

THE ORDER



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Phyllis has taken a vast range and variety of community work in her stride for many decades



Phyllis Gray OAM turned 92 on January 21 and a month later recited the *Ode* at the Order of Australia's Remembrance ceremony at the Association's annual conference in Brisbane.

Born in Naracoorte, Phyllis was a member of 30-plus community organisations, including several women's professional groups, Red Cross, Legacy, Guide Dogs, Order of Australia Association, Crippled Children's Association, Victoria League and Australian American Association.

She was awarded one of the first Order of Australia Medals in 1977 for her incredibly active community involvement.

She and husband Gordon, both active in Adelaide's business and community groups, helped set up the International Hair Stylists and are still joint patrons of it.

In 1982 they retired to the Gold Coast, where Phyllis continued her community work with great commitment. She is still active in Zonta, Australian American Association, the Ionians and the Order of Australia Association.

Human rights, a bill of rights and the Constitution — Page 2

Optimism is legal in Australia: The OAA Oration — Pages 6–7

Regional group members on new database — Page 8

Building stronger links with members — Page 11

THAT PILE OF AGM PAPERS: REMEMBER TO FILL IN AND RETURN THE OPTION FORM

A human rights act, a bill of rights and the Constitution

There's nothing like the issue of "rights" — whether a bill of rights or a human rights act — to bring out the country's debaters including, among others, former High Court judges, a priest and a TV presenter.

At present people are being asked to comment on the framing of a human rights act which could incorporate a "bill of rights" — with one important distinction.

An act of parliament can be changed by successive governments; a bill of rights (generally associated with the United States) is usually part of a country's constitution and much more difficult to change.

One of the first questions about a human rights act of parliament was raised by former High Court Judge **Michael McHugh AC** who expressed doubts that elements of the proposed model were constitutionally valid.

To examine the issue of such an act's validity and "to clear the air" the Australian Human Rights Commission recently held a round table, bringing together some of Australia's leading constitutional and human-rights lawyers, including Mr McHugh and former Chief Justice **Sir Anthony Mason AC KBE**, to discuss the constitutional validity of a human rights act.

The principal concern had been that



Father Frank Brennan AO — See below

it might be unconstitutional for a court to issue a declaration of incompatibility, a common feature of human rights acts elsewhere. It was suggested that an independent body such as the Australian Human Rights Commission could keep a watch on cases and notify the Parliament through the Attorney-General if a court were unable to interpret the legislation in a way that was compatible with the Human Rights Act.

According to the President of the Australian Human Rights Commission,

Cathy Branson QC, the time is right for Australia to join other Western democracies in giving formal protection to human rights in Australia through a national human rights act. She said concerns that a national human rights act would fall foul of the Constitution can be put aside confidently.

Enter former High Court judge **Ian Callinan AC**. In a book of essays on the topic, he writes that a bill of rights risks politicising the court system and corrupting members of the judiciary with power, according to a report in the *Sydney Morning Herald*.

He says a bill of rights would outsource political power to the courts. "That is not good government and can be worse for the courts. Judges are not immune to the narcotic of power. Most but certainly not all avoid addiction.

"That some cannot, and then even those who do, have no choice under a bill of rights but to decide a vague rights question as best they can, are factors which influence me."

Mr Callinan sounds his warning in a book published on May 25 in Sydney. Compiled by the Menzies Research Centre, a conservative think-tank, the book contains essays by 24 prominent Australians, including the former prime minister, John Howard, arguing against a bill of rights.

The Frank, Philip, Mary, Mick and Tammy show — and you

If you thought this debate was restricted to judges, lawyers and politicians think again. Everybody has the chance to have a say through the government-appointed independent committee to run the nationwide consultation. It consists of:

Father Frank Brennan AO, a committed advocate of human rights, having worked tirelessly for others for over 30 years and has won a number of human-rights awards. A Jesuit priest, he is a professor of law at the Australian Catholic University and Visiting Professorial Fellow at the University of NSW.

He was the founding Director of the Uniya Jesuit Social Justice Centre in Sydney. He has also written extensively on aboriginal land rights and, in 1995, he was awarded an Order of Australia for his services to indigenous Australians.

Philip Flood AO, a distinguished former diplomat and a former senior public servant. His career highlights include being Secretary of the Department of Foreign Affairs and Trade and High Commissioner to the United Kingdom. He was also Ambassador to Indonesia and Director-General of AusAID.

Since retiring from the diplomatic service in 2000 he has been actively involved with Care Australia, the Australia-Indonesia Institute and Asialink.

Mary Kostakidis, a well-known journal-

ist and former television news presenter from Sydney. She has a long history of community service, working with organisations such as Drug and Alcohol Council of Australia, the Order of Australia Honours committee and the Advertising Standards Board.

She is on the board of the Fred Hollows Foundation. Previously she was a member of the Breast Cancer Council Advisory Committee, the Constitutional Centenary Foundation and the Republic Advisory Committee.

Michael (Mick) Palmer AO APM, a former Australian Federal Police Commissioner. He served for six years as Commissioner of the Northern Territory Police, Fire and Emergency Services. He is now the Inspector of Transport Security. A lawyer, he is an honours graduate of the Queensland Barristers Admission Board and in 1982 was admitted to practice as a barrister at law in Queensland.

In 1997 he became the first Australian to be appointed to the Executive Committee of Interpol. In 1998, Mick was appointed Deputy Chairman of the Australian National Council on Drugs.

He was also appointed by the former Prime Minister to oversee the inquiry into the Government's handling of Cornelia Rau in 2005.

Well before her 20s **Tammy Williams**

was a vocal spokeswoman for issues affecting young people in Australia. In 1996 she attended the State of the World Forum in San Francisco. For her efforts she was awarded the 1997 Youth Award by the Australian Human Rights & Equal Opportunity Commission.

She has addressed other international forums, including the United Nations World Conference on Racism, Xenophobia, Discrimination and Other Related Intolerances, in Durban, South Africa in 2001. She won her law degree at the Queensland University of Technology in 2001 and was admitted to practice as a barrister in Queensland.

She has worked as a prosecutor for the Commonwealth Director of Public Prosecutions and in 2003 was named the "Emergent Young Lawyer of the Year" by the Queensland Women's Law Association. She's also one of the indigenous directors on the Board of Indigenous Enterprise Partnerships.

