

Allocation of air services within New South Wales

Michael Lowe

Research Officer

NSW Department of Transport

Abstract:

Government regulation has traditionally played a crucial role in the allocation of air services within New South Wales. The development and current nature of this unique system of allocation is critically examined. The peculiar interaction between public and private decision-making processes, the attitude toward regulation, the particular development of government policy, and the structure of government have had a fundamental impact on the process of allocation. Two major themes are identified within this context which give continuity to the events and issues which have influenced the development of the New South Wales air service network: 'co-operative federalism' and 'locality consciousness'.

NSW Department of Transport

G P O Box 1620

Sydney NSW 2001

Telephone: (02) 268 2847

Fax: (02) 268 2900

Introduction

This paper examines the processes responsible for the allocation of scheduled intrastate passenger air services within New South Wales (NSW). Attention is focused on how these services are allocated, and the agents responsible for these processes. Government regulation is of primary concern in this context. Although the supply of airline seats has been the responsibility of private companies, government has traditionally set the conditions of supply by allocating licences to carriers to operate specific routes, and by specifying a variety of other service requirements.

During the last thirty years, the NSW government has maintained a direct interest in the allocation of intrastate air services, exercising far greater control than any other State. Its policies have challenged the Commonwealth's assumed authority and led to a series of disputes regarding respective spheres of influence. The ensuing High Court cases and legislative and policy changes have clarified a number of matters, but have not resolved the fundamental issues which are a direct legacy of Australia's federal system. The most recent method of regulation responsible for the allocation of intrastate air services in NSW could result in further confrontation.

The difficulties faced by the NSW air service network stem from its paradoxical nature. The network is essentially dedicated to serving a large number of non-metropolitan centres, though most routes are focused on Sydney Kingsford Smith Airport (KSA). The airport is owned and controlled by the Commonwealth, and is also a major hub for intermetropolitan and international air services. With the introduction of commuter aircraft there has been a dramatic increase in the number of services to non-metropolitan centres in NSW. This has placed an increasing strain on the facilities at Sydney KSA. The State's current regulatory system, dominated by non-metropolitan interests actively pursuing the service improvements offered by smaller aircraft, has exacerbated the problem.

'Co-operative federalism'

The constitutional division of power between the Commonwealth and States, combined with the disparity between their functional responsibilities and financial capabilities, has generated considerable scope for confrontation between these two levels of government in Australia. The problem has been particularly acute in

This paper is a condensed version of the thesis, submitted by the author, in partial fulfilment of the degree of Bachelor of Arts (Honours), Department of Geography, The Faculty of Arts, Australian National University, Canberra, in November 1989. The author is grateful for the assistance of the New South Wales Air Transport Council and the New South Wales Department of Transport. The views expressed are those of the author and do not represent those of the New South Wales Air Transport Council, the New South Wales Department of Transport, or the New South Wales Government.

relation to intrastate air services. Events in NSW during the 1960s and 1970s confirm that any resolution of the jurisdictional contradictions inherent in Australia's federal system can only be achieved through compromise and a willingness of both parties to restrict their spheres of influence to complementary fields. This is the essence of what Sawyer (1975: 134) has referred to as 'co-operative federalism'.

Establishment of New South Wales government authority

Aircraft licensing was a relatively minor issue in NSW until the early 1960s. Although the State government had made provision for the licensing of intrastate air services under the *State Transport (Co-ordination) Act 1931* (NSW), de facto, the Commonwealth was the licensing authority, relying on its powers under the *Air Navigation Act 1920* (Cwlth) (Brogden, 1968: 85). This state of affairs persisted despite two High Court decisions during the 1930s, which held that the division of power and responsibility under the *Commonwealth of Australia Constitution Act 1900* (Cwlth) meant that the Commonwealth's authority over intrastate air services was restricted to issues of safety (*R v. Burgess; Ex Parte Henry* (no. 1) (1936) 55 CLR 608 at 608, 629, 667-668, *R v. Poole; Ex Parte Henry* (no. 2) (1939) 61 CLR 312 at 334).

The 'threat' of monopoly finally prompted the NSW government to assert its authority over the allocation of intrastate air services. The situation was unique in Australia as NSW was the only State with two intrastate operators, both of which were privately owned. In 1957/58 the Melbourne-based Ansett organisation had taken over Butler Air Transport, later Airlines of NSW/Air NSW, the State's major intrastate airline. In 1960, Ansett made another takeover bid, this time for the State's other intrastate carrier, East-West Airlines. East-West successfully resisted the bid but then appealed to the NSW government to take action which would enable the airline to survive in the long-term as a viable independent operator (Riley et al., 1986: 15).

