20. Inquiry and investigation

Whatever might be learned from the inquiries set in train by the Air Force, the Prime Minister and the members of his Cabinet knew that a nation prompted by an inquisitive press would want answers that internal and secret investigations could not give. Hugh Dash, reporting from the crash scene for the *Daily Telegraph*, had learned that a coronial inquest would be the ‘only public inquiry’. ‘Only an open inquiry will satisfy the public’, the *Telegraph* said on August 14, ‘because of the number of accidents to the type of machine in which the Ministers flew from Melbourne.’ Here was a signal that the *Telegraph* knew more than it was saying about the RAAF’s new Hudsons and the difficulties their pilots had experienced with them. A day into his new ministerial role, Arthur Fadden had enough sense of self-preservation to let it be known to the press that he would be seeking Cabinet approval of the action to be taken.¹

What could the government do to give reassurance to an anxious and disturbed public? The Secretary of the Department of Air hurriedly prepared a briefing paper to explain the options. When there was a fatal accident involving an RAAF aircraft, a Service Court of Inquiry was ‘invariably convened’, Mel Langslow pointed out on August 15. Since the Inspectorate of Air Accidents had been established in June 1940 its two-man team also had a duty ‘to make a first-hand investigation of any accident or forced landing when directed by the Chief of the Air Staff and to make a personal report to him’. As ministers well understood, these inquiries were established and conducted within the RAAF. They were already in motion before the Cabinet had considered what should be done.

A moment’s reflection would have brought the realisation that those who undertook the RAAF inquiries, competent as it may be supposed they would be, might have been personally acquainted with the officers and airmen whose deaths they were examining. The Air Force investigators could bring to their inquiries knowledge acquired from their own observations, as well as impressions conveyed by fellow officers. They might be willing and capable of keeping open minds. But there was a further possible concern. Officers selected by their superiors, subject to Service discipline and rules, naturally having regard for their own careers, could be portrayed by sceptical reporters and informed aviation commentators as lacking independence. The point had been made in Parliament nearly four years earlier by a school contemporary of Jim Fairbairn, the United Country Party leader in the Senate, Charles Hardy. The charismatic Hardy, former leader of the secessionist Riverina Movement, had deemed it ‘anomalous’ and ‘inadvisable’ that Defence Department officers who

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¹ *The Argus*, 15 Aug. 1940.
were members of the Air Accidents Investigation Committee (AAIC) should be allowed to ‘determine the cause’ of accidents for which Defence Department officers might have been responsible. Had he been conscious of the extent to which the AAIC relied on work done by departmental officials other than those on the Committee, Hardy might well have been even more perturbed.

What else could be done? It had been the very concern about perceptions that had prompted the proposal to Prime Minister Stanley Bruce 13 years previously to create the Air Accidents Investigation Committee: the tendency for press and public to suspect that an Inquiry by the Service interested ‘is not as full, far-reaching and searching as is necessary in such cases’. Until less than a week before A16-97 crashed, the AAIC, established by powers conferred by the Air Navigation Act No. 50 of 1920, might have been mandated to investigate the Hudson accident. At least so it was thought by those who had not followed the intricacies by which the Committee’s civil and military aviation roles had recently been separated. The Committee consisted of an independent chairman with engineering qualifications and two (originally four) aircraft and flying experts appointed by the Minister of Defence. It was required to furnish reports on all accidents involving injury to personnel or damage to aircraft, and all forced landings. The Committee would seek to determine the cause of an accident, and recommend action to prevent a recurrence. It had rights of access to any aircraft establishment and could examine any aircraft, equipment, or process in that establishment. Evidence presented was to be kept confidential. Reports of all Air Force accidents were made to the Air Board. Other reports were made to the Controller of Civil Aviation.

Perennial criticism from aero clubs and aviation companies about the secrecy and alleged unfairness of AAIC proceedings had been brushed aside by successive Defence Ministers. The Committee even resolved in 1934 that ‘in the interests of both aviation and the public, no reports on accidents would be submitted for insertion in the press’. But more widespread public disquiet about aviation safety in the late 1930s produced a shift in policy. The creation of a Department of Civil Aviation had led to the separation of responsibilities for investigating RAAF and civil accidents. The Committee was replaced by Air Courts of Inquiry. Such Courts were to be established under the authority of the Governor-General, with jurisdiction to make inquiry into air accidents referred by the Minister. Jim Fairbairn had been keen to retain ministerial control but was in Canada at the end of November 1939 when Cabinet decided in relation to civil aviation that causes of accidents or forced landings were to be

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2 CPD, Senate, 26 Nov. 1936, p.2378; Hardy died in an aircraft accident in August 1941.
3 Minister of Defence (Sir T. W. Glasgow) to Prime Minister, 12 May 1927, NAA: A461, F314/1/1; Dept of Defence, Air Board, Air Accidents Investigation Committee, NAA: A664/1 415/402/120. For continuing doubts about the expertise and independence of the committee, see NAA: MP187/1.
4 The Courts of Inquiry were established under Statutory Rule No. 40 of May 1939 amended as No. 155 of 1940.
referred to the Court of Inquiry, ‘unless the Minister certifies that the matter is too trivial so to do; provided, however, that the Minister should not be entitled so to certify in the event of death or serious injury without a direction from the Governor-General’.5

The new Courts had characteristics in common with the Air Navigation (Enquiry Committee) Regulations drafted in 1929 by Attorney-General Latham. When a baffled and angry public made it imperative to investigate the forced landing of Kingsford-Smith’s Southern Cross and the tragic fate of Bob Hitchcock and Keith Anderson, the government had decided that a smaller inquiry body with greater powers than the AAIC was needed.6 But to create the appearance of independence, the new regime established late in 1939 went too far in yielding political control. Jim Fairbairn applied his mind to the matter and came back to Cabinet in May 1940. Cabinet agreed with him that the Court of Inquiry should have jurisdiction only when the minister referred an accident to it. Similarly, under the revised Air Force Courts of Inquiry regulations, the Minister for Air could refer a Service accident to a Court constituted by a Justice or Judge of any federal or state court or court of a territory appointed by the Governor-General. As with civil accidents there was no obligation to set up such a Court of Inquiry. It was a matter for ministerial decision. Once appointed, however, the presumption of judicial independence provided the assurance that neither the government nor the Air Force could determine the result.