For more information about how to contribute to the human rights act consultation (deadline July 7), go to: www.humanrightsconsultation.gov.au/ www/nhrcc/nhrcc.nsf/page/home

The round-table statement concerning the constitutional validity of an Australian human rights act can be found at <http://www.humanrights.gov.au/>

Foundation's 10th anniversary winners

Twenty-year-old **Rebecca Evans**, of Darwin, Northern Territory, is enrolled for the degree of Bachelor of Teaching and Learning at Charles Darwin University. From an early age Rebecca has wanted



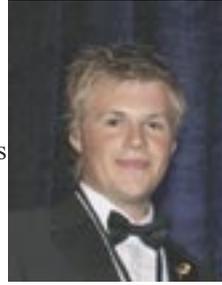
to be a teacher because of an outstanding teacher she once had. She wants to be someone who will make a difference in the life of a child. She has held many teaching and caring positions — a child-care worker in an outside-school-hours program; night respite carer for a family for Family and Children's Services; and in school sports and fete days.

Her Student Teacher Bursary recognises her academic record and potential to become a teacher. With qualifications including Childcare Warden Emergency Management Procedures, St John Ambulance Senior First Aid and Epipen Administration, Asthma Foundation Emergency Treatment and Heart Foundation Eat Smart Play Smart, she is gaining skills to back her voluntary work.

Basketball is her favourite sport as both player and coach. She works to support herself so her week involves juggling lectures, research, travel, teaching practice and volunteer work but she continues to obtain high marks. She has chosen Primary Teaching as her field of study and is emphatic that she does not want to be a good teacher — but rather a teacher of excellence!

Funding for this Scholarship was generously donated by The Order of Australia Association.

Twenty-year-old **James Hicks**, of Noorat, Victoria, is enrolled for the double Degree of Bachelor of Business (Management) and Bachelor of Engineering (Mechanical) at Swinburne University of Technology.



James completed secondary school at Terang College and was school captain and SRC president. In 2006 he was Lions Youth of the Year Regional winner. He excels in many other areas: — Scouting, receiving its highest award; debating, winning at the Warrnambool Eisteddfod; football, selected in the Geelong Falcons TAC cup squad; athletics, state triple jump champion; Duke of Edinburgh Award; music, outstanding on guitar; lifeguarding at the local pool; Conservation Volunteers Australia; and leadership, always being called on to represent groups or individuals to effect change in the community.

He had a unique opportunity to work with Victorian State Government ministers to seek funds for a youth leadership program at Glenormiston College, Victoria.

He has always been interested in how things work and why things happen and wants to be the CEO of a major company and enter politics! He also hopes to study overseas.

Funding for this Scholarship was generously donated by Mr David Mandie AM OBE.

Twenty-two-year-old **Jarrold Hodgson**, of Melbourne, is enrolled for the double Degree of Bachelor of Arts and Bachelor of Science at Monash University.



He is studying the complementary areas of geography and conservation biology with a view to a future in environmental policy. After completing secondary school at Whitefriars College in 2005, where he was social justice captain, Jarrold spent six months in Kolkata (Calcutta), India, as a volunteer aid worker caring for the dying and destitute in both the medical and food programs.

Jarrold became a Queen's Scout in 2005 and volunteers to work with a Melbourne Scout group for adolescents with disabilities. He recently led a 28-person Australian Scouting contingent to Kobe, Japan, where he was responsible for the Scouts and their carers.

At Monash University, Jarrold was the only undergraduate science student to be included in the Vice-Chancellor's Student Leadership Program and then was selected to attend the Australian Davos Connection Future Summit.

Jarrold has a passion for the environment. His love of the outdoors and his academic interest in the natural world puts him on a path to leadership in the environmental sciences. Funding for this Scholarship was generously donated by The Finkel Foundation.

THE ORDER OF AUSTRALIA ASSOCIATION FOUNDATION

Summary of Foundation Awards 2004–2008

Year	Awardee	Course of Study	Tertiary Institution	Mentor
2004	Rahul Khubchandani	Engineering & Commerce	Uni of Western Australia	Mr Dennis Glennon AO
	Felicia Ang	Commerce and Science	Uni of Melbourne	Prof. Adrienne Clarke AC
	Natalie Rainger	Graduate Medical Degree	Uni of Sydney	Dr John Yu AC
2005	Melissa Bowtell	Occupational Therapy	Uni of Queensland	Dr Cherrell Hirst AO
	Nicholas Clements	Arts	Uni of Tasmania	Dr Kalev Kruup OAM
	Jason Ford	Advanced Dip of Eng Tech (Civil)	Victoria Uni	Mr John B Laurie AC
	Andrew Johnson	Advanced Dip of Arts (Graphic Design)	Victoria Uni	Mr Harold Mitchell AO
2006	Emily Bond	Cert in Animal Technology	Victoria Uni	Prof. Wayne Morrison AM
	Ashley Hunt	Chemical Engineering	Curtin Uni	Mr Robert King OAM
	Jarrad Cody	Electrical & Mechatronic Eng	Uni of SA	Mr David Klingberg AM
	Johanna Elms	Advanced Science(Pharm)	Uni of NSW	Prof. Stella O'Donnell AO
	Laurie Pearcey	International Studies	Uni of NSW	Mr Sam Wong AM
2007	Sara Farnbach	Nursing	Uni of Canberra	Ms Kaye Hogan AM
	Glen Smith	Commerce & Law	Uni of Adelaide	Mr Ross Adler AC
	Tom Molomby	Electrical Eng, Science	Uni of NSW	Dr Peter Farrell AM
	Amelia Parker	Engineering (Biomedical) & Science (Biochemistry)	Uni of Sydney	Prof. David Burke AO
2008	James Hicks	Business (Management) & Engineering (Mechanical)	Swinburne	TBA
	Rebecca Evans	Teaching & Learning	Charles Darwin	Mrs Wendy James OAM
	Jarrold Hodgson	Arts/Science (Geography & Conservation Biology)	Monash	Mr Chris Leptos AM

New National Secretary Man of many roles

Roger Dace AM QGM is the new National Secretary of the Order of Australia Association, succeeding Jim Leedman AM.

After a varied and active career in the British Army, Colonel Dace resigned in 1982 to accept a commission in the Australian Army. He became an Australian citizen in 1982. Since arriving in Australia he has been based in Canberra in appointments that have brought him into close and regular contact with Australian industry.

