepare a legal agreement to give effect to the points outlined in the Memorandum of Understanding can proceed no further until such time as the precise nature of the grant of plenary power from the Commonwealth is known. Meetings held with the Commonwealth in Canberra last week indicate that the Commonwealth is not well advanced in its policy determination as to the exact nature of the power to be given to the Territory. This matter should be pursued strongly with the Commonwealth as quickly as possible.

Clause 6 - The last paragraph of this clause indicates that the necessary amendments to the Aviation Act should be passed at the February Sitzings of the Assembly. Given that the Commonwealth has not as yet commenced drafting and that assent will be necessary to Commonwealth legislation as well as the drafting and promulgation of Regulations (both civil aviation and self-government) there does not appear to me to be the urgency necessary for the amendments to pass ~~all stages at the February Sitzings.~~

SIGNED:

DESIGNATION:  Crown Solicitor

DATE: 4.2.80

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Department/Authority Department of Transport and Works

COMMENT ON CABINET SUBMISSION No.

TITLE: AVIATION - REGIONAL AIRLINE DEVELOPMENTS

COMMENTS:

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Issues are arising as negotiations develop and I would prefer the introduction of an amending Bill in the February Sittings in the knowledge if further amendments become necessary before May they can be the subject of an Amendment Schedule to the Bill before the House.

Clause 13 - For the reasons outlined above this clause is not accurate. There are several major issues involving Commonwealth Government relations still to be resolved. This is related not only to the plenary power to be granted to the Territory but to the operational and fairsetting questions as well.

In my view Cabinet ought to be asked to -

- (i) note developments to date;
- (ii) approve the introduction of an amending Bill to the Aviation Act in the February Sittings;
- (iii) authorise continued negotiations with the Commonwealth to resolve the outstanding matters set out above; and
- (iv) call for further reports on this matter at 30 day intervals until the handover of power is completed.

SIGNED: 

DESIGNATION: Crown Solicitor

DATE: 4.2.80

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Department/Authority DEPARTMENT OF THE TREASURY

COMMENT ON CABINET SUBMISSION No.

TITLE: AVIATION : REGIONAL AIRLINE DEVELOPMENTS

COMMENTS:

Submission supported.

SIGNED: P.F. TEMPLE
DESIGNATION: DEPUTY UNDER TREASURER
DATE: 4/2/80

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THE ISSUES

1. Cabinet Decision 1047 called for a further submission outlining:

- (a) the implications of the Memorandum of Understanding effected by the Northern Territory Government and East West Airlines on the establishment of a regional airline;
- (b) the proposed necessary amendments to the Aviation Act 1979;
and
- (c) the progress reached in the transfer of the necessary aviation powers from the Commonwealth.

BACKGROUND

2. Cabinet Submission 847 was originally presented to a special meeting of Cabinet on 4 December 1979. No formal Decision was issued, but in effect the recommendations of the Submission were set in train on the basis of verbal approval by the Chief Minister and the Minister for Transport and Works. (A copy of the original recommendations is included as Attachment A).

3. Following extensive discussions between representatives of East West Airlines and the Departments of Transport and Works, Law and Treasury, contracts effecting the sale of Connair to East West Airlines were signed, and a Memorandum of Understanding between the Northern Territory Government and East West Airlines was signed on 23 January 1980. (A copy of the main provisions of the Memorandum are shown at Attachment B).

4. These actions were supported by Cabinet's formal decision (No. 1047 of 23 January 1980 - copy attached at 'C').

CONSIDERATION OF THE ISSUES

5. Implications of the Memorandum of Understanding

- (a) Action is proceeding to prepare a legal agreement (between the Northern Territory Government and East West Airlines) to give effect to the points of agreement and respective undertakings outlined in the Memorandum. This legal agreement will come into force once aviation powers have passed from the Commonwealth to the Territory, at which time the Northern Territory Government will be empowered in its own right to issue the appropriate Regular Public Transport (RPT) licences.
- (b) East West's public commitment to the continuity of employment of all Connair staff, without reduction in salary, has allayed employee anxiety and pre-empted possible industrial disquiet.
- (c) Similar public statements by the airline underlining a commitment to consideration of future prospects of Ansett, TAA and MMA employees who may be adversely affected by the development of Northern Airlines, have tended to smooth industrial anxieties.
- (d) Northern Territory Government undertakings in respect of exclusive operating rights on specific routes currently being operated by TAA/Ansett/MMA cannot be guaranteed to be effected