With this background fresh in his mind, Mel Langslow reminded ministers that the new inquiries were ‘to be held in open court’. The Court itself would have the discretion to hold the hearing ‘or any part of the hearing…in camera’. Langslow proffered no advice. However, the government could not ignore the newly established process for independent inquiry. As The Mercury reported on August 15, ‘a section of the Federal Cabinet and probably an overwhelming majority of the members of the Federal Parliament believe that the inquiry should be public’. The government’s decision was noted by the Prime Minister at the foot of the submission: ‘Cabinet approves of open enquiry by Air Force Court of Inquiry.’ Murray Tyrrell, now assistant private secretary to Arthur Fadden, conveyed these precise words to the Secretary of the Air Department on August 16.7

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5 ‘Air Courts of Inquiry’, Cabinet Agenda 244, NAA: A461, V314/1/1.
6 ‘Summary of Events in Connection with Flights of “Southern Cross” and “Kookaburra”’, NAA: MP274, 4 21/1/846 Pt 5.
7 NAA: A461, F314/1/1; A705, 32/10/2729.
Legislation to establish the Air Courts of Inquiry was being drafted early in 1939. But when an Avro Anson crashed at Riverstone in New South Wales, and another went down into Port Phillip Bay, a fresh eruption of public consternation about the safety of RAAF operations prompted an urgent political response. The first parliamentary questions addressed to Robert Menzies as Prime Minister in April 1939, and to his new Minister for Defence, Geoff Street, were about these accidents. John Curtin asked if the Prime Minister would direct the Minister to ensure that an open inquiry would be held by a High Court Justice. The Prime Minister announced on 5 May 1939 that legislation to create a ‘Federal Air Court’ would be presented to Parliament ‘in a week or two’. Menzies did not know that the current draft bill was replete with anomalies and ambiguities. Not the least of these — resulting from the failure of the Civil Aviation Department to pass on to the Attorney-General’s Department the views of the Minister for Defence — was that it actually made no specific provision for the investigation of accidents to Air Force aircraft. Realising that a new Act could not be ready within Menzies’ time frame, Geoff Street immediately instructed the Defence Department to prepare ‘Special Draft Regulations’ under the Defence Act to ‘constitute a Committee of Enquiry’. Street’s idea was that the ‘Court of Enquiry’ — the language and the spelling were not yet settled — would not be restricted to the recent Avro Anson crashes but would have ‘general application’.

In anticipation of a new regime coming into effect, Judge Harold Bayard Piper, an Adelaide barrister and vice-president of the Liberal and Country League who had joined the Court of Conciliation and Arbitration in early 1938, was appointed to undertake investigation of air accidents as a temporary justice of the Supreme Court of the ACT until the end of November 1939.\(^8\) It had at first been thought, too optimistically as it turned out, that a High Court judge might be available. But by mid-May, Menzies had to admit that after discussion with the Minister for Defence he was ‘agreeable to the inquiry being conducted by a judge, if one can be obtained for the purpose, or, failing that, a magistrate’. Temporary appointment to the ACT Supreme Court was necessary for Court of

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Conciliation and Arbitration judges because theirs was not regarded as a proper court. Ex-AIF Gunner Piper, the default selection, held the first Air Force Courts of Inquiry under hastily devised procedures later that month.

Three days after the funeral services, Artie Fadden told reporters that ‘Bay’ Piper would probably preside over the open inquiry announced by the Prime Minister. A draft Executive Council minute paper on August 20 requested the Governor-General to establish a Court of Inquiry and appoint ‘His Honour Harold Bayard Piper’ to constitute the Court. But Piper’s name is struck out and ‘The Hon. Charles John Lowe’ is inserted by hand. What might have been overlooked was that both Piper, and his Conciliation and Arbitration Court colleague the Deputy President, former Senator, Major General E. A. Drake-Brockman, whose family connection and acquaintance with senior RAAF officers made him the first choice in 1939, could only sit on the Supreme Court bench if another of the judges was on leave. The Governor-General had to certify that for the period of the appointment he was satisfied that the judge was ‘unable to act’. That had been possible when the ailing 71-year-old Judge Lionel Lukin, a ‘crusted Conservative’ in Jack Lang’s words, was absent on sick leave the previous year; but at two days’ notice it would have been difficult to contrive to create a vacancy. The fact was, however, that Piper was unavailable, being already engaged in the Full Court hearing of the 1940 Basic Wage Inquiry.

The substitution of Justice Charles Lowe of the Victorian Supreme Court for Judge Piper might in any case not have been a belated change of mind, at least not by the departmental and Service chiefs. Piper’s previous work had been thorough and meticulous. Perhaps too meticulous — ‘a painstaking chap’, Harry

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9 NAA: A432, 39/486; Sec., Air Board to AMP, 5 May and 10 May 1939; Sec. Dept of Air to Sec., Air Board, 5 May 1939, copies, NAA: A705, 108/2/189; ‘Appointment of Acting Supreme Court Judges ACT’, NAA: A432, 1942/733.  
10 The (Adelaide) Mail, 8 Jan. 1938, had wrongly said that Piper on the Arbitration Court bench would have the status of a High Court Judge. When it seemed that Piper might not be free, it was reported that his Arbitration Court colleague Edmund Drake-Brockman would be appointed. An Executive Council minute naming him was prepared and hastily amended. The disarray of the government was reflected in the press with stories that Drake-Brockman was to be added to the Air Accidents Investigation Committee (NAA: A432, 1939/19; The West Australian, 10 May 1939). The Advertiser, 17, 18 May 1939, for clarification of government intentions and Piper’s appointment to the two Anson inquiries.  
11 Sydney Morning Herald, 19 Aug. 1940. It is possible as Tink says (Air Disaster, p.205) that Cabinet resolved that Piper should conduct the Inquiry, though more likely that they just assumed he would.  
12 A similar stipulation was suggested when Piper took leave of absence as Chief Justice of the Arbitration Court in 1946 (NAA: A2153, PIPER H B).  
13 At the time of Piper’s appointment Lukin had not sat in the Arbitration Court jurisdiction for several years, being preoccupied with bankruptcy cases and Supreme Court work in the Federal Capital Territory (The Mercury, 8 Jan. 1938). The Basic Wage Inquiry sat on Aug. 5–8, 12–15, 20–22, 1940 and was then interrupted by the illness of Beeby CJ (Sheehan’s Bulletin of Proceedings in the Commonwealth Arbitration Court, vol. 14, 1940, Noel Butlin Archives Centre, ANU, NBAC E217).
Wrigley recalled. Sitting with Piper as an assessor with Squadron Leader Allan Walters, Wrigley had seen the examination of witnesses in relation to the crash in fog of Anson A4-11. The thoughtful Wrigley and the ‘fiery’ Wally Walters, a brilliant flying instructor whose recent RAF Staff College evaluation noted that he reasoned by instinct rather than logic and was an ‘indifferent and somewhat incoherent speaker’, made an odd combination. Neither could have been comforted by Piper’s rigorous questioning of Service witnesses and his observation that ‘there appears to be a difference of opinion amongst superior officers as to whether during the period of instruction at Laverton it is necessary for pilots to fly in actual cloud’.