Colonel Dace worked in the Army's materiel area before being appointed Director of Value Management in 1989. In this appointment he was responsible for introducing value engineering and value management concepts into the Defence contracting arena. He was President of the Australian Institute of Value Management in 1991 and 1992.

He has been closely associated with the introduction of formal and informal partnering to Defence and the building industry.

Appointed Director of Industry Communication in 1993, he became responsible for the national Defence Procurement Conference, the Australian Defence Industry Quality & Achievement Awards, the Defence and Industry Study Course, Defence regional briefing programs and industry placement initiatives.

He was made a Member of the Order of Australia in the 1996 Australia Day Honours for his service to Defence and to Australian industry.

In December 1997 he retired from full-time service with the ADF. He returned to part-time duty in February 1998 and had responsibility for managing the annual national Defence & Industry Conference and the Defence & Industry Study Course until July 2003.

Between 2002 and 2006 he served as Secretary of the ACT Branch of the Order of Australia Association. During 2007 he led the ACT team responsible for the 2008 OAA National Conference.

In April 2004 he was appointed a Visiting Fellow of the National Graduate School of Management, Australian National University. He discontinued this appointment in 2006.

His earlier career began when he enlisted in the British Army's Intelligence Corps in 1961, where he served



Roger Dace

until commissioned in the Royal Army Ordnance Corps in 1964.

As a junior officer he served in a number of logistics appointments in the UK and overseas and was ADC to the Queen Mother for a short period. In 1967 he trained as an ammunition officer and spent two years doing bomb disposal in the north of England.

After a brief period in Malaysia, he was appointed in 1970 an instructor at the Royal Military Academy, Sandhurst, where he taught tactics and military law. While at Sandhurst he was appointed a national sailing coach of the Royal Yachting Association and was responsible for developing and delivering the first sailing training program for physically and intellectually handicapped children.

In 1974 he was posted to Northern Ireland on counter-terrorism duties, for which he was awarded the Queen's Gallantry Medal. He later served in Hong Kong, where he was responsible for managing the initial rush of "boat people".

Between 1978 and 1980 he worked in London as the British Government's adviser on the use of high technology by criminal and terrorist groups. He then took up an academic appointment at the Royal Military College of Science, where he lectured in ammunition, explosives chemistry and guided weapons technology.

Sir Zelman Cowen on issues past and present

Over the years former Governor-General Sir Zelman Cowen AK GCMG GCVO QC made a number of significant speeches at various gatherings of Association members. They have been published in book form by the Association.

The topics covered include the early history of the Association as well as Sir Zelman's thoughts on the issue of knighthoods in the Order of Australia, the phasing-out of imperial honours and the recurring debate about Australia's becoming a republic.

Copies of the book are available from the Association's merchandise office.

— see advertisement Page 10

Words of eminent Australians



The Order of Australia Association's booklet of Orations 2003–2007 records the words and opinions of some of Australia's finest minds. It contains:

The 2003 Oration

Science, Education and the Australian Experience by Professor Peter Doherty AC

The 2004 Oration

Searching for the Real Australia by Dame Leonie Kramer AC DBE

The 2005 Oration

Advancing the National Interest and The Order of Australia by the Hon Sir James Gobbo AC CVO

The 2006 Oration

The Marginalisation of the Law in Australia by Sir Guy Green AC KBE CVO

The 2007 Oration

Federal Renewal and Unity in Reconciliation – A Return to Government by the People by Lieutenant General John Sanderson AC

Price: \$5.50 (incl GST) + postage.
To obtain a copy contact your local OAA Branch.

Help the OAA Foundation

Apply for your official Order of Australia Association plaque. See the other side of address sheet of *The Order* for more details and order form. The sale of plaques assists The Order of Australia Association Foundation's fund-raising.



Pursuing new members

More than 220 members and guests attended the 23rd Annual National Conference in Brisbane in February. Given the economic downturn, the heat, the terrible bushfires in Victoria and the floods in Queensland it was not only a very good turn-out but enthusiastic too!

The conference provided a pleasing balance of social, intellectual and administrative activities, a round-up of which, including the oration given by Justice Margaret McMurdo AC, can be found on our web site. On behalf of the members and the National Committee I extend our thanks to the Queensland Conference Committee for all the hard work that went into staging such a successful event. The South Australian team has now got the baton and plans are well under way for the 24th National Conference (which coincides with the Association's 30th anniversary).

At the National Committee meeting in Brisbane the new guidelines for regional groups were adopted by the directors. This was the last stage in the updating of branch structure and governance — a crucial step towards meeting Strategic Plan Goal 2 (looking after the Association). The way is paved now for us to further the achievement of other goals in the plan.

The plan identifies attracting new members as an issue. This is a perennial problem that faces many organisations. At present, less than 50 per cent of recipients of awards in the Order of Australia choose to join the Association.

There are many reasons for this, including continuing commitments to

other organisations, family and financial circumstances, age and health. However, many simply do not know enough about the Association or what it does. Strategies to address this include greater contact with new recipients and wider publicity for the Foundation, state and local association initiatives and events.

The Victorian State Branch and regional groups proposed the trial of a comprehensive and persistent program of contact with new awardees, which was endorsed by the National Committee. The Victorian Branch has undertaken to assess the impact of this strategy and to report its findings at the next national meeting in Adelaide. Engaging with new recipients is an important tool for widening membership.

The Queensland Branch invited Au-



Dina Browne

By National Chairman Dina Browne AO

lia Day Honours recipients to attend the annual conference dinner and Foundation Scholarship presentation so that they could see the Association in action and meet the members informally. As I write this, the investitures of Australia Day Honours recipients are happening across the country. I hope we will see a greater proportion of these new awardees join the Association as a result of our increased contact with them

As we settle in to the year, with the challenges of our strategic vision before us, I would like to thank all branch and regional members and state committees for the zeal and energy they devote to the Association. I acknowledge particularly the re-elected executive subcommittee members who give so freely of their time and I welcome our new National Secretary, Colonel Roger Dace AM QGM, who has taken on the role with enthusiasm and efficiency.

I look forward to meeting many of you in my term as chairman and, of course, at the conference in Adelaide.

Replace lost insignia

If you have lost your Order of Australia insignia or lapel pins, you can obtain replacements from:

The Secretary,
The Order of Australia,
Government House,
Yarralumla ACT 2600
Telephone: (02) 6283 3533
email: honours@gg.gov.au

The Order of Australia Association cannot replace lost insignia or lapel pins.

