

CONFIDENTIAL

CABINET DECISION

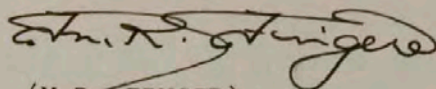
NO. 815

Submission No.: 703

Title: PROPOSED NORTHERN TERRITORY AIR TRANSPORT
LEGISLATION.

Cabinet decided that the Northern Territory Government accept in principle responsibility for all State-type air transport functions subject to satisfactory arrangements being made with the Commonwealth Government through the Interdepartmental Committee on Constitutional Development for the Northern Territory regarding the extent of functions to be transferred, funding and staffing arrangements.

Cabinet agreed to the drafting of appropriate legislation which is to be resubmitted to Cabinet for approval.



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

15 August, 1979.

CONFIDENTIAL

THE NORTHERN TERRITORY OF AUSTRALIA

CONFIDENTIAL

Copy No.1.....

FOR CABINET

SUBMISSION No. 703

Title:	PROPOSED NORTHERN TERRITORY AIR TRANSPORT LEGISLATION.
Cabinet Member	HON. R.M. STEELE, MINISTER FOR TRANSPORT AND WORKS.
Purpose:	Introduction and enactment of Northern Territory Air Transport Legislation.
Relation to existing policy:	Consistent with existing policy to assume full measure of Self Government on State-type functions and in keeping with Commonwealth agreement to transfer such responsibilities.
Timing/ legislative priority:	HIGH PRIORITY, Legislation should be presented in the Legislative Assembly in the September session, to come into effect from January 1980.
Announcement of decision, tabling, etc.:	Public announcement immediately prior to introduction of Legislation.
Action required before announcement:	Further negotiation with the Commonwealth Government.
Staffing implications, numbers and costs, etc.:	Staffing aspects have been covered in a separate submission for the establishment of a Transport Commission within the Department of Transport and Works.
Total cost:	These aspects have also been covered in a separate submission for establishment of a Transport Commission.

CONFIDENTIAL

CONFIDENTIAL

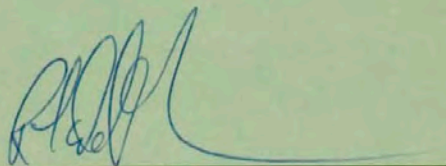
Department/Authority OFFICE OF THE PUBLIC SERVICE COMMISSIONER

COMMENT ON CABINET SUBMISSION No.

TITLE: PROPOSED N.T. AIR TRANSPORT LEGISLATION

COMMENTS:

No objection to the recommendation contained in the Cabinet submission. Comments on staffing implications are covered in the comments to the "Proposed N.T. Transport Commission Legislation" submission.



SIGNED:

R.L. DONALDSON

DESIGNATION:

for Public Service Commissioner

DATE: 3.8.79

CONFIDENTIAL

CONFIDENTIAL

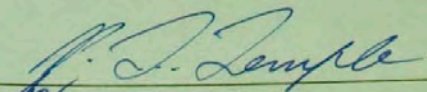
Department/Authority DEPARTMENT OF THE TREASURY

COMMENT ON CABINET SUBMISSION No.

TITLE: PROPOSED NORTHERN TERRITORY AIR TRANSPORT LEGISLATION

COMMENTS:

SUBMISSION SUPPORTED.



SIGNED: A B ASHLEY

DESIGNATION: UNDER-TREASURER

DATE: 7 August 1979

CONFIDENTIAL

CONFIDENTIAL

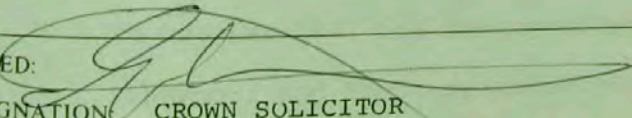
Department/Authority DEPARTMENT OF LAW

COMMENT ON CABINET SUBMISSION No.