Piper’s Court
(Border Watch [Mount Gambier], 3 June 1939)

14 AVM H. N. Wrigley, interview [1978]. To my chagrin I cannot recall, and can find no note of, what Wrigley told me about Piper off the record, with the tape recorder switched off. Piper’s penchant for off-the-cuff remarks from the bench could also have been a worry e.g. The Advertiser, 17 May 1939. In welcoming him to the Bench, Attorney-General Menzies had spoken of his ‘integrity, ability and reputation for strong commonsense and strong vigilant judgment’ (Piper MSS, NLA MSAcc06/057 Box 1).

15 NAA: A12372, O312. AVM Walters’ personality appraisal in 1937 does not appear to have impeded his career progression. Clive Caldwell, who served under him in No. 1 Fighter Wing, thought him ‘a first class officer and an excellent chap’. The US Air Force Gen. George C. Kenney remembered a ‘big, red-faced, and jolly’ Walters; promotion to ACdre followed Walters’ unwise disclosure that as a GpCpt. he had been combat flying and shot down a Zero (Hayes, Angry Skies, p.100; Watson, Killer Caldwell, pp.147–8; George C. Kenney, General Kenney Reports: A Personal History of the Pacific War, Duell, Sloan and Pearce, New York, 1949, p.33). For Walters’ landing mishap in a Gypsy Moth in 1932, see NAA: A9845, 73/10.
In his inquiry into the fatal crash of another Anson, A4-32, on 28 April 1939, Piper had drawn attention to training matters which he had not had time to investigate. The question he had been asked to consider was whether trainees were ‘reasonably capable of carrying out the duties and responsibilities which they are required to perform’. After reviewing the training of the pilot of A4-32, he added pointedly: ‘It is not within my province to express an opinion as to whether, under this practice, the pilot, on this amount of training and experience should be entrusted with a valuable machine carrying a crew of three besides himself.’ He went on to qualify this judgement: ‘mishaps and accidents are rare’. And if it was good enough for the RAE, which it was, ‘it must be considered…that the pilots are reasonably capable of carrying out ordinary peace-time operations under normal flying conditions’. But what about abnormal situations?: ‘…under the present system the pilots get the knowledge but it is doubtful whether they get sufficient practical experience to ensure speedy and instinctive action in some cases of emergency’.16

A finding of this kind, unwelcome as it was to the RAAF, would be potentially much more damaging in a public report on the most shocking air disaster in Australian history. In a summary prepared for the Prime Minister’s information, Piper’s most troubling ruminations had not been mentioned.17 He had confined his report to the relationship between training and the specific accident he was charged with investigating. He and the assessors would, he said, ‘willingly make further inquiry’ and submit a further report if asked. They were not.

Piper had himself brought the government’s attention to the drawbacks and pitfalls of the kind of inquiry with which he had been entrusted. In a letter to Sir George Knowles, the Commonwealth Solicitor-General, on the day he sent his reports to the Governor-General, he explained:

In the report re the Port Phillip accident I have referred to the difficulties I experienced in obtaining complete evidence from Laverton. This was to some extent [italicised words were added by hand to replace the typed ‘largely’] due to the fact that the evidence was not privileged and could therefore be used in any other place or proceedings. Some officers were therefore on the defensive and not being represented by Counsel were obviously not sure of their position. I could of course have taken their evidence in camera but this would have been very undesirable.

I would suggest that consideration be given, if the Court should have to sit again in the future, to the possibility and desirability of making some provision for prohibiting the evidence being used in any other

17 NAA: A461, V314/1/1.
sphere. Apart from the position of officers concerned, it may be a matter of some importance to the Government if civil claims were to be made for damage done to private property by a crash.

In my covering letter to His Excellency I have referred to the fact that my comments on the syllabus and training are based on normal conditions of training and not the exigencies of war.18

On the most significant training matters raised by Piper the files reveal a sequence of evasion and buck-passing that plainly did not impress the principal officers of the Department of Air. Geoff Street as Minister for Defence had asked for the comments of the Air Board. But as late as March 1940 nothing more than what ‘Johnnie’ Coleman minuted as ‘a most sketchy reply to the Minister’s request’ had been received. By then Piper’s report had passed through the hands of the Prime Minister (who, as Attorney-General, had appointed him to the Arbitration Court), and Harold Holt, as Acting Minister for Air. It had been ‘noted’ by Jim Fairbairn almost as soon as he arrived at his desk on returning from England. Fairbairn had himself expressed a desire for Air Board comments on ‘the questions of a training, technical, etc. character, specifically raised’ in Piper’s two reports. It had already been decided that air cadets would receive some training before they left Point Cook in Ansons or ‘some similar type of machine’.19 Flight Lieutenant Dixie Chapman, Deputy Director of Training, was quick to inform his superiors that instrument flying was to be included in the conversion course syllabus and ‘a far more extensive & comprehensive syllabus has been prepared for conversion of pilots to Hudson aircraft’. But the Director of Training, George Jones, referring to the use of the Link Trainer as well as ‘a certain amount of the experience in actual cloud flying’, cautiously drew the Secretary of the Air Board’s attention to the short duration of the course in wartime. Although files do not always tell the whole story it is notable that, having decided that there was no need to report to the Prime Minister’s Department of Defence Co-ordination, the Air Board does not appear even to have reported to its own minister. The file was quietly ‘put away’ on 16 July 1940.20

If inconvenient facts could be pigeon-holed, inhibitions caused by fear of self-incrimination could be removed by amending the regulations. The necessary change was drafted in October 1939 but stalled while the Attorney-General’s and Defence Departments punctiliously consulted each other over wording. It was finally made in a statutory rule (No. 165) signed by UAP Senator Herbert

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18 H. B. Piper to Sir George Knowles, 2 Oct. 1939, NAA: A432, 39/486. Piper had commented in his report that ‘certain officers were obviously not sure of their position when giving evidence and this led at times to some confusion in their answers and to their adopting a somewhat defensive attitude which was entirely unnecessary but understandable’ (NAA: A705, 32/10/2387).

19 Courier-Mail, 8 June 1939.

20 NAA: A705, 32/10/2387; A461, V314/1/1.
Collett, Vice President of the Executive Council, a week after the Canberra crash. The new Minister for Air had been briefed urgently the day before. In language that had sat on a file for 12 months, Arthur Fadden was advised that witnesses might not be ‘altogether ingenuous, especially if they feel that the Inquiry is being used as a “fishing expedition” as a prelude to civil or criminal (including court-martial) proceedings’. It does not seem to have been noticed that, if the Governor-General were to issue a commission by Letters Patent, witnesses would have been protected under Section 6DD of the Royal Commissions Act 1902–1933.