Tell your own story

Contribute to **The Quiet Australians** project with your details on the pro-forma on our web site. It features 700 recipients' histories: www.theorderofaustralia.asn.au

And send your news to:

The Editor, The Order, The Order of Australia Association, Old Parliament House, 18 King George Terrace, Parkes ACT 2600
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REGIONAL GROUPS (Contact Branch Secretaries)

NSW

Blue Mountains/Hawkesbury/Nepean, Central Coast, Central West, Clarence/Richmond, Coffs Coast, Dubbo, Far West, Hastings, Hunter, Illawarra, Manning, Muswellbrook/Scone, Nambucca/Macleay, New England, Riverina, Shoalhaven, South Coast, Southern Highlands, Southern Tablelands.

Queensland

Bundaberg, Darling Downs, Sunshine Coast, Gold Coast, Townsville, Central Qld, Far North Qld

South Australia

Barossa Valley, Fleurieu Peninsula, South East, Gawler & Districts, Kangaroo Island.

Tasmania North-West, Northern, Southern

Victoria

Central Highlands, Goulburn Valley & North East, Loddon Campaspe, Mornington Peninsula, Eastern Suburbs, Western Suburbs, South Central Suburbs, Central Suburbs.

Western Australia

Great Southern (Albany), Lower South West (Bunbury)

Northern Territory Southern Region – Alice Springs

Optimism is quite legal in Australia — despite the best efforts of the shock-jocks

Justice Margaret A McMurdo AC, President of the Queensland Court of Appeal, gave the Order of Australia Association Oration at the National Conference in Brisbane in February. In her address, Optimism is Legal in Australia, she deplored the negativity in many of today's news reports that ignored the often positive and reaffirming human response to bad news. She traced both the history of the common law and the slow but now steady progress of women in the legal profession. She reviewed the march of universal suffrage, especially slow for indigenous Australians, and commented on the essential need for an independent judiciary. This is an extract from address on the need for independence of the legal profession and the judiciary, on the vexed issue of sentencing — and uninformed media comment.



In a democracy like Australia, an independent legal profession has the duty of ensuring that every citizen has access to the rule of law.

The rule of law provides equal justice for all, regardless of gender, race, skin colour, religion, power or wealth. The High Court of Australia recognised in the Australian Communist Party case that the essence of a modern democracy is the observance of the rule of law.

Lawyers must be independent because they have a special duty to protect and pursue their clients' rights, unswayed by the power, privilege or wealth of others and subject only to their duty as officers of the court, essentially to not mislead the court.

Justice Michael Kirby explained the importance of an independent legal profession in this way:

"If all people are entitled to equal protection under law, without exception, lawyers must be able to represent unpopular clients fearlessly and to advocate on behalf of unpopular causes, so as to uphold legal rights. To ensure the supremacy of the law over the arbitrary exercise of power a strong and independent legal profession is therefore essential.

"In this way, an independent legal profession is an essential guardian of human and other rights. By ensuring that no person is beyond the reach of the law, the legal profession can operate as a check upon the arbitrary or excessive exercise of power by the government and its agents or by other powerful parties. By basing advocacy and judgments upon the rule of law, as opposed to the wealth or power of relevant interests or the transient popularity of the decision or of the interests affected, both lawyers and judges are indispensable instruments for the protection of minority and individual rights."

Justice McMurdo went on:

Another essential aspect of democratic governance is judicial independence, a concept strongly and repeatedly affirmed by the High Court of Australia. The concept requires that judges exercising judicial functions be free from any interfer-

ence or external influence that may seek to reduce their objectivity and impartiality. It follows from the doctrine of the separation of powers that the judiciary in its decision-making is completely uninfluenced by the legislature and the executive.

The institutional role of an independent legal profession and judiciary and the need for public confidence in them are why it is desirable in a democracy that the legal profession and the judiciary chosen from it (both necessarily an elite in terms of education, training and professional experience) are broadly reflective of the community to which they belong. They should include appropriately qualified men and women from diverse backgrounds.

The increased diversity in the legal profession and the judiciary is amongst the most significant changes to the justice system in Queensland and throughout Australia since I was admitted as a barrister 33 years ago. Until 1990, there were no Queensland women judicial officers — not even a magistrate. Now eight of the 24 justices of the Supreme Court of Queensland are women. Even more significantly, three of the seven justices of the High Court of Australia are women, Justices Susan Crennan, Susan Kiefel and Virginia Bell. The Chief Justice of the Family Court of Australia is Chief Justice Diana Bryant, and the Chief Justice of Victoria is Chief Justice Marilyn Warren.

Since 1990, the substantive and procedural criminal law relating to women and children as victims of crime has also changed significantly. Offenders can now be convicted of sexual offences solely on the testimony of the complainant. A man can be convicted of raping his wife. Complainants in sexual cases give their evidence in courts which are closed to the media and the general public and their names are not published. The original statements of complaint to police from child witnesses are now tendered as the child's evidence and any cross-examination is video-recorded before the trial to minimise the trauma of court appearances. Although the legislature enacted these changes to the law, many lawyers played

an active role in effecting the reforms.

I turn now to discuss how judges make law without trampling on the legislative role of government. They do so, consistently with the separation of powers, in two ways. The first is in their role as interpreters of laws passed by the democratically elected parliament. A judge's decision between two or more possible interpretations of a statute will effectively make law. Of course, if parliament does not consider the judge's decision reflects its intention in the statute, it can amend the legislation. Many acts of parliament give judges a discretion in decision-making, the exercise of which makes law.

The most common, and perhaps most closely scrutinised of these judicial discretions is the sentencing of offenders. The bulk of media reports of judges' sentencing is accurate but too often some elements of the media, like talk-back radio programs, report only selected aspects of the matter and whip some members of the public into a frenzied rage against judges.

... ordinary people given the relevant facts and law and asked to impose hypothetical sentences, theirs are the same, or lighter than, those imposed by judges...

Richard Ackland, in *The Sydney Morning Herald*, recently discussed this issue with perspicacity [after] the [publication] of the Bureau of Crime Statistics and Research's report on public confidence in the criminal justice system. The report concluded that when it came to sentencing criminals, public confidence in the system was low because of the distorted and sensationalist mis-message delivered by the media, especially TV and radio news and tabloid newspapers.

Ackland rightly noted that this was a serious social concern: the legitimacy of judges to issue orders, including sending offenders to jail, is dependent on public trust. Ackland considered, again rightly, that there should not be a disconnect between public perception and what is really happening in the criminal justice system.