The State government responded to these events by deciding to introduce a policy modelled on the Commonwealth's interstate Two-Airline Policy (TAP). The TAP had been developed during the early 1950s to prevent a monopoly of interstate air services by maintaining a regulated duopoly in which the market was almost equally divided between a privately-owned firm, Ansett-ANA, now Ansett Airlines, and a public enterprise, Trans-Australia Airlines/TAA, now Australian Airlines. In NSW the focus was on restricting the expansion of Airlines of NSW, which held 70 per cent of the market, and allowing East-West to operate half of the most lucrative routes in the State. It was hoped that by improving East-West's profitability, the airline would be able to resist selling to Ansett (Brogden, 1968, 161).

Challenge and confrontation

Given the Commonwealth's assumption of authority over the allocation of intrastate air services, the challenge posed by the NSW government inevitably led to confrontation. The State government sought to justify its position in a survey of

Lowe

intrastate air services in 1961. Based on the survey's findings, the NSW government decided to guarantee East-West 49 per cent of intrastate traffic, through the interchange of a number of routes with Airlines of NSW. The Commonwealth retaliated to what it perceived as an infringement of its jurisdiction. Realising that its only real power lay in its control of financial resources, the Commonwealth argued that it provided a substantial amount of money to both Airlines of NSW and East-West in the form of subsidies, and that if the State government wanted to re-allocate airline licences, it should also be prepared to accept financial responsibility for the subsidies. The State government ignored the Commonwealth's threats and gave the airlines eight weeks to complete the transfer of services. The Prime Minister responded by notifying the NSW Premier that the Commonwealth was prepared to continue subsidies, and would provide guarantees for all airline equipment orders, if the State government agreed to refrain from licensing services that did not have the Commonwealth's express sanction (Brogden, 1968: 162).

Airlines of NSW, who stood to lose a number of profitable services as a result of the re-allocation, attempted to resolve the conflict between the Commonwealth and State governments by bringing an action in the High Court. In *Airlines of New South Wales Pty. Ltd. v. New South Wales* (no. 1) (1964) 113 CLR 1 at 1, the airline claimed that the Commonwealth's *Air Navigation Act 1920* and attendant *Air Navigation Regulations*, including the federal licensing of air transport services, extended to all air navigation within Australia. The *State Transport (Co-ordination) Act 1931* was inconsistent with Commonwealth law, by establishing an additional licensing system, and consequently invalid under section 109 of the *Commonwealth of Australia Constitution Act 1900*, which ensures the 'paramourcy' of Commonwealth laws.

The High Court ruled against the Commonwealth's assumption of absolute power over civil aviation. It held that there was no inconsistency between the State Act and the Federal Act and attendant Regulations, and that Airlines of NSW was not entitled to use aircraft within the State without holding a licence under the State Act. It noted that the Commonwealth's *Air Navigation Regulations* did not purport to apply to all aspects of intrastate air navigation, and that only particular regulations, relating to matters such as controlled airspace, could be enforced (*Airlines of New South Wales Pty. Ltd. v. New South Wales* (no. 1) at 28-29, 41-42, 47-49). In effect, both levels of government were responsible for the allocation of air services within the State, though the Commonwealth's role was restricted to operational and safety matters. The decision assumed added importance, however, because several judges argued that the Commonwealth's role was restricted to matters that might actually require the Commonwealth to exercise sole control over all matters concerned with air navigation (*Airlines of New South Wales Pty. Ltd. v. New South Wales* (no. 1) at 27, 33-38, 50-51).

The Prime Minister responded to the High Court's findings by immediately informing the State Premiers that the Commonwealth intended to assume total legal control over civil aviation, including intrastate operations. He argued that the Commonwealth bore the financial burden of providing and maintaining aviation facilities throughout Australia, and accordingly proposed a series of interlocking amendments and additions to the *Air Navigation Regulations* (Brogden, 1968: 163-164). Under the revised legislation, the Commonwealth was required 'to have regard to matters concerned with the safety, regularity and efficiency of air navigation' when issuing an intrastate licence. A new *Air Navigation Regulation*,

200B, was also passed, which transferred sole responsibility for intrastate licensing to the Commonwealth.

The NSW government quickly redefined its role in an attempt to maintain some authority over the allocation of intrastate air services. It repealed the relevant sections of the *State Transport (Co-ordination) Act 1931*, and enacted new legislation to deal exclusively with the control of intrastate air transport. The *Air Transport Act 1964* (NSW) placed substantial restrictions on the State government's authority, making it consistent with all Commonwealth Regulations except Air Navigation Regulation 200B. Section 3(1) of the *Air Transport Act 1964* made it an offence for any person to carry passengers or goods by aircraft between places in NSW without a State licence covering the operator, the aircraft and the route. Airlines of NSW applied to the State government for a licence to operate between Sydney and Dubbo, but was refused. The licence was allocated to East-West, who in turn, were refused a Commonwealth licence.

Once again, Airlines of NSW attempted to resolve the impasse between the Commonwealth and State governments by challenging the validity of the new State Act in the High Court. The judgement was given in *Airlines of New South Wales Pty. Ltd. v. New South Wales* (no. 2) (1964) 113 CLR 54 at 54, 77, 113-115). The Full Bench upheld the Federal regulations that provided for the licensing of all commercial airline services in Australia, but found that the Commonwealth's power over intrastate operations was limited. It ruled that the Commonwealth could not assume sole responsibility for intrastate licensing and that consequently, Air Navigation Regulation 200B was invalid.