Other dangers to the Air Force could be minimised by writing the terms of reference far more tightly than the ones that Geoff Street as Defence Minister had endorsed in great haste for Piper. But, for a beleaguered government with a general election due in not more than two months, a senior judicial figure was needed to deflect potential harm. This was not the time for the kind of specious objection raised on an earlier occasion by ‘Johnnie’ Coleman, then Secretary of the Air Board, that ‘it is difficult to see how a judge of the High Court or any other court could be more qualified to judge the cause of an aircraft accident than the Coroner’.

Arthur Fadden, as the rapidly installed Minister of State for Air, made the press statement accompanying the proclamation of the inquiry on 20 August 1940. The Governor-General had that same day received the Prime Minister’s recommendation that the House of Representatives be dissolved and a general election held on September 21. It was the day after Wing Commander Leon Lachal’s Service Court of Inquiry had reported. The Coroner’s inquest had not yet been completed. Technically, setting up the Air Court of Inquiry was separate from referring a particular accident to it. The reference from Fadden requested that the Court ‘with all possible expedition, inquire into, and report to His Excellency the Governor-General concerning the accident and the cause or causes thereof’. Fadden was unavoidably the formal authority but the file on the constitution and terms of reference of the new inquiry bore the unmistakeable fingerprints of the Service hierarchy.

There was a salient contested element in the task remitted to the Inquiry. It was to look for the ‘cause or causes’ — it was not assumed that there was a single cause. But even more important was a word that did not appear in the Commonwealth of Australia Gazette on August 21. ‘It will be noted,’ the Secretary of the Air Board had advised the Minister on the nineteenth, ‘that in the Reference the Court is asked to inquire into the immediate cause or causes of the accident.’

22 ‘Accidents Involving Hawker Demon Aircraft of the Royal Australian Air Force’, Notes for the Minister, 10 Feb. 1938, NAA: A5954, 869/10. Much of this memo, including this sentence, was copied from a minute by the Chief of the Air Staff, 7 Jan. 1938, NAA: A5954, 869/8.
23 NAA: A9845, 319/37.
Ten Journeys to Cameron’s Farm

The Chief of the Air Staff had sensed the danger inherent in a draft prepared by the Attorney-General’s Department after a telephone conversation between Mel Langslow and Jim Fairbairn’s friend Gilbert Castieau, Assistant Secretary of the Attorney-General’s Department.

The draft proclamation from Castieau invited a report ‘concerning the circumstances connected with, and the probable cause or causes of that accident’. Burnett corrected the phrasing in his own hand, deleting the ‘circumstances connected’ and inserting the qualifying word ‘immediate’.24 The proposed restriction of the Inquiry’s scope to ‘immediate cause or causes’ was clearly designed to minimise the potential for embarrassing discoveries and revelations. For the Chief of the Air Staff there was to be no trawling back through previous months and years of policy and performance, omissions and mistakes that might prove to be relevant to an understanding of the fate of A16-97, its crew and passengers.

By directing attention to the word ‘immediate’ had Mel Langslow intended to offer reassurance to the Minister or to undo the Air Force’s self-serving restriction on an Inquiry they could not control? Arthur Fadden, with an instinct for due process and conflict of interest, asked the Attorney-General’s Department to re-draft the terms of reference. Fadden’s signed copy was returned to the department by his acting private secretary, Murray Tyrrell. Faint pencil underlining of the changed wording — ‘immediate’ had gone — showed that its import was understood. Whatever Langslow’s motive had been, the outcome was alarming for anyone in the RAAF who understood the ways of inquisitive judges and zealous counsel.

Assembling the court

The reasons for the choice of Charles Lowe to lead the Inquiry can only be surmised. Even if a judicial berth could be found for him, Edmund Drake-Brockman was unavailable, having stepped down from the Arbitration Court in November 1939 to become an active Major General. The policy file created to deal with Lowe’s appointment, which passed between the Secretary of the Air Board and the Attorney-General’s Department between 17 and 23 August 1940, was destroyed some time after 1960.25 The Victorian judiciary was known in later years to be averse to undertaking royal commissions and inquiries. But,

24 NAA: A705, 32/10/2729 for Burnett’s pencilled amendments, the advice to Fadden, and Gazette reference; A9845, 319/37; A705, 32/10/2387. Lowe’s surviving papers in the Victorian Supreme Court Library contain no relevant material.
25 NAA: A2408, 108/2. The subject registration booklet for Air Department correspondence records the creation on 17 Aug. 1940 of the file ‘Establishment of the Court and appointment of Judge to constitute’, and the file’s movement and destruction.
doubtless realising that this was no ordinary matter, the Chief Justice of the Victorian Supreme Court and the Premier, Albert Dunstan, consented to make Lowe available.\footnote{Air Force Court of Inquiry to Investigate the Aircraft Accident Near Canberra on 13/8/40, Attorney-General’s Department File, NAA: A432, 1940/729.} Before his elevation to the bench in 1927 Lowe had enjoyed a strong practice in common and criminal law. He had never taken silk but was the recognised leader of the County Court Bar. Concealed beneath ‘a grave and courtly demeanour’, Lowe was known for a sense of humour, ‘at times impish in its unexpectedness’. He had crossed swords and laughed uproariously with the young junior, Robert Menzies, a fellow tenant of Selborne Chambers.\footnote{John Minogue, in Dow (ed.), More Memories of Melbourne University, p.47; F Maxwell Bradshaw, Selborne Chambers Memories, Butterworths, Sydney, 1962, pp.54–8; Sir Robert Gordon Menzies, The Measure of the Years, Cassell, London, 1970, pp.255–6.} A member of the Melbourne and Australian Clubs, and the Royal Melbourne Golf Club, he had long moved in the same professional and social circles as the Prime Minister. They sat together on the council of Melbourne University. He had served on the council of Trinity College. They were both likely to be found taking summer holidays in picturesque Macedon, where the Menzies family had their own retreat and the Lowes would stay at the exclusive Golf House.