Observing that the Bureau's report received almost no publicity in the media, he added, "Crime is a form of public entertainment, hence the findings that large sections of the public believe property crime is going up, when it has been going down since 2000. They overestimate the proportion of crime that involves violence and underestimate the percentage of arrested offenders who are convicted and imprisoned."

Ackland concluded by musing:

"The Bureau [published] data to the effect that the number of eight- and nine-year-olds coming to the attention of the police had [declined] from 130 a month to 94 a month over two years. The headline in the Tele: 'Kid crime rampage'."

Sentencing

Sentencing decisions comprise about a third of the workload of the court over which I preside, the Court of Appeal, Supreme Court of Queensland. Our work is done in public. You are welcome to visit the courts. Our decisions are published and easily accessible on the court's web site. If you are concerned about a sentence imposed in the Queensland Court of Appeal, I urge you to read the judgment for yourselves. Preliminary results from academic surveys show that, when ordinary people are given all the relevant facts and law and are asked to impose hypothetical sentences, their sentences are the same, or lighter than, those imposed by judges in the real case.

I turn now to the second way in which judges make law. It is in developing the common law and the law of equity through their application to novel factual circumstances in individual cases.

The modern law relating to contracts, upon which the Australian business community relies, has been developed by judges in this way.

The law of civil wrongs, known as torts, the largest aspect of which is the law of negligence, arises from judge-made law. Lord Atkin, one of the most famous common-law judges, developed the law of negligence in the seminal 1932 House of Lords case about a snail in a bottle of soft drink. It is not well known that he was born in Brisbane not far from here in Tank Street in 1867. He returned to England with his mother three years later. Mrs Atkin described Brisbane as, "[A] very odd town, unlike anything you could see in England. There are about three miles of houses which might easily be comprised in three-quarters of a mile, the interval between the houses being filled with cactus, oleander, hibiscus and exquisite orange creepers."

The oleander, hibiscus and orange creepers still abound but I am afraid the space

between the houses is fast disappearing.

The law of negligence, initiated by Lord Atkin despite some alleged excesses colourfully but not always accurately reported by the media, has provided fair compensation in Australia and throughout the common-law world to millions of claimants, seriously injured through the fault of others, who would otherwise have led lives of poverty, dependence and misery.

The judges with the greatest opportunity to make positive changes to the law in Australia are those on our final appellate court and our court of constitutional interpretation, the High Court of Australia, established after federation in 1903.

Historian Henry Reynolds notes that "it was widely believed in Darwin that he was shot by police and his body dumped in the harbour"

The High Court has shown leadership in indigenous issues. In 1935, in a unanimous decision, it quashed the murder conviction and the death sentence imposed upon a traditional Yolngu man by the name of Tuckiar. He had allegedly killed a police officer. Although Tuckiar was from Arnhem Land, spoke no English and had little or no contact with the mainstream community, his barrister did not use an interpreter. The barrister wrongly disclosed in open court confidential communications with Tuckiar. The High Court was critical of the conduct of the case by both the trial judge and defence counsel. Tragically, Tuckiar's High Court victory was pyrrhic. Shortly after his release from custody, he disappeared.

Historian Henry Reynolds notes that "it was widely believed in Darwin that he was shot by police and his body dumped in the harbour" but Tuckiar's case resulted in a significant improvement to our criminal justice system and especially as to its treatment of indigenous Australians.

The High Court first recognised that indigenous Australians have native title to Australian land in *Mabo v The State of Queensland (No 2)*. The court found that the Meriam people from the Torres Strait were entitled by way of common-law native title to the possession, occupation and use and enjoyment of the Murray Islands. The Mabo decision was a major turning point in Australian history. It is seen by indigenous and non-indigenous Australians alike as a keystone in the stairway to reconciliation.

A critical role of the High Court is to

interpret Australia's Constitution. In 1951, the Cold War was at its peak and McCarthyism rampant in the US. I am proud to say that the High Court rejected Prime Minister Menzies' attempt to legislate against the Communist Party by holding invalid under the Constitution the *Communist Party Dissolution Act 1950*.

I am also proud that the Australian people rejected the subsequent referendum to amend the Constitution to prohibit the Communist Party.

Our Constitution does not contain a bill of rights but the High Court has interpreted it as implying certain rights. When the New Zealand Prime Minister, David Lange, brought an action for defamation against the ABC, the court held that our Constitution protected the freedom of communication between people concerning political or government matters, which enables Australian voters to exercise a free and informed choice, a freedom not confined to election periods. The court has extended that constitutionally implied freedom of political communication to non-verbal conduct intended to be politically expressive.

The vulnerable

The High Court has refashioned the law of equity and its concept of "unconscionability" to meet modern conditions, extending the boundaries of long-established doctrines to assist the vulnerable. These developments include requiring fair dealing in precontractual negotiations; requiring greater disclosure of relevant commercial information and independent and impartial advice; and refusing to permit the unconscionable exploitation of strict contractual rights.

The High Court has also developed the common-law concept of "undue influence" as a doctrine related to the wider framework of equitable unconscionability to assist weaker litigants who have suffered through a relationship of trust and confidence.

The theme of that classic Australian movie, *The Castle*, is not without some basis! These areas of equity and the common law may well be developed to assist weak and vulnerable litigants in the future.

Although most of the ground-breaking changes to the law are made in the High Court, every judge and magistrate has the onerous responsibility of deciding cases of great significance to the litigants. Every judicial officer's work presents opportunities to make decisions which develop the law.

The full text of Justice McMurdo's oration is available on the OAA web site: www.theorderofaustralia.asn.au or phone (02) 6273 0322 or fax (02) 6273 0041

Tracking regional group members

By Peter McDermott AM CSC
National Regional Groups Coordinator

Given changes in bylaws relating to regional groups, the Association is making a special effort to ensure that regional groups receive the support they need to keep track of their members.

New members are now being invited to nominate which regional group (new) and which state or territory (existing) they would like to be identified with when they join the Association. Membership forms reflect this choice.

There is a need, however, to ensure that existing members' choices of regional group identification are recorded properly at national, branch and regional levels — a process not previously completed.