The Court noted that the NSW *Air Transport Act 1964* and the Commonwealth's new regulations were differentially rather than diametrically opposed, and as such, were not inconsistent. The Commonwealth's licensing regulations were based on matters concerning 'safety, regularity and efficiency', whereas the State's Act was based on economic and social policy considerations (*Airlines of New South Wales Pty. Ltd. v. New South Wales* (no. 2) at 84, 88, 106-107, 119, 155). Consequently, intrastate operators were required to obtain two licences, Commonwealth and State, in addition to a Commonwealth permit to use controlled air space and another permit to use Commonwealth airports. In this way, both levels of government maintained a degree of control over the allocation of intrastate air services.

The potential for conflict between the Commonwealth and State governments remained unresolved. As all intrastate routes in NSW were, and still are, focused on Sydney, the Commonwealth's ownership of Sydney KSA and its complete control of air-navigation facilities, meant its powers were paramount. Nevertheless, the NSW government could still refuse to grant an intrastate licence to an operator approved by the Commonwealth.

Compromise and co-operation

In practical terms, the High Court's ruling meant that the Commonwealth and NSW governments had to agree to the terms of any licence re-allocation. In an example of 'co-operative federalism', a compromise was eventually reached. The Commonwealth and State governments appointed a two-man committee in 1965, comprising the Commonwealth's Assistant Director-General of Air Transport Policy

(Unkles) and the NSW State Commissioner for Road Transport (Coleman), to discuss NSW intrastate route allocation. Significantly, the 1965 Coleman and Unkles Inquiry identified 'the requirement of keeping in operation two independent airlines within New South Wales' (in contrast to the notion of a balanced duopoly) as the essence of its brief, based on the assumption that this represented a statement of policy common to both Commonwealth and State governments (Coleman and Unkles, 1965: 2). The Inquiry recommended a modified version of the re-allocation recommendations and East-West finally secured some of the routes it was originally allocated following the 1961 survey.

The State government did not consider the re-allocation process finalised and in 1967, the Coleman and Phillips Inquiry (comprising the persons holding the same Commonwealth and State appointments as in 1965) was formed to consider the situation. On the question of whether the share of traffic was consistent with the requirement of keeping two independent airlines operating in NSW, the 1967/68 Coleman and Phillips Inquiry noted that since the 1965 Coleman and Unkles Inquiry, both Airlines of NSW and East-West had phased out 28-seat DC-3 piston-engine aircraft and were operating fleets of five 40-seat F27-200 turbo-props each. In the process, both airlines had ceased services to a number of small ports and had operated profitably making adequate provisions for renewals, despite severe and protracted drought conditions in many of the areas they were serving (Coleman and Phillips, 1968: 5). The Committee found no need for any further transfer of routes between the two airlines and no further action was taken.

Introduction of commuter services

The introduction of small commuter aircraft at this stage had a critical impact on the industry and the attitude of the Commonwealth and State governments to the issue of regulation. The 1967/68 Coleman and Phillips Inquiry noted that the rationalisation of services by Airlines of NSW and East-West had generally been followed by the introduction of commuter services. These new aircraft could provide direct air services to Sydney from towns which did not generate sufficient traffic to justify the use of F27s, or which had airports unsuitable for such aircraft (Coleman and Phillips, 1968: 3).

The greater flexibility afforded air services by the introduction of commuter aircraft, led the Commonwealth to pay less attention to intrastate operations. After 1968, it followed a policy of freely licensing any new operator in NSW approved by the State government. In turn, the NSW government generally approved all licence applications, except where it was felt that a proposed service would attract passengers away from an existing service (Riley et al., 1986: 20). The attitude of both governments, combined with the introduction of larger 52-seat F27-500 turbo-props by Airlines of NSW and East-West (which led both airlines to withdraw from most of their remaining smaller ports), encouraged a sharp increase in commuter services during the 1970s.

The increasing popularity of commuter air services in NSW prompted the Commonwealth to reassess its policies concerning intrastate operations, and eventually to reassert authority over the allocation of air services. By 1976, the Commonwealth was increasingly concerned with the effects of congestion in the air space and on the runways of Sydney KSA. It responded by introducing a new

system of priority access to the airport and refused many new applications for routes to Sydney when operated by aircraft with less than ten seats (Riley, et al., 1986: 18). Once again, the vital role played by Sydney KSA in the State's air service network meant the Commonwealth's policy amounted to de facto control over the allocation of air services within NSW.