Menzies knew that Lowe would bring detachment and a keen mind to the task. He would also have a broader appreciation of the government’s sensitivities. There might be scepticism in aviation circles generally and the RAAF in particular about the ability of a 59-year-old judge who had never been in an aeroplane to add anything of value to their understanding of the crash. However, Lowe could be relied upon to listen carefully to the evidence of those who supposedly knew what they were talking about. And he was quick to win over some of the doubters by taking to the air himself with the court registrar and the two RAAF assessors appointed to assist him; he would see, hear, and feel a Hudson and its crew at work. On the morning of August 27, with Squadron Leader Freddie Thomas at the controls of Hudson A16-78, he was treated to a 30-minute demonstration flight in sight of the granite peaks of the You Yangs near Lara, north of Geelong, the world so familiar to Jim Fairbairn, Geoff Street, and Frank Thornthwaite.\footnote{F. W. Thomas, flying log book, 27 Aug. 1940, Thomas MSS, courtesy of Rob Thomas; Sydney Morning Herald, 28 Aug. 1940. Tink, Air Disaster, (p.209), following the paraphrase in Newman Rosenthal, Sir Charles Lowe, A Biographical Memoir, Robertson & Mullens, Melbourne, 1968, p.99, makes the flight 30 minutes. Thomas would recall that he demonstrated a stall to Lowe (Frank Cranston, ‘Note of Telephone Conversation with Group Captain Sir Frederick Thomas Sunday November 11, 1990 4.55pm to 5.20pm’, courtesy of Rob Thomas).}

For the vital role of counsel assisting the Inquiry the logical man on grounds of experience would have been Harry Winneke, incidentally a friend both of the Lowe family and the Prime Minister. It was ‘understood’, according to press reports, that Winneke would be appointed.\footnote{The West Australian, 17 Aug. 1940.} But he was now in uniform,
and his involvement in the Inspectorate of Air Accidents would in any case disqualify him. Having already participated in one inquiry into the accident, Squadron Leader Winneke could not be seen as independent. Nor could he easily be spared from his other duties. Someone from outside the Air Force had to be found: someone who would have the confidence of both Justice Lowe and the government. Fred Gamble, a friend and former pupil of the Prime Minister at the Bar, and counsel assisting the Air Accidents Investigation Committee inquiry into the *Kyeema* accident, would have been an obvious choice. But he was now on the verge of embarking for overseas service as a major in the 2nd AIF. The answer was a slightly older Law School contemporary of the Prime Minister’s from Melbourne University, a fellow Presbyterian and Freemason, Arthur Dean.

Unlike Menzies, a conspicuous figure on the wartime Parkville university campus, Dean had postponed his entry into the legal profession to enlist in the Army in 1915. He had served in the ranks on the Western Front, earned a commission, was wounded and gassed. In 1933 he had co-authored a history of the AIF 7th Battalion.\(^{30}\) He was now a leading junior at the Victorian Bar with a practice in equity and industrial property, and the acknowledged authority on the law relating to estate agents, auctioneers, and hire purchase. He had continued through the 1930s in the Reserve of Officers, rising to the rank of Lieutenant Colonel. In 1940 he was the 3rd Division’s legal officer. Arthur Dean and Menzies had seen each other at close quarters over 20 years. Dean had the highest admiration for Menzies’ forensic skills and advocacy. He had fought with him and against him.\(^ {31}\) He was also well acquainted with Charles Lowe, whose learning, extraordinary memory, courtesy, judicial temperament, and home tennis court he knew at first hand. He was to describe Lowe 28 years later as ‘a simple and straightforward character with no complications...a practical minded lawyer’.\(^ {32}\) In later years, Air Marshal Sir Richard Williams, who professed never to understand why judges were appointed to inquire into aircraft accidents, was to say that counsel assisting ‘without any real knowledge’ made their own decision about who was to blame and then set out to prove it.\(^ {33}\) But, whatever premature conclusion Dean might have been tempted to formulate, he would not be left uninstructed for long.

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30 Arthur Dean & Eric W. Gutteridge, *The Seventh Battalion AIF: resume of activities of the Seventh Battalion in the Great War — 1914–1918*, Melbourne, 1933, reprint with amendments 1986. The authors had paid tribute to their CO, Pompey Elliott: ‘Outspoken, impulsive, straight as a ruled line, intensely headstrong...a dour fighter, brave to a fault...’ (p.7).

31 Dean was a signatory of a testimonial to Menzies by scores of eminent civic leaders, businessmen, and barristers re-affirming on 7 Aug. 1941 their ‘complete confidence’ in his leadership (Menzies MSS NLA MS 4936/40/23). He had not signed a similar circular in June 1940 (Wright MSS, NLA MS 8119, Series 6/1).


Arthur Dean at home
(Courtesy of Ursula Whiteside)
Even before Dean was briefed by the Crown Solicitor, Fred Whitlam, two assessors to ‘assist and advise’ the Court had been chosen and announced. Wing Commander (temporary Group Captain) D. E. L. Wilson had been, like his contemporaries Ulex Ewart and ‘Dad’ Bladin, an Army lieutenant when he joined Lester Brain, Joe Hewitt, and others in the first group of a dozen men to go through the RAAF’s new flying course in 1923. Douglas ‘Del’ Wilson, Service number 16, had later graduated from the RAF Staff College, and commanded the RAAF station at Richmond 1939–40 before becoming Senior Administrative Staff officer at RAAF Central Area Headquarters in Sydney.34 ‘He has had long experience in Service squadrons’, the press release noted. His experience as a vigorous court-martial prosecutor in 1936, reassuring as it perhaps was to his superiors, was not mentioned. Nor his confident exposition of theories to explain the crash of the Anson A4-32 to Judge Piper in June 1939.35 Wilson had been seen making a ‘minute examination of the wreckage’ the day after the crash in Canberra. Attention would not be drawn to this. Or to his role in identifying bodies at the Canberra morgue on August 13, or his testimony to the Coroner the next day. The Victoria Barracks and Toorak hierarchy, especially his close friend the Director of Operations and Intelligence, ‘Dad’ Bladin, (the oldest of his group at Duntroon), needed no briefing on his record.36

Wilson’s companion was to be 33-year-old Squadron Leader (temporary Wing Commander) A. G. Carr AFC. Tony Carr was Director of Staff Duties at Air Force Headquarters, Melbourne. He was a rising star, like Paddy Heffernan and Val Hancock a Duntrooner taught to fly by Ray Garrett, and as experienced a Hudson pilot as could be found. He had only recently relinquished command of No. 1 Squadron, equipped with Hudsons since April. The appointment of Wilson and Carr on the recommendation of the Air Board gave reassurance that the legal minds would have reliable professional guidance. But in case it might be thought that they could unduly influence the outcome of the Inquiry their role was explained for the press: ‘The duties of assessors in the Court will be similar to those performed by assessors in the long established Marine Courts of Inquiry, and like the latter, these officers have no power of adjudication.’ As Air Marshal Williams was to lament, assessors ‘could not submit a minority report even if they considered the finding of the Court was wrong’.37 What no-one appears to have remembered was the advice about the selection of assessors given by the Secretary of the Air Board to the Air Member for Personnel the previous year: ‘...consideration should be given to whether they have been

34 NAA: A9300, WILSON DEL.
35 The West Australian, 23 June 1939.
connected directly with the particular inquiry, e.g. if they have been witnesses at the air-force court of inquiry or members of such court or otherwise directly interested in the accident’.38

These implicit criteria should have given pause to anyone who knew of Wilson’s roles in Canberra immediately after the accident.