Members who have joined since Australia Day 2009 have recorded their preferences already. Existing members will follow this continuing process:

1. State or territory branch regional group coordinator has a copy already of all financial members in that branch;
2. Regional group conveners or committees should send their lists of regional group members to their branch regional group coordinators who, after confirming that those members are financial, send a list for each regional group to the National Membership Secretary;
3. The National Membership Secretary will ensure that all members' regional group identification is recorded in the National Membership Register and will then return to every branch a soft copy list of financial members, complete with any regional group identifications. Branch regional group coordinators will then provide all regional group conveners or committees with current lists of financial members of their regional groups.
4. When this has been completed for the first time, branch and regional groups will have a comprehensive list of all members, grouped by regional groups. Members can check their details with their own regional group conveners or their branch regional group coordinators.



The OAA's Clive Robartson OAM presents Constable Susan Smith with her award (see report above right).

WA's Constable Susan Smith earns Graduate of the Year award

The WA Branch of the Order of Australia Association is proud to support and sponsor the prestigious Police Graduate of the Year Award at the WA Police Academy.

The presentation of the award by Mr Clive Robartson OAM, Chairman of the WA Branch (pictured left), to Constable Susan Smith took place at a graduation at the academy last November 28.

As a trainee, Recruit Smith was elected Assistant Squad Leader as part of a rotation of the leadership role. A team player, she led by example and showed other recruits that she was prepared to undertake tasks. Her professionalism was displayed in her high standards, including those in punctuality, dress and dedication to study.

Three awards

Constable Smith's attitude to study, discipline, maturity and determination to be a police officer resulted in her achieving the Dux Award, the Geoffrey Bowen Award and the Minister's Award, all of which were presented to her on her graduation.

An honour board has been mounted in the Academy Learning Centre as a tribute to the winners.

The graduate of the year is selected from all recruits who have graduated from the WA Police Academy in that calendar year. Graduates are nominated by members of the academy staff and the winner is selected by a panel that includes a member of the Order of Australia Association.

Recruits are assessed for leadership, professionalism and intellect, ethical conduct, communications, motivation, commitment and determination, teamwork, attitude and self discipline.

Branch regional group coordinators

NSW: Rev Dr Douglas Parker OAM (02) 4869 1529/Mr Ronald Sharpe OAM (02) 4343 1011
VIC: Mr Kevin Howard OAM (03) 5722 2971 kmpro@w140.aone.net.au
Qld: Mr Ross Dwyer OAM (07) 3265 4734 HonSecOAA_Qld@aapt.net.au
SA: Mrs Margot Vowles OAM (08) 8344 7478 margot.vowles@internode.on.net
Tas: Ms Linley Grant OAM (03) 6234 6672 mgr70303@bigpond.net.au
WA: Mr Clive Robartson OAM (0419 048 556) crobarts@bigpond.net.au
NT: Mr Stewart Cox OAM (08) 8981 3882 stewart.cox@oamps.com.au

New chairman for Northern Territory committee

A new committee of the Northern Territory Branch is headed by long-term territorian Stewart Cox OAM. Stewart is well known in business and sporting circles in the Territory and was honoured to be asked to stand as chairman.

One of his ambitions is to see the Association's annual conference being held in the Territory.

He expressed thanks on behalf of all members to the outgoing Chairman, Wendy James OAM, whose contribution to the Territory Branch has been significant.

Territorian wins OAA Scholarship

The Territory Branch is delighted at its success in nominating a candidate for one of the Association's 2009 scholarships.

The nominee is Rebecca Evans, who will be studying for a degree in Teaching and Learning at Charles Darwin University. Rebecca was presented with her scholarship by Her Excellency Ms Penelope Wensley AO, Governor of Queensland, at the Annual Conference in Brisbane.

In her studies Rebecca will be mentored by Wendy James OAM, Sister

Elizabeth Little OAM and Rosemary Burkitt OAM

Meeting with the Alice Springs Mayor

In the course of a trip to Alice Springs in February, Stewart Cox and Secretary Michael Martin met the Alice Springs Mayor, Damian Ryan, to seek, successfully, his support for establishing a Central Australian Regional Group of the Association.

With the support of the Mayor and long-term centralian Ted Egan AO, the Committee is confident of establishing the group over the next 12 months.

Talking over old times

The President of Global Filipinos Australia, Lolita Farmer OAM (left), with the Governor-General, Ms Quentin Bryce AC, at their meeting earlier this year. Both are former members of the National Women's Advisory Council. They discussed "issues of common concern affecting women, especially migrant women".



Faith, a bakery and polar travels



Victoria's Eastern Suburbs Regional Group multifaith service and lunch was held at Clifford Park on November 28. Chatting before the service were Rabbi Jonathan Keren-Black OAM, Father Grant Morrow OAM and Deaconess Doris Fletcher OAM. INSET: Flower arrangements prepared by participants for the service.

The Marysville Bakery's Lyn Phelps and Joan Noke, who call themselves The Two Fat Ladies, entertained members with a lunchtime address after the annual general meeting of the Order of Australia Association Victorian Branch Eastern Suburbs Regional Group held at the Templestowe RSL last September.

Sadly, the beautiful town of Marysville was all but destroyed in Victoria's Black Saturday bushfires. One of the few buildings left standing was the bakery.

• • •

A lecture by **Kester Brown OAM** on travels to the north and south polar regions was well-attended in February.

Kester Brown, who was chief anaesthetist at the Royal Children's Hospital, Melbourne, wrote a book on the development of anaesthesia in the 20th century as

Notes from the Eastern Suburbs Regional Group in Victoria

well as on his travel adventures.

His lecture on his extensive travels in the far north and far south of the world was accompanied by extraordinary images, both photos and paintings, of places few of us will ever get to see. It was a most interesting and informative presentation.

• • •

A civic reception, being planned by City of Whitehorse Mayor, **Helen Harris OAM**, will be to recognise recipients of Order of Australia awards in Whitehorse in 2009.

Other councils are being encouraged to acknowledge award recipients in their municipalities.

Make it Adelaide in February

Where will you be in February? One of the best places you can go is Adelaide, SA, February 11 to 14 for the 24th National Conference of The Order of Australia Association.

With the theme "Celebrating Australia's Diversity", the organisers are offering a unique program — including music on a Wurlitzer organ — during the welcome ceremony at St Peter's College Memorial Hall. Other architectural gems include the Adelaide Town Hall (civic reception); University of Adelaide's Elder Hall (conference symposium); the university's Bonython Hall (multifaith observance); and the closing conference lunch at the National Wine Centre. The conference dinner and OAA Foundation awards will be at the Adelaide Conference Centre.