- (i) until aviation licensing powers are vested in the Northern Territory Government; nor
- (ii) without recognising the essentiality of reaching agreement with TAA/Ansett/MMA to ensure continuity of services until phased out.

In this context initial discussions have already been held with senior management of these airlines, resulting in substantial agreement in principle on most issues.

- (e) Existing agency arrangements in Tennant Creek, Katherine, Gove and Groote Eylandt are in the process of being examined and reviewed by Northern Airlines staff, with the aims of

- (i) reducing anxiety felt by agencies as to their future, by
- (ii) appointing agencies to act for Northern Airlines, with the objective of
- (iii) ensuring no agency is put out of business as a direct result of airline developments (although some will inevitably become less profitable).

- (f) Northern Territory Government is not committed by the Memorandum to providing financial support or financial guarantees. The Government is however committed to giving favourable consideration to any request, backed up by detailed proposals, if it can be demonstrated by Northern Airlines or East West that there will be a significant adverse effect on the finances or operations of East West (outside the Territory), or on the operations of Northern Airlines, if financial guarantees are not provided.

The first test case will be for guarantees for finance to cover the purchase of five (5) surveillance Nomad aircraft, and the airline's initial presentation was scheduled for discussion 1 February 1980.

6. Amendments to the Northern Territory Aviation Act 1979

To give effect to those matters agreed between the Northern Territory Government and East West Airlines concerning the establishment and operations of Northern Airlines, it will be necessary to amend the Aviation Act in one important area, that of licensing RPT operations.

At present the Act provides for all licence applications to be made to, examined, assessed, and determined by the Director of Transport. It is proposed to amend the Act to provide for RPT licensing issues to be determined by the Minister, rather than the Director, primarily to secure the Act from legal attack and to ensure in addition that protection of the operational environment for the regional airline is monitored and resolved at this more appropriate level of government.

Amendments to achieve this end are in the process of being developed jointly by the Departments of Law and Transport and Works.

Other amendments to the Act similarly designed to secure it from legal attack, and also clarifying certain points, are also being developed.

Given the expected timing for assumption of aviation powers (as discussed in following paragraphs), it will be necessary

for those amendments to the Aviation Act to be passed at the February sittings of the Legislative Assembly.

7. Transfer of Aviation Powers

At meetings in Canberra 30 January 1980 between Commonwealth Department of Transport officers and representatives of the Northern Territory Departments of Transport and Works, and Law, the Commonwealth indicated its intention to pass, at the February/May sittings, the necessary amending legislation to enable the transfer of aviation licensing powers to the Territory.

OPTIONS

8. The Northern Territory Government has, over the past year, proceeded to arrange for the acquisition of aviation licensing powers from the Commonwealth, and to this end gave priority late in 1979 to the passage of our Aviation Act. No serious practical option to this established course of action exists at this time or in the foreseeable future.

9. On those issues relating to the Government and East West Airlines working together towards the establishment of Northern Airlines, again no practical options exist at this time. The Memorandum of Understanding sets the scene for joint consideration of the issues, and providing that points of difficulty can be resolved (particularly insofar as the question of financial guarantees is concerned), the Government is committed to supporting East West/Northern Airlines endeavours.

PUBLIC IMPACT OF THE RECOMMENDATIONS

10. The recommendations per se contain no new developments that have not previously been disseminated publicly, and which in any case were well received.

FINANCIAL CONSIDERATIONS

11. The question of possible financial guarantees or other forms of financial support to East West/Northern Airlines has yet to be finalised and the effects of any such involvement by the Northern Territory Government will be the subject of separate consideration.