With Lowe, Dean, Wilson, and Carr appointed, on August 20 the Deputy Chief of the Air Staff, Air Commodore Bill Bostock, who was orchestrating proceedings, passed the accident inquiry file to the RAAF’s principal legal officer, Wing Commander F. F. Knight. Fred Knight, another Victorian barrister, veteran of Gallipoli and the Western Front, was asked for his ‘comments and any necessary advice’. Knight at once recognised the danger inherent in the reference the Court had been given. There were crucial procedural elements that Anderson, Bostock, Burnett, and others had missed. Another job needed to be done, one that the RAAF high command should be anxious to ensure would be done by someone they could trust. If there was going to be an independent judge and an independent counsel and assessors assisting him, it was essential that the Air Board had someone in the room to represent their interests. Knight had learned this lesson when Justice Piper had roamed freely and mused over embarrassing issues the previous year. ‘It is considered advisable’, Knight warned, ‘to take action to avoid the recurrence of certain unfortunate incidents which took place during the hearing before the previous court in 1939.’ In that case the Service was not represented by counsel:

Neither the assessors, nor any technical representative of the Service saw counsel assisting court before the hearing. The result was that at the outset and whilst evidence of a somewhat damaging nature was given, counsel was left without the technical assistance essential to enable him effectively to cross-examine the witnesses.

Knight’s version of events in 1939 was tendentious. The truth was not that there had been no meeting between the assessors and counsel before proceedings began. Rather, that meeting had not afforded an opportunity to talk privately to counsel assisting; it had occurred in the presence of the judge, and officers of the Deputy Crown Solicitor’s office and the Air Board.39 The situation was, Knight noted, retrieved before the Court convened for a second time to inquire into the accident to Anson A4-11 but not before ‘considerable damage had been done to the Service in the eyes of the public’. Determined that this should not happen again, Knight laid out the course that needed to be taken. In a minute to the Air Member for Personnel on August 20, seen first by the Director of Personal Services, Joe Hewitt, he recommended:

(a) that counsel be briefed to represent the Air Board, or, if this is not agreed to, that a legal officer be detailed to do so. It is recognised that Squadron Leader WINNEKE may not be available, and if that be so Pilot Officer PAPE is suggested. He is a member of the Service Court of Inquiry on this accident;

(b) that a General Duties Branch officer, preferably with experience of Hudsons, be detailed to assist counsel assisting the court, if counsel so desires;

(c) that all assistance be offered to counsel assisting the court by this Department, and that the services of Squadron Leader WINNEKE be made available to him, if he so desires. This suggestion is made because in this way counsel could be advised of the witnesses who might be called, and the order in which it is advisable to call them;

(d) that, where possible, all service witnesses, be instructed to confer with a service legal officer before giving evidence, if the service is not represented before the court;

(e) that the assessors confer with Section L.1 with respect to the exclusion from the press, etc. of secret and confidential matter arising before the court.⁴⁰

Knight’s message was not lost on his superiors. Known as the ‘Legal Eagle’, for over a decade he had lectured and examined cadets as well as officers seeking promotion to squadron leader. He had served frequently as Judge Advocate in courts-martial. Called up in December 1939, he had helped steer the Air Force Act through Parliament.⁴¹ He was a respected and trusted advisor. Educated at Melbourne Grammar and Trinity College at Melbourne University, Knight had been in the Service part-time since 1926 and was promoted Wing Commander in 1934. The son of a prominent pastoralist, stockbroker, and philanthropist, and cousin of Otway Falkiner of the famous Boonoke merino stud, he moved familiarly in Melbourne club land and was a valuable link between the Bar and the Air Force. His closest Service friends were ‘King’ Cole, Harry Cobby, Allan Walters, Doug Candy, and Jack Graham, who was his legal assistant before being called up in 1939.

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⁴⁰ Sec., Air Board to Sec. Dept of Defence, 30 May 1939, NAA: A705, 108/2/189; WCdr F. F. Knight to Air Member for Personnel (through Director of Personnel [sic] Services), minute, 20 Aug. 1940, NAA: A705, 32/10/2729/85.

Knight openly displayed his political sympathies, scrutineering at elections for the UAP deputy leader, Jack Latham. With his barrister friend Ned Herring, he had played his part in the Victorian secret army organisation of the previous decade, and was a close friend of Geoff Street’s cousin, Jack Scott, now in counter-intelligence. His recommendation of counsel to represent the Air Force went up to the Deputy Chief of the Air Staff. Bostock was careful not to reveal too much of his own hand. He was adept at pleasing his chief, as his promotion to Air Commodore, vaulting over the heads of seven more senior officers (Anderson, Harrison, Cole, De La Rue, Wrigley, McNamara, and Lukis), had marked two months earlier. He endorsed Knight’s advice and passed the file to the CAS. Sir Charles Burnett agreed and sent the papers back to the Air Member for Personnel (AMP) and the Secretary of the Department.

‘A. M. P. will I presume take necessary action’, Burnett wrote. ‘Mucker’ Anderson knew better than the British CAS about the relevant lines of authority. He took the opportunity to nominate someone for the task in a minute to the Secretary on August 23:

Action to request that counsel be briefed to represent the Air Board must be taken by the Secretary. I recommend Mr J. B. Tait, of the Victorian Bar, who is a man of high standing in his profession and was a pilot in the last war. If the request for counsel to represent the Air Board is refused, Section L.1 will supply a legal officer.