In accordance with the High Court's 1964 rulings, the NSW government accepted that 'safety, regularity and efficiency' of operations were matters for Commonwealth control. Consequently, it did not challenge the Commonwealth's decision to place a virtual embargo on additional commuter licences into Sydney KSA. The ownership and use of the airport was considered the sole preserve of the Commonwealth. Indeed, the policy adopted by the State government meant that when considering applications for new licences, an important task was to ascertain whether the proposal was operationally acceptable to the Commonwealth (Riley et al., 1986: 23).

The Commonwealth reviewed its civil aviation policies in the late 1970s, and once again modified its approach to intrastate operations. It accepted that the constitutional division of power and responsibility meant its powers over intrastate air services were restricted to operational and safety issues, and that it had no authority to allocate air services within the States. A policy of non-intervention in the allocation of intrastate air services was consequently introduced, and the Commonwealth emphasised that its role was primarily to ensure the 'safety, regularity and efficiency' of aviation in an operational sense (Bureau of Transport and Communications Economics, 1988: 3). These developments led to the termination of the embargo at Sydney KSA in 1978, though small aircraft were required to meet more demanding requirements for fuel reserves, necessary during periods of 'holding' while awaiting a turn to land (Riley et al. 1986: 18).

Present Commonwealth influence

Despite the Commonwealth's emphasis on technical and operational matters, indirect control over the allocation of intrastate air services has been maintained through aircraft licensing functions, anti-monopoly legislation, and the Two-Airline Policy. Another source of influence has been the Commonwealth's ownership and operation of Sydney KSA, which remains the focal point of air services within NSW.

Aircraft licensing and operational standards have had a substantial impact on the allocation of intrastate air services. In 1967, commuter operations began in Australia when the first exemptions under Air Navigation Regulation 203 were granted by the Commonwealth. This change enabled scheduled services to be provided without a full airline licence, and led to the establishment of a wide variety of new routes.

Air Navigation Regulation 203 exemptions were progressively replaced by Supplementary Airline Licences after 1983. Revised operational and airworthiness standards for commuter operations were also introduced, including a requirement for aircraft with ten passengers or more to be operated by two pilots. Previously, two pilot operations were only required on aircraft with nineteen seat or more. Although costly to commuter operators, the Commonwealth argued that the revised standards reflected the general expectations of the public and the increasing

Lowe

sophistication of commuter aircraft (Riley et al., 1986: 24-25). The licensing changes encouraged commuter operators, such as Eastern Australia Airlines and Hazelton Airlines, to expand their operations in order to reduce overhead costs.

The 'threat' of monopoly in the airline industry has continued to elicit a response from government authorities, though the approach has changed markedly since the 1970s with the establishment of the Commonwealth's Trade Practices Commission (TPC). The TPC was designed to deal with monopolies in all aspects of society, and has had a significant influence on the allocation of intrastate air services in NSW.

Following the 1987 purchase of East-West, by interests associated with TNT Ltd. and The News Corporation Ltd. (TNT-News), the TPC determined that TNT-News were in a position to dominate the NSW market, and that section 50 of the *Trade Practices Act* (Cwlth) had been contravened. TNT-News already owned the State's second largest commuter airline, Aeropelican, and the only other regional carrier, Air NSW, giving them 85 per cent of the intrastate market. To avoid lengthy court proceedings, TNT-News agreed to vacate all East-West routes in NSW, except Albury and Tamworth, divest the East-West shareholding in Eastern Australia, and seek the TPC's approval before acquiring any proprietary interest in any other NSW operator (Iverach and Leavens, 1989: 5).

Until the Two-Airline Policy's (TAP) termination in November 1990, the Commonwealth's control of trunk air services will continue to exert a significant influence on intrastate operations by limiting access to intermetropolitan routes, and placing restrictions on aircraft size, seating capacity, and airfares. With only two trunk airlines permitted in Australia under the TAP, all other operators are obliged to align themselves with one of the main carriers. In NSW, these links have been forged and maintained through equity holdings and the provision of expensive and sophisticated airport handling, reservation and sales facilities. The structure of the industry has constrained the development of intrastate operators, leaving them reluctant, or unable, to conflict with the interests of their 'host' airline. Only two operators have sought to compete in any significant way with the trunk airlines in recent years, neither was successful in the long-term.

'Locality consciousness'

City, Municipal and Shire Councils constitute the third level of government in Australia, and are significantly 'closer' to the daily lives of people than the Commonwealth or State tiers. They provide a powerful and effective forum for the representation of local interests, motivated by what Miller (1959: 138) has termed 'locality consciousness'. This institutional bias in favour of particular areas, as opposed to larger regions which often share common interests, has had a major impact on the allocation of air services within NSW.

Establishment of local government influence

During the last thirty years most local governments in NSW have assumed day-to-

day operational control over the airports in their region under the Airport Local Ownership Plan (ALOP). Significantly, this transfer of responsibility has been a Commonwealth initiative that has bypassed the State governments. By involving vital components of civil aviation infrastructure, the program has provided local government with a substantial degree of bargaining power, and significant opportunities to influence the allocation of intrastate air services.