TITLE: PROPOSED NORTHERN TERRITORY AIR TRANSPORT LEGISLATION

COMMENTS:

Subject to the transfer of executive responsibility for intra-Territory air transport and any necessary amendments to Commonwealth legislation, there appear to be no constitutional or legal barriers to this proposal. In this regard agreement in principle has been reached on the transfer of responsibility, but further negotiations with the Commonwealth are necessary as to the extent of the transfer to take place and on the consequential amendments to Commonwealth legislation. At the minimum, amendments to the Air Navigation Regulations will be required but this is being considered by the Department of Law at the moment. It may well be that amendments to the Commonwealth Air Navigation Act as well as possibly The Australian National Airlines Act, the Air Accidents (Commonwealth Government Liability) Act, and the Civil Aviation (Carriers Liability) Act will also be required. In this regard the timetable for the transfer may be critical. The impact of the Commonwealth Trade Practices Act needs to be considered although at this stage I see no insuperable problems.

SIGNED: 

DESIGNATION CROWN SOLICITOR

DATE: 8 August 1979

CONFIDENTIAL

ISSUES

1. That the Northern Territory Government:
 - (a) accept transfer of State-type air transport responsibility and functions now carried out by the Commonwealth with the necessary administration, legislation and financial adjustments.
 - (b) introduce legislation for the regulation of air transport within the Northern Territory.
 - (c) determine policy approach for the extent of controls necessary to best serve the aviation industry and travelling public.

BACKGROUND

2. The proposed legislation will provide the facility to legislate, to restrict or control commercial aviation carried out within the Territory on economic and other legitimate grounds.
3. The proposed legislation will not have power over international, interstate or State/Territory air services. In addition it will have no power to regulate or control commercial aviation on grounds pertaining to air safety and efficient navigation. It would complement Commonwealth legislation covering air safety requirements, e.g. the Air Navigation Act and Regulations, which would still apply.
4. The Executive Authority will relate to intra-Territory services regardless of whether they are regular scheduled operations, charter operations or aerial work, provided they are characteristically commercial.
5. In October 1977 the Northern Territory Department of Transport and Industry foreshadowed the transfer of State

- type air powers in its submission to the Domestic Air Transport Policy Review Committee. The review indicated the existing State/Commonwealth arrangement is satisfactory and workable.
6. In October 1978 the N.T. Government commissioned a study on air transport policy carried out by Mr. Frank Gallagher from the Western Australian Director-General of Transport's office.
 7. In my Transport Policy Paper presented to the Legislative Assembly on 27 February 1979, I stated his department was currently identifying administrative, legal and policy responsibilities for marine and air matters.
 8. On 30 May 1979 Frank Gallagher's summary report was tabled in Parliament. The summary report had been prepared to enable the Government to act quickly on a number of recommendations.
 9. On 13 June the implications of the report were discussed with members of the general aviation industry in the Northern Territory, to ensure that their views were taken into account.
 10. On 9 July the report was discussed with senior officers of the Commonwealth Department of Transport and agreement in principle for the transfer of powers was reached.
 11. The type of Northern Territory air transport legislation proposed is outlined at Attachment 'A'.

CONSIDERATION OF THE ISSUES

12. At present the Commonwealth has responsibility for all aspects of aviation within, to and from the Northern Territory. Commonwealth influence on commercial aviation within the Territory comes directly through the regional offices of Department of Transport, Adelaide.

13. Commonwealth control has led to limits on numbers of charter aircraft but little policing of unauthorised charter or their intrusion on regular services. It has also led to domination of main intra N.T. routes by the major airlines at the expense of a viable regional airline.
14. Local political control is essential for effective development, administration and control of intra N.T. air operations along appropriate policy guidelines. The Domestic Air Policy Review findings are not inconsistent with this.
15. The Government has to decide whether it will allow open entry and protect operators from unfair competition only or protect operators from competition generally. In this, it has to distinguish between aerial work, charter and regular services. It has also to consider the extent it wishes to be directly involved at Ministerial level as against giving responsibility to a Transport Commissioner.
16. The separate submission for a Transport Commission seeks to give the Commissioner a wide range of discretion on transport regulatory matters under general policy guidelines.
17. Draft criteria (Attachment 'B') have been established to guide the Transport Commissioner on the policy appropriate to his use of discretionary powers under the proposed Act. These take account of the views expressed by the Gallagher report and by existing operators, but further discussion with the industry and assessment is needed before the criteria can be finalised. The draft provides that -
 - (a) the Commissioner in administering the Act should not exercise any special form of control over operations falling within the 'aerial work' classification except that Commonwealth safety and navigation requirements

would still have to be met and issue of an aerial work licence would not establish a prior right to a charter licence.