Why there might be a refusal, and who might refuse, was not clear. The nomination of Jim Tait was shrewd. As an Australian Flying Corps Lieutenant in No. 3 Squadron he was an old comrade both of Anderson and Harry Wrigley. He was one of only three men ever to read with the formidable High Court judge, Owen Dixon, Menzies being another. Would there be political resistance to the appointment of outside counsel? Would the engagement of so well-regarded a barrister suggest that the RAAF felt it needed exceptionally able protection? That had not been the thought 31 months earlier when both the then Minister for Defence and the Attorney-General had approved of the department being represented in the politically sensitive inquest into the death of Flying Officer Jack Fallon, a Labor MP’s son. Attorney-General Menzies had then ‘directed that the best available counsel should be secured’. This time, as Anderson

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44 In his own words, Bostock had ‘made his mark very quickly’ with Burnett. (‘Why Bostock?’, ts draft article, Heritage Collections, Queensland State Library, Acc. 4349).
noted the next day, there was ‘further discussion’, after which ‘it was agreed to provide one of our own legal officers rather than brief outside counsel, & this is being arranged. CAS concurred.’ Given that George Pape had already assisted Lachal, it might have been predicted that he would be assigned. There was in any case no-one else.46

‘Mucker’ Anderson: ‘immersed in the minutiae of administration’
(Courtesy of the RAAF Museum)

46 NAA: A705, 32/10/2729/1–3.
Bostock’s precautions

The Air Force hierarchy had mobilised for damage control. A week later, on the day the Inquiry was due to start, Pape received his riding instructions. The directive came down from the Deputy Chief of the Air Staff to the Air Member for Personnel with a copy to Fred Knight. Whereas Knight had urged that the RAAF not be left without protection before the court, Bostock now set out a comprehensive strategy to ensure that anything that might conceivably be embarrassing was shielded from view. Bostock had for some time been alert to criticism, including letters reaching the Air Minister, of ‘the administration of senior officers and of equipment by personnel in units’. The Air Member for Personnel had taken the matter up with Area commands ‘in an endeavour to improve morale generally’. There had been concern, too, about a ‘large percentage increase in forced landings’. In secret conclave it was admitted that the cause was ‘principally the lack of close supervision by Flight and Squadron Commanders’. Poorly executed aerobatics and incomplete knowledge of the characteristics of particular engines were blamed. Now Bostock might have taken as his text the advice of the Secretary of the Air Board to the Minister of Defence on an earlier politically fraught occasion: ‘it has not been the practice in the past to enter into any discussion with the press or public on the technical causes of air accidents, otherwise ill-informed criticism and comments cannot be avoided’. 47

In 1937 Jim Fairbairn had been a strong defender of secret inquiries: ‘I believe that aviation would benefit to the greatest extent if the evidence were given in camera…the rights of the public are protected by means of coronial investigations.’ 48 Those senior officials familiar with the Piper inquiries that followed would have known that, on the advice of the assessor, Group Captain Harry Wrigley, the proceedings in camera in Melbourne were closely held. Only three transcripts were made. Defence Minister Geoff Street, distinctly peeved, noted that ‘advice should have been given to the Judge for a copy of such evidence to be made available to the Minister’. Street directed that in future he was to be sent any evidence taken in camera. 49 What Street could not have known was that the Solicitor-General, the recently knighted Sir George Knowles, had privately recommended that Piper keep his inquiry papers in the

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49 Minute by Street, 8 Sept. 1939, on Sec., Air Board to Sec. Dept of Defence, 14 Aug. 1939, NAA: A705, 108/2/189.
offices of the Arbitration Court in Sydney and Melbourne. If he had to rely on support staff from the Air Department he could at least keep the files secure under his own control.50

Air Commodore Bostock knew what he was doing. As station commander at Richmond in the mid-1930s he had used his press contacts to avert ‘unjustified but nevertheless distasteful publicity when individual members of the Service, suffering under the emergency “cuts”, were anxious to rush into print with all sorts of grievances’.51 In June 1939, as Director of Operations and Intelligence he had belatedly been assigned to assist counsel to Piper’s Air Court of Inquiry in Melbourne. It was his activity at that time — providing the Court with a secret document explaining why all Ansons not fitted with Sperry instruments had been grounded after a crash into Port Phillip Bay — that Fred Knight had hinted at when he spoke of the situation being retrieved. Bostock’s ostensible brief then was to assist in gathering ‘requisite information’ relating to the ‘adequacy of training of air-force personnel’. Alert to the potential for the independence of the proceedings to be undermined, Geoff Street had approved the arrangement but insisted that ‘the officer should not “sit in” as a member of the Court but be available to give advice when required’.52 Such a passive role minimised the influence that could be brought to bear on the scrupulous Harry Winneke. And, when Piper’s two assessors found him unbiddable, the judge’s subsequent damning queries and faint praise brought no joy to the RAAF’s upper echelon.

Bostock was determined that nothing like this would happen again. Arthur Fadden had let it be known that before Cabinet met to decide on the form of a possible public inquiry he would seek the views of the Air Board on technical evidence that might prove useful to the enemy.53 On such matters a new and inexpert minister would be foolhardy not to follow the advice he received. Taken at its face, Bostock’s minute on August 27 amounted to a brazen order to subvert the ‘open inquiry’ authorised by the Cabinet. ‘As the terms of reference are wide in their scope,’ he pointed out, ‘it is inevitable that evidence may be required which must not be made available to the Press or Public.’

It is therefore considered necessary that the officer appearing for the Air Board should request that evidence on the following matters should be taken in camera:

Maintenance of Aircraft:

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50 Knowles to Piper, 22 June 1939, NAA: A432, 486 of 1939. Knowles had a personal source on RAAF flying safety, his son, Air Cadet Lindsay Knowles (later F/Lt, killed in action Nov. 1941).
51 Bostock to Norman Ellison, 16 Aug. 1940, Ellison MSS NLA MS 1882 2/22.
52 The Mercury, 10 June 1939; Sec., Air Board to Sec., Dept of Defence, 31 May 1939, annotated by Street, 1 June 1939, NAA: A705, 108/2/189.
Standards reached by maintenance personnel.

Maintenance equipment available.

Security of aircraft storage:

Whether aircraft are housed in hangars or in the open.

Disposition of aircraft on the aerodrome.

System and numbers of guards available.

Training of Pilots:

Methods and time spent.

Adverse comment on general standard.

Adverse comment on standard of pilots of the particular aircraft.

Armament and Wireless Equipment:

No indication of armament or details of wireless equipment should be given.

Adverse comment on crew members.

General Equipment:

No indication should be given as to lack of equipment.\(^{54}\)

Taking care not to divulge matters that would jeopardise security was of course entirely proper. When opening his inquiry in Melbourne in May 1939 Judge Piper had said ‘It was the wish of the Court to preserve any state secrets. He would ask witnesses not to divulge openly details of defence importance.’ If necessary the Court would sit in camera (as it did for a period at Winneke’s request) or confidential matter would not be taken in evidence. There were already stipulations in place that prohibited disclosure of the mark of the engine; all internal construction, armament, and equipment of the aircraft; as well as performance, range, or estimated speeds.\(^{55}\) However, all this was not enough for Bostock. Adverse comment on crew members unable to defend themselves might justifiably be kept confidential. But to endeavour to hide criticisms of


pilot training, shortages of equipment, or maintenance standards could be seen as self-serving — or would have been if the contents of the document had been made public.