Under the ALOP scheme, local governments have become a force for the multiplication of air services in NSW. Enthusiastic to promote their own particular areas, they have encouraged a proliferation of new airports, many within a few minutes flying time of each other. The result has been a relatively inefficient system of allocation, particularly in low-density/marginal regions. In 1965, only seven years after the ALOP scheme was initiated, the Coleman and Unkles Inquiry into NSW air services drew attention to the problem of 'inefficiently adjacent ports' (Coleman and Unkles, 1965: 9). Similar comments were also made by the 1967/68 Coleman and Phillips Inquiry (Coleman and Phillips, 1968: 8-9). Non-metropolitan airports were not included as a term of reference for either Inquiry, indicating that the Commonwealth and State governments were unaware of the issue. The NSW government responded by instituting a policy of always considering the question of adjacent airports when examining air service applications (Riley et al., 1986: 22).

Rapid development of commuter air services led to some revision of State government policy, and a number of licences were issued for adjacent ports in the Hunter Valley region. Licensing of these routes followed active lobbying by the local authorities responsible for the airports involved (Riley et al., 1986: 22). Generally the State government continued to prevent commuter services from operating to airports close to those served by Airlines of NSW and East-West, who claimed that they operated large, expensive aircraft to full airline standards and needed the largest possible share of the potential market to cover costs and maintain an adequate frequency of service (East-West, 1983: 1).

Formal recognition of local government influence

Following a major revision of licensing policy in 1980, the NSW government formally recognised the role of local authorities in the allocation of intrastate air services. This critical alteration in the State government's approach reflected the changes caused by the Commonwealth's withdrawal from direct allocative regulation, and the increasing importance of commuter air services. The *Air Transport (Amendment) Act 1980* (NSW) established the new policy in law. The Act created an Air Licensing Advisory Committee comprising the Commissioner for Motor Transport as Chairman, and members nominated by the Ministers for Tourism, Transport and, significantly, Decentralisation.

Under its new policy, the State government demonstrated a greater consideration and acceptance of the views of local authorities. Where considered desirable by the Minister or the Committee, public meetings were held to enable interested parties to make oral or written submissions (Riley et al., 1986: 19). The conditions under which two routes were licensed immediately prior to the passage of the *Air Transport (Amendment) Act 1980*, indicated the State government's new approach. Approval in both cases followed extremely vigorous representations from the local authorities affected, which stressed the need for improvements in the

frequency and timing of flights. The State government accepted the importance of these features on short-haul routes (Riley et al., 1986: 22), thereby establishing important principles for the future allocation of air services.

Mounting pressure for the introduction of competition in NSW, particularly from local authorities and commuter airlines (Riley et al., 1986: 21), led to the creation of an independent committee in 1985 to review the administration and operation of intrastate air services. The conditions under which the review was established demonstrated the increased emphasis placed on non-metropolitan interests by the State government. John Riley, former Chairman and Managing Director of Tamworth-based East-West Airlines, was appointed Chairman of the Review; Bill Bedsor, a North Coast businessman, and Don Burton, a previous Member of the State Legislative Council, were appointed members.

In setting up the Riley Review, the NSW government noted that the 'pattern, arrangement and interaction' of all air services needed to be reviewed to ensure that the 'present and future air transport needs of the people of the State were identified and adequately satisfied' (Riley et al., 1986: 19). Although the terms of reference encompassed all matters subject to control or influence by the State government, the Riley Review considered its primary task was to determine the respective roles of the 'market place' and government regulation in the State's air service industry (Riley et al., 1986: 10).

The Riley Review called for submissions from all parties with interests in the NSW air service network, including Commonwealth organisations and interstate and overseas groups. Attention was focused on the views of local authorities, not only because they controlled most of the non-metropolitan airports, but because it was felt they provided the best indication of community sentiment. The Review argued that the comments of local government should 'guide the industry in seeking desirable future developments' (Riley et al., 1986: 99-100).

The Riley Review's findings and recommendations were considered by the State government and Parliament, where they received strong bi-partisan support (NSW Hansard 79, 1987: 12182-12200, NSW Hansard 84, 1987: 13340-13351). A series of legislative changes were subsequently passed to introduce competition to the industry, and replace the 'operator-oriented' approach of the past with a more 'consumer-oriented' system (NSW Hansard 77, 1987: 11608-11610, NSW Hansard 79, 1987: 13340-13342).

Significantly, the *Air Transport (Amendment) Act 1987* (NSW) imposed few constraints on air transport policy. All licence applications could be routinely granted, amounting to de facto deregulation. Alternatively, all incumbent operators could have their licences renewed as long as they continued to provide a service, in much the same way as had occurred prior to 1987. The State government was left to decide exactly what course it would follow.

Current Conditions

In accordance with the 1985/86 Riley Review's recommendations, the State government chose a policy of regulated competition unique in Australia. It is a system based on controlling the number of licences and awarding them for a set period on the basis of competitive merit, after consultation with the affected communities. The measurement of merit stresses service quality and is made on a

range of factors originally identified by local authorities during 1985/86, including non-stop same-day-return services, and the use of modern sophisticated aircraft (Iverach and Leavens, 1989: 4).