(b) a licencing system should protect users and operators in both the 'charter air service' and the 'regular air service' classifications from unfair competition with the extent of control being at the discretion of the Commissioner, in consultation with the Minister.

(c) to control entry into the 'regular air service' classification and operation on regular service routes to develop and maintain viable regular air services and in the interest of efficiently utilising Northern Territory resources.

18. One further consequence of these changes in responsibility will be for existing and future intra-Territory air service of Ansett, MMA and TAA to require N.T. Government approval. This matter is subject to separate consideration in considering proposals for a regional airline, which will be the subject of a further submission when negotiations between East West Airlines and Connair are completed.

OPTIONS

19. The options open to the Northern Territory Government are:

(a) not to assume 'State-type powers but to pressure the Commonwealth to establish an effective local presence.

(b) to take on State-type powers but to refer them back to the Commonwealth.

(c) to adopt and apply, State-type powers in a way that provides for a wide range of flexibility to take

account of user and operator needs for aerial work, charter and regular services.

- (d) to adopt and apply State-type responsibilities in a way that provides tight control over entry and operations for aerial work, charter and regular service to protect the industry.

PUBLIC IMPACT OF THE RECOMMENDATIONS

20. The Australian public have in recent years become very critical of the rigid Commonwealth Government Air Policy and this criticism is even more relevant in the Territory because of its high level of dependence on air movement.
21. There has been growing pressure on the Northern Territory Government on air regulation matters and it is believed the acceptance of State-type powers would receive general support.

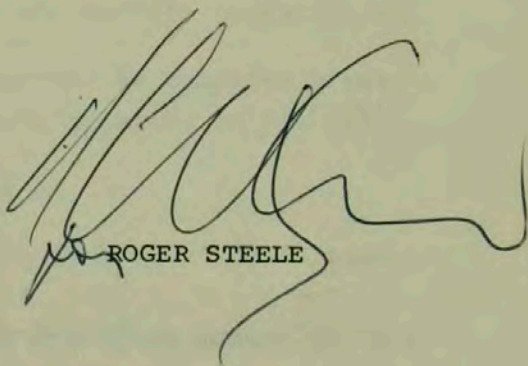
FINANCIAL CONSIDERATIONS

22. The cost of administering the legislation in the first full year of operation is estimated at \$95,000 per annum, which is part of the total Transport Commission cost.
23. The revenue raised from the issue of air service licences would be nominal as it is considered undesirable to substantially add to the heavy cost burden operators are facing.

RECOMMENDATIONS

24. It is recommended that Cabinet approves:
- (a) the acceptance of State-type air functions from the Commonwealth as from 1 January 1980.

- (b) the preparation of the necessary Northern Territory legislation in association with the Transport Commission Act, which is being recommended in a separate Cabinet submission.
- (c) that the Chief Minister writes to the Prime Minister requesting a change in the Self-government regulations to provide executive authority over State-type air transport matters, with a later requirement to amend the Air Navigation Act clearing any ambiguity between State-Territory status and to make any other necessary changes in Commonwealth legislation.
- (d) that priority be given to the drafting of the Air Transport Control Act.
- (e) the proposed guidelines for licencing air services subject to a further submission when the guidelines have been completed after discussions with the Industry.



ROGER STEELE

1. LICENCE FOR AIRCRAFT

The Commissioner may grant an aircraft licence.

2. APPLICATION FOR LICENCES

The details on application must include:

- . the routes on which and/or the area in which it is intended that the aircraft is to operate;
- . a description of the aircraft in respect of which the application is made;
- . the maximum number of passengers to be carried at any one time, and the classes of goods to be carried by the aircraft;
- . the service proposed to be provided;
- . the fares and freight rates proposed to be charged; and
- . such other particulars as may be prescribed.