Pre- and postconference activities include wine-region tours of the Barossa and McLaren Vale plus the seals on Kangaroo Island; and a visit to the Australian Submarine Corporation. For information, call SAPMEA Meetings Management on (08) 8274 6053 or email ooa2010@sapmea.asn.au

The conference brochure is enclosed with this issue of *The Order*.

National Conference planning

All branches have been asked whether the structure of the National Conference and AGM meets the needs and expectations of the membership. If you have any suggestions for improvements tell your branch committee.

In addition to Adelaide next year and Hobart in 2011, branches have offered to host the National Conference and AGM: **2012 Darwin**, probably in late March or April and **2013 Canberra**, late February to coincide with Canberra's Centenary.

Tasmania looks ahead to 2011

Tasmania will host the Order of Australia Association's 2011 national conference and plans are under way already to make it the best ever.

All three regions of Tasmania have held regular meetings, some with guest speakers, others with lunches and welcoming functions for the Australia Day recipients of the Order. The investiture at Government House and the official welcome dinner were held on May 15.

The Northern Regional Group had a barbecue in January, a lunch in April and a lunch in June planned, as well as a welcome for new recipients. A lunch is organised for July.

The North West Regional Group has planned a major Queen's Birthday lunch in Burnie, the Governor of Tasmania, His Excellency Peter Underwood AC, as guest of honour.

People — medals — issues

The Australian Century

In an address to the Royal Commonwealth Society, Perth, WA, on Australia Day this year, defence and strategy adviser to governments and heads of state **Gregory R. Copley AM** said, “We now face an age in human history in which — in the titanic upheavals and change now beginning — great things will be possible for societies who dare, who risk, and who strive in the rewarding selflessness of a vision of an harmonious, unified people.

“Equally, we face an age in which all manner of despair and decline is possible for those who fail to dare, who fail to risk or strive; for those who sit in silent and self-righteous expectation that the fruits of the world will be given to them...”

Gregory Copley, who serves as an adviser on strategic issues to a number of governments and leaders, is President of the International Strategic Studies Association (ISSA), based in Washington, DC. He is Editor-in-Chief of Defence & Foreign Affairs publications, and the Director of Intelligence at the Global Information System (GIS), an on-line,



Major General Bill Crews AO (Retd)

encrypted-access, global intelligence service that provides strategic current intelligence to governments.

He is a founding Director (and at present Chairman of the Research

Committee) of Future Directions International (FDI), the Australian strategic research institution.

He has written numerous books and academic papers on defence and security for the future.

For a full text of his paper, email grcopley@aol.com.

Top brass at Australian War Memorial

Former Chief of the Defence Force **General Peter Cosgrove AC MC (Retd)**, author **Mr Les Carlyon** and **Major General Bill Crews AO (Retd)** have been reappointed to the Australian War Memorial Council. All were first appointed in 2006. The part-time reappointments had been approved by **Governor-General Her Excellency Ms Quentin Bryce AC**.

General Cosgrove was elected Chairman in 2007 after being an ex-officio member in 2000–2002.

Les Carlyon has been reappointed until April 2012, as has General Cosgrove. A former editor of several metropolitan newspapers, Les twice won the Walkley Award and wrote the best-seller *Gallipoli*. His recent book *The Great War* was a joint winner of the Prime Minister’s award for Australian history.

Major-General Crews has been reappointed until April 2011. He has been National President of the Returned & Services League of Australia since 2003.

The Australian War Memorial Council comprises 10 part-time members and the Chiefs of Army, Navy and Air Force as ex-officio members.

See last item of advertisement opposite.

See also report on page 4.



THE ORDER OF AUSTRALIA ASSOCIATION MERCHANDISE



Both the tie and the scarves are of new design. The scarves are made of polyester twill or polyester chiffon.

Please SEND ME:

- No. Tie @ \$35.00 + \$2 postage
- Tie (original design) @ \$35.00 + \$2 postage
- Scarf @ \$27.50 + \$2 postage
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- Cufflinks (sets) @ \$30.00 + \$5 postage
- Brooch @ \$15.00 + \$2 postage
- Booklet *Speeches to Members of the Association* by Sir Zelman Cowen (Pictured opposite) @ \$10.00 + \$2 postage

Cheque attached; or charge my Visa Mastercard

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Mr Richard Rozen OAM

National Merchandise Officer

The Order of Australia Association

3/144 Were Street, Brighton, Victoria 3186

Fax: (03) 9592 1767 Tel: (03) 9592 8068

NOTE: ONLY MEMBERS MAY WEAR TIES, SCARVES, BROOCHES, CUFFLINKS

Changes agreed on medals

The Parliamentary Secretary for Defence Support, **Dr Mike Kelly AM**, has accepted the recommendations of the Defence Honours and Awards Tribunal report of the inquiry into recognition of service by Australian military personnel who served with 4th Battalion, Royal Australian Regiment (4RAR), in Malaysia in 1966–67.

The tribunal has recommended that the end date for the Australian Active Service Medal (AASM) 1945–75 with Clasp “MALAYSIA” be extended to 14 September 1966 inclusive for service in Borneo.

He has accepted the tribunal’s recommendations on the eligibility criteria for the Australian Defence Medal which recognises Australian Defence Force regular and reserve personnel who have, within a set time, “demonstrated their commitment and contribution to the nation”, Dr Kelly said.

In particular, the report contains a recommendation that applications for the ADM by former serving members who were medically discharged without a compensable injury or illness be considered on a case-by-case basis.

The tribunal’s full report is available at www.defence-honours-tribunal.gov.au. Further information on Defence honours and awards is at www.defence.gov.au/medals/

National Executive expenditure review

We are all aware that, despite the recession, some costs continue to increase and the Order of Australia Association is not immune from these pressures. We are conducting a continuing review to identify areas of activity where we can achieve savings without reducing services to members. At this stage, two areas of our operation can be modified to achieve greater efficiencies:

1. AGM Management

In 2008–9 the cost of distribution of papers relevant to the AGM exceeded \$25,000, yet fewer than 150 members attended the AGM.

The Corporations Act 2001 requires that all members must have access to a range of documents associated with the AGM. However, Section 316 of the

Funeral notices



OAA members, their families and friends are advised that the Association's logo can be used in obituaries and funeral notices of members. The Australian Association of Funeral Directors has been advised and local branches may be contacted by those who would like to use it.