Commensurate with its policy of awarding licences on the basis of competitive merit, the State government accepted the view of many local authorities that low-density routes were best served by single operators (Air Transport Council, 1988: 4, Iverach and Leavens, 1989: 4). It was argued that direct competition in such cases would lead to an over-supply of seats in what were already marginal markets, and competitors would operate aircraft of inferior quality, often on similar schedules, which would contribute to delays at Sydney KSA. Existing low profitability levels would be stressed even further, with bankruptcies and service disruption the likely consequences (Riley et al., 1986: 119, 123). Even on major routes, it was argued by local authorities, and accepted by the NSW Government, that the capacity offered by a second airline should be limited to ensure the primary operator was capable of providing a minimum frequency of service (Riley et al., 1986: 164).

The NSW Air Transport Council (ATC) was constituted under the *Air Transport (Amendment) Act 1987* to assist in the administration of the Act, and to provide independent advice to the Minister for Transport regarding licensing decisions. It was established in June 1987 with five members, including a Chairman/'industry expert' (John Riley), a representative of the Minister for Transport, a consumer's representative (significantly a former Shire Council President), a representative of the Minister for Tourism, and the Secretary of the Ministry of Transport.

As one of its first actions, the ATC publicly invited expressions of interest from operators for the provision of air services on any intrastate route. This approach was abandoned in August 1987, following the purchase of East-West by a company associated with TNT-News. After the TPC announced East-West's divestiture of certain routes, the ATC encouraged applications from prospective carriers and conducted extensive consultations with local authorities, holding public meetings around the State and special briefings in Sydney (Air Transport Council, 1988: 10).

The result was a dramatic re-structuring of the air service network as the commuter airlines took advantage of the opportunities to extend their operations. Eastern Australia acquired the routes divested by East-West and transferred its Central and Western NSW services to Hazelton. In the process, a wide variety of local government concerns were met, including the introduction of new sophisticated aircraft and significant scheduling improvements. In particular, Hazelton's 'hub and spoke' systems, based on Dubbo and Orange, provided many centres in the State's west with same-day-return services for the first time.

Cooma and South Coast licence reviews

The 'consumer-oriented' system of air service allocation, adopted in 1987, has effectively placed the ATC at the centre of the industry in NSW. It has been made responsible for assessing licence applications with particular reference to the views of the communities affected. Essentially it acts as a surrogate market place, attempting to ensure an effective match between demand and supply. To examine the system's operation, a study was made of the ATC's 1989 review of the Cooma

and South Coast licences. The review, which was conducted as part of a systematic program of licence reassessment, commenced early in the year when the ATC called for expressions of interest from prospective operators, and sought submissions from local authorities. Public meetings were also held in Bega and Cooma, attended by members of the public, Shire Council representatives, tourism groups and the airlines, at which a variety of issues were raised.

Of particular concern at the Bega and Cooma meetings was the low-frequency and poor timing of flights provided by the incumbent operator, Air NSW. Although it was accepted that the airline's fleet (comprising 50-seat F50 turboprops and 65-seat F28-1000 jets) was ideal for handling the high-level of ski-season traffic on the Cooma route, the company's refusal to introduce small commuter aircraft on the low-density year-round service to both ports was criticised. The disparity between traffic levels and aircraft capacity meant Air NSW could only provide nine services a week, even when the two ports were combined in a Sydney-Merimbula-Cooma-Sydney (triangulated) pattern. The situation was complicated by the lack of night-landing lights at Merimbula airport, which severely restricted afternoon services, particularly during winter. Consequently, the two, day-return services per week, only allowed 5 hours 25 minutes in Sydney (Hutchison, 1989).

Scheduling deficiencies on the Cooma/South Coast service reportedly encouraged a substantial diversion of intending passengers to alternate modes of transport; in Cooma it was claimed approximately 65 per cent of potential traffic was travelling to Canberra by road and flying from there (Boyce, 1985: 11, Maher, 1989: 2-3). The Snowy River Shire Council, owner of the Cooma airport under the ALOP scheme, noted that declining traffic levels were affecting its ability to maintain and operate the airport, by reducing the amount of money recoverable from landing fees (Smits, 1989: 1).

Responding to the concerns raised at both public meetings, the ATC advised the airlines, who had already submitted proposals, that 'triangulated' services were unacceptable, significant scheduling improvements were required, and that if necessary, their submissions should be revised accordingly (Whitehead, 1989a: 1). The proposals were evaluated by the ATC in accordance with the State government's policy of awarding licences on the basis of competitive merit. Nevertheless, when recommending the re-allocation of the Cooma and South Coast licences to Eastern Australia and Hazelton respectively, the ATC emphasised the popularity of these proposals with the local authorities affected (Whitehead, 1989a: 5, Whitehead, 1989b: 5).