COMMONWEALTH AND LOCAL GOVERNMENT RELATIONS

12. Issues relating to Territory/Commonwealth Government involvement in the transfer of aviation licensing powers have been fully explored in an earlier Submission that resulted, ultimately, in the passage of the Northern Territory Aviation Act.

13. No further issues involving either Commonwealth Government or local government relations arise directly from these recommendations at this time.

CO-ORDINATION

14. The Departments of Transport and Works, Law, Treasury and the Northern Territory Development Corporation have been involved in issues covered in this Submission.

LEGISLATION

15. To ensure that the Northern Territory Aviation Act is enforceable in its desired, final form at the time of the transfer of aviation licensing powers, high priority is sought for the passage of necessary amendments.

PUBLICITY

16. It will be appropriate to publicise the actual transfer of powers when this takes place later this year. Nothing in this Submission warrants publicity at this time.

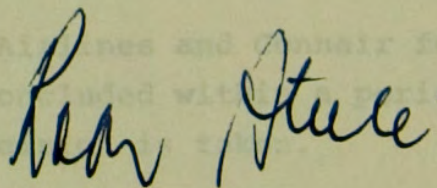
TIMING

17. Amendments to the Aviation Act will need to be scheduled for passage during the February sittings if the Act is to be in its final form before the actual transfer of aviation licensing powers to the Northern Territory Government.

RECOMMENDATIONS

18. I support this Submission and recommend that Cabinet:

- (a) note the implications arising from the Memorandum of Understanding;
- (b) accept the need for amendments to the Aviation Act to secure it from legal attack;
- (c) approve high priority for the drafting of such appropriate amending legislation; and
- (d) support its scheduling for passage **during the** February sittings of the Legislative Assembly.



ROGER STEELE

1/2/80.

CO-ORDINATION

10. The Law Department has been closely involved in the preparation of the Northern Territory Aviation Act and on the proposals for the establishment of the regional airline.

TIMING

11. An early decision is required because of the present Connair problems.

RECOMMENDATION

12. I fully concur in the findings of the Working Party and I seek Cabinet agreement to the implementation of their recommendations. Accordingly, I recommend that :

. The Northern Territory Government should accept the application of East West Airlines to operate the new Northern Airline subject to total acceptance by East West Airlines of the precise requirements set out in Cabinet Decision No. 902, particularly in regard to subsidy.

. Negotiations between East West Airlines and Connair for the purchase of Connair should be concluded within a period of three weeks after the Cabinet decision is taken.

. The Northern Airline should endeavour, as far as practicable, to ensure that traffic on-carriage is divided as fairly as possible between Ansett and TAA.

. The Northern Airline should be given all the support, short of financial subsidy, which the Northern Territory Government can provide.

. The Northern Territory Government should give the Northern Airline the right of first refusal for the contract for the Northern Territory Aero-medical Service (now operated by TAA) and use its best endeavours to secure, for the Northern Airline,

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. The Northern Territory Government should give the Northern Airline the right of first refusal for the contract for the Northern Territory Aero-medical Service (now operated by TAA) and use its best endeavours to secure, for the Northern Airline,

Commonwealth contracts for coastal surveillance.

. The Northern Territory Government should give sympathetic consideration to any proposals made to it by the Northern Airline for financial guarantees and, where appropriate, for competitively priced loan funds.

. The Northern Territory Government should reconsider its requirement that the Northern Airline should introduce jet aircraft on all intra-Territory routes by June 1981.

. The Northern Territory Government should use its best endeavours to have the Commonwealth Government approve the importation of suitable jet aircraft appropriate for use on Northern Airline routes.

(Original signed by

ROGER STEELE,

Minister for Transport and Works.

in Melbourne - 30 November 1979.)