Bostock’s list of areas for in camera evidence was as good a guide as could be assembled to the RAAF’s fears about the flaws and weaknesses that might be exposed. The Deputy Chief of the Air Staff could scarcely have forgotten, for example, that it was less than four months since the Air Board issued orders promulgating a new policy on ‘approaching and landing’. The introduction of ‘modern high wing-loaded, flapped monoplanes’ had made ‘the old accepted methods of approaching and landing both difficult and unnecessary’. Four pages of detailed advice followed on the ‘modern technique’ that was henceforth to be imparted. Bostock knew only too well how hard it was proving to replace ‘old accepted methods’ with ‘modern technique’. Well aware of how narrowly he had himself escaped a share of the blame for the spate of accidents a few years earlier, he now took a perilous step across the line of propriety.

The Secretary of the Department of Air was not sent a copy of Bostock’s advice to the court until August 28. Extraordinary as it may seem, the Service members of the Air Board had gone behind the back of the Department and the Minister. Alerted by the transcript of evidence typed and delivered to his office each day, the departmental Secretary, Mel Langslow, sent a brusque request late on August 27 to the Chief of the Air Staff, invoking the Minister’s name:

C. A. S.

It is understood that at the opening of the sittings of the Air Force Court of Inquiry, which is investigating the aircraft accident at Canberra on 13th August, 1940, a document was handed to the judge ‘by order of the Deputy Chief of the Air Staff’ relating to the evidence which should be heard in camera.

Would you please forward for the information of the Minister a copy of the document which was handed to the judge.

ML

Secretary

A typed message, conveying a request that could very easily have been made personally or by telephone, signalled displeasure and an implicit rebuke, on the record.57

Precise as always for the file, when the document arrived Langslow noted: ‘Copy of statement handed to Court by Deputy Chief of Air Staff.’ But, as Langslow already knew, the statement by the Deputy Chief of Air Staff had not been handed to the court by Bostock himself. The distinction is important, and was not a syntactical error. When George Pape had received his copy of the Deputy Chief of the Air Staff’s minute he knew what was meant by ‘For your information & attention’.\(^5^8\) He could rely on Lowe to seek guidance from counsel assisting about when to exercise the power to direct that evidence should be given *in camera*. A word to Arthur Dean would ensure that he would have the opportunity to advise what should be kept from the public. And so it proved.

![Bill Bostock, orchestrator of proceedings](image)

*Bill Bostock, orchestrator of proceedings*  
(Courtesy of Geoff Bostock)

Dean in his opening remarks referred to evidence from Service personnel ‘of a character that should not be published’. Lowe asked him to indicate when such evidence was about to be led. Dean then opened the door for Pape:

MR. DEAN: I will do that to the Court and, if there is any evidence that my friend Mr. Pape thinks should not be made public, and which I

\(^{58}\) NAA: A705, 32/10/2729/38.
Ten Journeys to Cameron’s Farm

should not so describe, I feel sure that he will no doubt give Your Honor [sic] a similar indication. It is not necessary to indicate the reasons that exist for this course to be followed.

THE COURT: No, they are obvious. In a time like this, evidence of this nature, which is of a technical character, should be made subject to that protection.

MR. DEAN: Exactly.

Whether or not Justice Lowe realised it, he had walked into a trap. He had assumed that the evidence that needed to be protected was ‘of a technical character’. This was of course true in part. But, as Dean and Pape led him forward, the net tightened. Dean explained that he was first going to call Air Force personnel from Laverton whose evidence should be taken in camera. There was, however, no reason he believed, as ‘at present advised’, why persons from Essendon or observers from Canberra need be heard in camera. As the first witness was about to be sworn, Lowe sought confirmation from Pape that the evidence from Laverton personnel was of a nature that ought not be disclosed in public. Yes it was, Pape responded, seizing his chance:

…furthermore, it may perhaps assist Your Honor in dealing with this matter if I hand you [a] copy of an instruction from the Deputy-Chief of the Air Staff which has been supplied to me. Your Honor will see the particular type of matter which it is felt should not be elicited in public.

With Bostock’s ‘instruction’ in his hands, Lowe heard Pape continue for about 20 seconds, repeating his agreement about the way to deal with the witnesses from Laverton, Essendon, and Canberra. Having had barely enough time to scan the ‘instruction’, the judge made the commitment that guaranteed the secrecy Bostock wanted: ‘I propose to follow, at any rate at the outset, the suggestion that has been made, and to direct that evidence which involves matters under the headings handed to me by Mr. Pape shall be taken in camera.’

Lowe clearly had insufficient time to assimilate the document Pape put in his hands. He had already agreed in principle to the exclusion of what he thought would be matters of a ‘technical character’. Now he acquiesced in the placing of a cloak over everything that had not been observed on August 13 by civilian witnesses. Such was to be the ‘open inquiry’ that the Cabinet had approved. Pape, entitled to an extra blue cotton band on his sleeves denoting his promotion
to acting flight lieutenant with effect from August 26, had done his work well. Unintentionally perhaps, the 37-year-old barrister had also provided plausible deniability to the government.

Just in time for the next morning’s newspapers, Arthur Fadden issued a statement. ‘Commenting on the fact that the Court had met in camera for the greater part of yesterday’s hearing,’ The Argus reported on August 28, the Air Minister said, ‘the interpretation of the terms of reference was a matter for the judge. The aim of the Ministry was a comprehensive inquiry into the cause or causes of the accident consistent with protection of the war effort.’ What Fadden never knew was the Air Force’s fall-back position if the judge declined to close the Court when ‘matters of a secret nature’ were about to be raised: ‘Failing the agreement of the judge it is suggested that the assessor seek the adjournment of the court to enable the Minister to decide whether the proceedings should be held in camera.’

The government had insulated itself from Lowe’s inquiry. There was no need for anyone to articulate the obvious truth that the Air Force interest in limiting unhelpful revelations was itself a bulwark against political embarrassment for an embattled Prime Minister.

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59 All quotations from the Inquiry transcript copy in NAA: A705, 32/10/2729 where Pape is addressed as ‘Mr’ throughout, and sometimes described as Pilot Officer. Pape’s promotion: HQ Southern Area Personal Occurrence Reports, 2/1940, NAA: A10605, 48/2; NAA: A9300, PAPE GA shows P/O 1 July 1940, F/O 1 Jan. 1941, F/Lt 20 July 1941.

60 ‘Assessors for Special Courts of Inquiry into Aircraft Accidents’, 10 May 1939, NAA: A705, 108/2/189. The Secretary of the Air Board, following the Defence Minister’s lead, had argued: ‘It is essential that there should be a provision empowering the Minister to certify that in the public interest it is desirable that any particular inquiry be held in camera.’