Implications of 'locality consciousness'

The Cooma and South Coast licence reviews demonstrate the influential role played by local authorities in the current regulatory system, particularly when combined with their control of non-metropolitan airports. The ATC's approach in both cases meant that, defacto, the local authorities, influenced by 'locality consciousness', were responsible for establishing the basic conditions of the proposals, and deciding which one was most suitable. The lack of emphasis, in the decision-making process, on the broader considerations involved, has important implications for the rest of the network and the regulatory system itself.

To win the support of South Coast local authorities, Hazelton intended

introducing new, expensive, technologically advanced aircraft to its already diverse fleet. It actively pursued measures to overcome restrictions at Merimbula airport, receiving a commitment from the Bega Valley Shire Council, owner of the airport under the ALOP scheme, to fund the installation of approach lighting (Wilson, 1989: 1), and also proposed a new service linking Merimbula and Moruya with Melbourne (Coote, 1989).

Although the introduction of lights at Merimbula has made night landings possible, surrounding terrain conditions mean that takeoffs are still restricted to daylight hours (Stone, 1989: 1-2) and aircraft have to 'overnight' at the airport to achieve significant scheduling improvements. By basing the aircraft and crew away from the airline's Orange/Cudal headquarters and its other operational centres in Dubbo and Sydney, Hazelton has incurred additional expense. Arrangements regarding the installation of approach lighting involved a major effort by the airline, but only guaranteed the short-term success of its proposal, given that the licence was granted subject to the project proceeding within a 'reasonable' length of time (Whitehead, 1989b: 5). The Melbourne service also carries a substantial risk. Merimbula and Moruya are tourist destinations and the majority of passengers using the flights would be Melbourne-based. Hazelton is new in the Melbourne market and the financial expense of attracting passengers, particularly in competition with the long-established Kendell Airlines on the Merimbula-Melbourne route, will be substantial and long-term.

One of the ATC's reasons for awarding Hazelton the South Coast licence was to strengthen the airline's operation, and thereby, the structure of the entire network and regulatory system (Whitehead, 1989a: 4, Whitehead, 1989b: 5). The features contained in the airline's proposal could have had the opposite effect, however, as a direct consequence of local government influence. The importance these authorities placed on scheduling details, aircraft characteristics, passenger facilities, and tourism support, led the ATC to give such issues precedence over broader considerations, including the proposal's impact on Hazelton itself, and the network as a whole.

Innovations in aircraft design have led to an extremely flexible environment, not only for the airlines, but also the local communities in low-density/marginal regions. This flexibility has allowed local authorities to pursue considerable improvements in service standards, particularly under the current 'consumer-oriented' regulatory system in NSW. By failing to distinguish between what is necessary for local authorities and what they would like, the State government has neglected to ensure that the operator's networks are balanced, efficient and viable; factors which are critical if the airlines are to provide the very service levels the current regulatory system is trying to promote. The ATC is best positioned to resolve any contradictions that arise under the current system of allocation and must be prepared to make some unpopular decisions to ensure, in accordance with section 6 of the *Air Transport (Amendment) Act 1987*, that 'the needs, in relation to air transport services, of the public of New South Wales as a whole' are satisfied. The only other option available to the NSW government is another review of regulatory policy.

The ATC anticipates that the Cooma and South Coast licences will be reopened to competitive application in 1992. By then, the flexibility available to the airlines will have diminished because of limited runway capacity at Sydney KSA. Runway access is already restricted by a 'slot allocation' system during many

morning and evening peak periods. Rationing of these slots will disrupt the licensed schedules of intrastate operators. If the pricing of slots and/or a forced relocation of intrastate operations to Badgerys Creek or Bankstown Airports is introduced by the Commonwealth, intrastate airlines will need to restructure fares and/or services, and the State government may have to reconsider its position accordingly.

The critical importance of Sydney KSA, as the primary focus for intrastate air services in NSW, has led the ATC to take an active interest in the 'efficient and equitable' operation of the airport. It has argued that: country centres must continue to have access to their capital city airport; inessential, non-scheduled operations should be severely restricted; the Badgerys Creek proposal will not ease congestion in the short term, and; Bankstown, the only other alternative, is already operating at capacity (Air Transport Council, 1988: 6). The ATC has also attempted to reduce delays at Sydney KSA by deterring aircraft with less than 18-seats from using the airport during peak periods (Air Transport Council, 1988: 6-7). In recommending the re-allocation of the Cooma and South Coast licences, however, the ATC was responsible for encouraging a sharp increase in aircraft movements during the most heavily congested time slots.

Conclusion

The disproportionate distribution of financial power and functional responsibility between the Commonwealth, State and local levels of government in Australia has had a critical impact on the processes guiding the development of the NSW air service network. This fragmentation of authority is reflected in the themes of 'co-operative federalism' and 'locality consciousness', which have characterised government regulatory policy during the past 30 years.