Wanted: Honorary Legal Adviser

From time to time (but infrequently) we need to seek advice on the application of the Corporations Act 2001 to our Association and any subsequent implications for our Memorandum and Articles of Association. The Association would be grateful for an offer of *pro bono* support by a legally qualified member of the Association. If you are willing to help, please contact the National Secretary on oaasecretariat@ozemail.com.au.

Act advises that members may elect to receive or not receive the documents. The law does not permit us to presume that you don't want them.

To allow you to make that choice we have included a reply-paid declaration with this issue of *The Order*. We ask you to seriously consider if you need the documents in advance of the AGM.

To help you decide, please note that: Downloadable copies of all AGM documents will be available through the Association's web site at least 21 days before the AGM.

Copies of all documents will be available at the AGM to all members who have advised an intention to attend it.

2. The Order

The Order is published twice a year and generally runs to about 12 pages. It costs in excess of \$50,000 a year to provide. As a means of communicating with members it is complemented by branch newsletters.

National Office Notes by Roger Dace AM QGM, National Secretary

The Order carries only a minimal amount of advertising but, by revamping the magazine, we should be able to attract suitable advertising support to offset costs.

Many of the nation's decision-makers are members of our Association, whose members represent every area of endeavour at levels of excellence not matched by any similar organisation. *The Order* should reflect this.

To attract advertisers, reduce costs and increase our distribution, we propose to:

- engage a professional advertising manager or agency (the Association maintaining editorial control);
- increase the frequency of the magazine to at least quarterly;
- solicit informative, challenging articles by Association and Order members on topics in their areas of expertise;
- provide space in *The Order* for branch news and events (as at present);
- include a "letters" page to encourage member debate and participation;
- carry a range of articles that are intellectually stimulating.

All these concepts are designed to offer content and structure that adds value to a member's subscription and creates a significant magazine in which appropriate national advertisers would buy space.

We would like to see the next edition of *The Order* in a trial format for further member input, so please have your say about your national magazine by writing to the National Secretary with comments, criticisms and suggestions.

Comments can be emailed to oaasecretariat@ozemail.com or sent to Old Parliament House, Canberra, 2600

Forum gives members a voice

by Peter McDermott AM CSC, Deputy National Chairman

For the last few years, the Order of Australia Association has conducted a forum for members of regional groups to raise and discuss issues relating to their operations.

In 2008, a comprehensive review of all rules and procedures was conducted, significant potential benefits arising in the way in which the Association will support its members at the branch and regional group levels. All bylaws have been reviewed and reissued, with particular emphasis on the bylaw relating to regional groups.

New management guidelines have also been developed and now give branches and their subordinate regional groups clear guidance on how to manage their activities. This new guidance resulted in solving many of the problems that had beset regional groups.

The National Committee decided, in mid-2008, to expand the scope of the annual regional group meeting to allow for matters of wider interest to be discussed, and to commence an annual informal

dialogue between the OAA leadership and its members.

The aim of this new Members' Forum was to give all members attending the National Conference the opportunity to discuss any and all issues relating to OAA activities.

This year's Brisbane conference provided a great opportunity to introduce this initiative.

It brought together branch chairmen (who, as members of the National Committee, are closest to the delivery of services) and members from across the organisation.

The forum was moderated and introduced by me as the Deputy National Chairman (and National Regional Groups Coordinator).

First I provided an overview of the way we manage the association, speaking of our vision and goals, of the new management guidelines and our new strategic plan.

The plan reminds us that we do three things in the OAA — look after:

- our members;
- our Association; and
- the communities we serve.

I explained how these new and revised documents give us clear direction in the things we do, making us a more attractive and dynamic organisation and one that members are proud to belong to and new recipients are proud to join.

Branch directors echoed these themes in their individual presentations, speaking of the way branches have folded — and will fold — their regional groups more closely into their branches.

Members had much to say and their concerns and plaudits were recorded and will be acted upon as appropriate by the Executive.

A consistent theme was the nature of the conference and its structure. All agreed that the forum was a great success, improving dialogue between the regional groups of the branches, the branches and the National Committee.

The forum will be a focus of future conferences.

Sir William Refshauge 1913–2009

Major-General Sir William Refshauge AC CBE ED died on May 27, aged 96. He was made a Companion in the Order of Australia in 1980, having been knighted in 1966. An obstetrician, surgeon, physician and medical administrator, "Bill" Refshauge pioneered many aspects of medical science in the military and after he had left the Army. Among his many appointments he was Secretary-General of the World Medical Association 1973–76, President of the World Health Assembly 1971 and chairman of the WHO executive board 1969–70.

Big bucks — daily

Major-General Peter Abigail AO (Rtd), as Director of the Australian Strategic Policy Institute, is responsible for the publication of a regularly published book with, arguably, the longest title.

Seventy-two million, nine hundred & ninety thousand, three hundred & seventy-five dollars & thirty-four cents per day is just part of the title of the Institute's Defence Budget Brief 2009–2019, *The Cost of Defence*. Its team of writers analyses the cost of Australia's defence, from equipment costing billions to ASPi's own contribution to the daily cost — a mere \$7,827.45 a day.

Rare bedside ceremony for OAM



Stanley Clarence Chilcott OAM, the founder of Temcare, was awarded the Order of Australia Medal in the Australia Day honours and received it in a rare and early ceremony just before he died this year. For 40 years Temcare has offered respite and mentoring for children up to 15 years and helping families in the community. Mr Chilcott, with advanced cancer, was in palliative care at Calvary Health Care Bethlehem, Caulfield, Victoria, when the honour was announced. The general investiture was to be held in March, so plans were made to hold it at Bethlehem early. The medal was sent to Melbourne and Nancy Price (right, above), who nominated Stan for the award, presented it to him on January 29. He is survived by his wife, Barbara.

Preserve the memory and acknowledge the support of others

We can help you preserve the memory of your Investiture and acknowledge

the support of family and associates who contributed to your award.

We offer to :

- supply you with a high-quality replica of your medal, with the appropriate ribbon;
- copy your Warrant;
- supply a plate with the details of your award;
- prepare a display frame with two of your photographs from your Investiture day, as illustrated, or to your individual design.

We offer other display options too, such as a smaller frame with a replica medal, ribbon and plate.

If you use a replica medal in a frame you can display the original in its box.

You might also consider having additional displays made for family members or for your supporters.



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