SUMMARY OF THE MAIN PROVISIONS OF MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NORTHERN TERRITORY GOVERNMENT AND EAST-WEST AIRLINES

- 1 The understanding is between the Northern Territory Government, East-West Airlines Ltd of New South Wales, and East-West Airlines Northern Territory Ltd which has been registered in Darwin. The Memorandum is a statement of intent by the parties and as such is not a legally binding document.
- 2 The Memorandum calls on East-West Northern Territory Ltd to seek to acquire all the issued share capital of Connair.
- 3 Upon acquisition of Connair, East-West Northern Territory Ltd shall continue to provide Connair's services and continue to employ all Connair employees. East-West Northern Territory Ltd shall change its name to Northern Airlines Pty Ltd and change the name of Connair to Northern Airlines Operations Pty Ltd.
- 4
 - (1) East-West NT shall be established with an authorised capital of \$5,000,000 comprising 5,000,000 shares of \$1 each;
 - (2) Prior to the execution of the Contract East-West shall apply for and East-West NT shall issue to East-West 1,530,000 shares at par paid up to 67 cents;
 - (3) East-West NT shall issue a further 1,470,000 shares at par paid up to 67 cents to NT residents.
- 5 The Board of East-West NT shall consist of either 5 or 7 persons of whom 2 or 3 respectively shall ordinarily reside in the Territory. The senior full-time executive responsible for the operations of the Regional Airline

of 5 years.

- 9 (1) The Territory shall consider a request accompanied by detailed proposals made to it by East-West or the Regional Airline for guarantees of finances provided to the Regional Airline by others.
- (2) It is acknowledged by East-West and the Regional Airline that the Territory would not ordinarily consider a request of the type specified in sub-clause (1) but the Territory shall give favourable consideration to such a request if it is demonstrated by East-West or the Regional Airline that there would be -
- (a) a significant adverse effect on East-West in its operations outside the Territory or its borrowing capacity for its operations outside the Territory; or
- (b) a significant adverse effect on the Regional Airline if a guarantee was not provided by the Territory.
- (3) Nothing contained in the Memorandum of Understanding shall be taken to be either an offer or an undertaking by the Territory to provide to East-West or the Regional Airline any guarantee or other financial support.
- (4) East-West and the Regional Airline acknowledge that operating capital is not to be sought from Northern Territory Government sources.
- (5) The loan of \$1.8 million from East-West Airlines of New South Wales to East-West NT to buy out Connair is to be repaid in such a way as to ensure a continuing financial involvement by the New South Wales Company in East-West NT.

(who is presently contemplated to be the General Manager) shall ordinarily reside in the Territory.

- 7 In providing regular public transport operations the Regional Airline shall -
- (a) introduce suitable turbo prop aircraft where appropriate to the operational and traffic requirements of the regular public transport operations;
 - (b) introduce such flights as mutually agreed by the Regional Airline and the Minister by Fokker F28 or other equivalent jet aircraft on the following routes by mid-1981 -
 - (i) Darwin/Katherine/Tennant Creek/Alice Springs or any combination of these stopping places;
 - (ii) Darwin/Gove;
 - (iii) Darwin/Groote Eylandt; and
 - (iv) Alice Springs/Ayers Rock.
- 8 (1) The Territory shall procure that airline licences for a term of 5 years are issued to the Regional Airline so as to enable it to provide the regular public transport operations required by the Memorandum of Understanding.
- (For reasons relating to the Trade Practices Act, East-West do not desire that the Memorandum of Understanding refer to the exclusive nature of these licences. However, the contract referred to under Section 10 will specify that the licences will be exclusive except on the direct Alice Springs/ Darwin route.)
- (2) The Territory shall procure that at the end of the term of the licences granted pursuant to sub-clause (1) those licences are renewed for a further term

- 10 Upon the execution of the Memorandum of Understanding, the parties shall negotiate a Contract and the conditions of the licences, and it is the intention of the parties that subject to East-West and East-West NT performing any preconditions required by the Memorandum of Understanding the parties shall execute the Contract and the licences shall be granted to the Regional Airline by the Territory.
-