Disputes between the Commonwealth and NSW governments, regarding the allocation of intrastate air services during the 1960s, demonstrated the significance of 'co-operative federalism'. The potential for confrontation has been alleviated by the Commonwealth's unilateral decision to concentrate on operational and safety issues, leaving the State government free to impose its own allocative regime over intrastate air services. A significant degree of overlap has remained between the interests of both parties, however, given the Commonwealth's control of Sydney KSA, all navigational facilities in NSW, and its powers under the TAP and TPC. Indirect allocative control is also available to the Commonwealth, through its operational licensing powers.

By transferring control of non-metropolitan airports to local authorities, the Commonwealth has substantially enhanced the third level of government's role in the allocation of intrastate air services. The 'locality consciousness' of these authorities, combined with the opportunities for service improvements offered by the expansion of the commuter sector, has led to a proliferation of airports and an inefficient allocation of air services. Nevertheless, the NSW government has accepted local authorities as effective and important partners in the system of allocation governing the air service industry.

The 1985/86 Riley Review, and the development and operation of the ATC, have demonstrated the emphasis that has been placed on the representation of non-

metropolitan interests under the current system of allocation in NSW. The comments and views of local government, as the representative of non-metropolitan interests, have assumed a predominant role. Calls by local authorities for service improvements, without the disadvantages of instability or monopoly, have led the ATC to try and ensure competition through regulation, based on a system of competitive application for licences. In contrast to the Commonwealth's TAP, which is based on the constraint of supply, the system of allocation in NSW is demand led, reflecting the opinions of local authorities.

Despite the NSW government's concentration on demand characteristics, almost all intrastate airlines are faced with one fundamental operational constraint: increasing congestion at Sydney KSA. The Commonwealth will have to respond to this problem. Whatever it decides, the outcome will have a critical impact on the allocation of intrastate air services in NSW, especially the low-density/marginal routes which have become dependent on small aircraft. To ensure a broad-based continuity of service, the ATC must be prepared to restrict the supply of air services, instead of trying to satisfy the demands of local authorities. This will require clarification of the State government's goals regarding the airline industry; more particularly, its attitude to regulation vis-a-vis local government.

The NSW government controls the allocation of intrastate air services through regulation. It is primarily concerned with the provision of services to non-metropolitan areas and the demands of consumers; the only limitations imposed regulate entry to the industry and levels of competition. In the next phase of policy development, attention must focus on the constraints facing the supply of air services within NSW.

References

Air Transport Council (1988) *Report of the Inaugural Year, 1987/88* Sydney: New South Wales Ministry of Transport

Boyce, M (1985) Submission by Cooma Air Travel to the Review of NSW Air Services, 4 September 1985 Cooma: Michael Boyce & Co.

Brogden, S (1968) *Australia's Two-Airline Policy* Melbourne: Melbourne University Press

Bureau of Transport and Communications Economics (1988) *Intrastate Aviation: Performance and Prospects* (Occasional Paper 95) Canberra: Australian Government Publishing Service

Coleman, D R and Unkles, G (1965) *Report of the Committee set up by the Governments of New South Wales and the Commonwealth of Australia to Enquire into New South Wales Intrastate Air Routes* Canberra: Commonwealth Government Printing Office

Coleman, D R and Phillips, R D (1968) *Report of the Committee of Inquiry into*

Lowe

Intrastate Air Services in New South Wales Canberra: Commonwealth Government Printing Office

Coote, B (1989) Submission to the New South Wales Air Transport Council on behalf of Hazelton Airlines

East-West Airlines (1983) *Submission to the New South Wales Motor Transport Department, Aviation Licensing Division* Tamworth: East-West Airlines

Hutchison, J (1989) Submission to the New South Wales Air Transport Council on behalf of Air NSW

Iverach, D and Leavens, R (1989) *The Impact of Regulatory Change in New South Wales* Sydney: New South Wales Ministry of Transport

Maher, C C (1989) Submission to the New South Wales Air Transport Council on behalf of the Cooma Visitors Centre

Miller, J D B (1959) *Australian Government and Politics, Second Edition* London: Duckworth

Riley, J G, Bedsor, A L and Burton, D R (1986) *Flying Towards 2000, Report of the Review of New South Wales Air Services* Sydney: New South Wales Government Printer

Sawer, G (1975) *The Australian Constitution* Canberra: Australian Government Publishing Service

Smits, W P (1989) Submission to the New South Wales Air Transport Council on behalf of the Snowy River Council

Stone, K (1989) Submission to the New South Wales Air Transport Council on behalf of the Commonwealth Civil Aviation Authority

Whitehead, J A (1989a) *Evaluation of Cooma Air Service Proposals* Sydney: New South Wales Air Transport Council

Whitehead, J A (1989b) *Evaluation of Merimbula/Moruya Air Service Proposals* Sydney: New South Wales Air Transport Council

Wilson, K I (1989) Submission to the New South Wales Air Transport Council on behalf of the Bega Valley Shire Council