3. MATTERS TAKEN INTO CONSIDERATION BY COMMISSIONER BEFORE GRANT OR REFUSAL OF LICENCE

- . conditions of the airports to be included in any proposed route or area;
- . character, qualification and financial stability of the applicant;
- . benefits for consumers;
- . approved Government policy for the granting of licences.

4. IMPLIED CONDITIONS OF LICENCE

- . any law applicable to the aircraft and its operation be complied with;
- . any industrial award or agreement to be complied with;
- . any direction of the Commissioner relating to the use of airports be complied with.

5. DISCRETIONARY CONDITIONS

(1) Commissioner may in his discretion attach the following conditions:

- . aircraft be operated only upon specified routes or in a specified area;
- . specified timetables be observed;
- . specified fares and freight charges be charged;
- . prescribed records and statistics be kept and be supplied to the Commissioner.

(2) The Commissioner may add to, vary or cancel any of the conditions above.

DRAFT CRITERIA

POLICY GUIDELINES FOR N.T. AIR LICENCING

The Government through the establishment of a Transport Commissioner will apply air powers in a manner that divides their operations into

1. aerial work e.g. mustering, surveying and other general activities that do not involve carriage of persons or goods for reward.
2. charter air services
3. regular air services.

1. AERIAL WORK LICENCES

The Commissioner will issue an aerial work licence without restriction providing:

- (a) the operator meets (or proves that he will be able to meet) Commonwealth Department of Transport safety and operational requirements; and
- (b) that the operator is engaged (or will be) fulltime in the business, or will have at least one pilot employed fulltime.

Granting an aerial work licence will not establish any future right to a charter licence.

2. CHARTER AIR SERVICES

General -

The Commissioner will protect users and operators in the charter air service classification, from unfair competition through the use of a licencing system in which the Commissioner will have a wide range of discretion subject to the general policy direction of the Minister. The Commissioner will also monitor initial capacity as against demand to allow action to avoid significant surplus capacity or to upset the viability of a regional N.T. airline. All charter licences will be subject to obtaining or proving that the applicant will be able to obtain a Commonwealth Department of Transport licence which covers safety and operational aspects. Licences shall be administered in such a way that they do not attain value.

Initially -

To provide for continuity while adjustment is made to any new requirements occasioned by the change in responsibility and the development of an N.T. regional airline.

- (i) Aircraft licenced to operate in the N.T. or for which approval had been given as at 1 August 1979 to continue subject to operator meeting certain conditions and controls to be applied to new entrants.

- (ii) Prior to the Commissioner giving consideration of additional aircraft an investigation will be carried out to establish capacity versus demand potential taking into account regular air service implications including development of the N.T. regional airline.
- (iii) For a short settling down period, an embargo will be placed to restrict existing licences to approved planes or their replacements to avoid any sudden rush.

Future Licence Issue and Controls -

- (i) Unless significant surplus capacity or conflict with regular services seems likely, an increase in licences may be granted. When entry is to be restricted, operators with highest ratio of investment in the industry may be given preference provided existing licenced aircraft utilisation is satisfactory and subject also to considerations of possible optimum fleet size and consumer needs and the level of competition in the area concerned.
- (ii) All licences to be at risk if safety requirements are not met or if licences can be shown to be adopting the practice of operating charter at a loss to obtain business.
- (iii) Commissioner may place stipulations on licences in respect of service type, regions, capacity etc. as appropriate, to regulate competition.

3. REGULAR AIR SERVICES

- (i) Through a licencing system, protect users and operators in the regular air service classification from unfair competition the extent of control being at the discretion of the Commissioner, under general policy direction of the Minister.
- (ii) To control entry into the 'regular air service' classification and operation on regular service routes required to develop and maintain viable regular air services and in the interest of efficient utilising Northern Territory resources.

The Commissioner will by using a licencing system, protect users and operators in the regular air service classification from unfair competition to be defined under general policy direction of the Minister.

The licencing system will also be designed to control entry into the regular air service classification to develop and maintain services which are in the best interests of the Northern Territory.