

AUSTRALIAN BIOGRAPHY

A series that profiles some of the most extraordinary Australians of our time



Dame Roma Mitchell

1913-2000

Lawyer & Governor

This program is an episode of **Australian Biography** Series 2 produced under the National Interest Program of Film Australia. This well-established series profiles some of the most extraordinary Australians of our time. Many have had a major impact on the nation's cultural, political and social life. All are remarkable and inspiring people who have reached a stage in their lives where they can look back and reflect. Through revealing in-depth interviews, they share their stories—of beginnings and challenges, landmarks and turning points. In so doing, they provide us with an invaluable archival record and a unique perspective on the roads we, as a country, have travelled.

Australian Biography: Dame Roma Mitchell

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Study guide prepared by Darren Smith © Film Australia

Also in Series 2: Faith Bandler, Franco Belgiorno-Nettis, Nancy Cato,
Frank Hardy, Phillip Law, Elizabeth Riddell

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SYNOPSIS

Born in Adelaide in 1913, Roma Mitchell was the daughter of a solicitor killed in the First World War. Roma's mother, who believed in tertiary education for women, put her through a law course at the University of Adelaide during the early years of the Depression. She graduated in December 1934, and the following February began as a barrister with an Adelaide law firm.

During the 1930s she did much work in the field of domestic violence. At first, Dame Roma says, her main aim was simply to be a good barrister. In 1962 she became the first Australian woman to be admitted as a Queen's Counsel. Then, in 1965, she became a judge of the Supreme Court of South Australia, the first woman in Australia to be appointed to that position. She also led a deputation of women seeking the right for women to serve as jurors.

Among other appointments, Dame Roma has been Chairman of the Human Rights Commission, President of the Churchill Fellowship and Chancellor of the University of Adelaide. She was awarded the OBE in 1971 and in 1991 was appointed Governor of South Australia, again becoming the first woman in Australia to hold that post.

CURRICULUM LINKS

This program will have interest and relevance for teachers and students at secondary and tertiary levels. Curriculum links include Legal Studies, Human Society and Its Environment/Studies of Society and Environment, Career Studies, History and English.

HISTORICAL BACKGROUND

War and the Homefront

Dame Roma Mitchell tells of the impact of her father's death as a soldier in the First World War on her family. Australia had over 59,000 fatal casualties in that war and about 40,000 in World War Two.

The human cost of the wars had a significant impact on the homefront, particularly for the families left behind. Families and communities grieved following the loss of so many men, and women increasingly assumed the physical and financial burden of caring for families.

For Dame Roma's family, aside from the emotional impact, the loss of her father put a financial strain on them. This was particularly felt by Roma's mother who, like many in her situation at the time, had not been trained for any profession and struggled to earn enough money to support her children in the way she and her husband had planned.

During both wars, families and the role of women in Australia changed substantially. The need to feed, clothe and resource Australian servicemen meant increased demand for labour, and many women were recruited for this aspect of the war effort. Women with husbands in the services juggled the roles of breadwinner, sole decision-maker, parent and home-manager.

News from loved ones came via mail that was delayed and heavily censored. The receipt of a telegram was dreaded, as this was how news that a loved one was dead, wounded or missing was conveyed.

When war came to an end, its impact on the homefront continued. The survivors who returned had experienced life-changing events; sometimes they had physical and mental scars that needed ongoing care.

- How did Dame Roma find out about her father's death? What might it have felt like to find out that way?
- Why do you think telling her sister about her father's death was 'extraordinarily responsible' for a four-year-old?
- What are some of Dame Roma's views about expressing emotions? How might they relate to the experiences she mentions as a child?
- In what other ways does war impact on the homefront?
- Can you think of other roles women play in war?

Activity

Letter writing. Students write a letter as a wife, parent, sibling or child of a soldier posted overseas during a war, expressing how they feel and what life has been like at home. They could then write a letter from the soldier as a response.

LEGAL SYSTEM

Lawyers

Dame Roma Mitchell carved out a successful career in law, starting out as an articled clerk to become a Queen's Counsel then a supreme court judge. In the program, she provides some insight into some of the challenges encountered by members of the legal profession.

Solicitors and barristers are two key players in the legal profession. Of the two, barristers tend to strike more of a chord in the public's imagination. Their role is limited to court advocacy and advisory work within specialised areas of law. Solicitors, on the other hand, have a more 'hands-on' role with clients. They are responsible for advising on legal matters, representing clients in court for summary matters (that is, less serious matters such as traffic offences) and instructing barristers in relation to more complex advocacy work. Depending on their field of law, solicitors can also be involved in drawing up contracts and agreements, advising on compliance with the law and negotiating on behalf of clients in commercial or other dealings. The rigidity of the line between solicitor and barrister varies amongst states/territories.

The title of Queen's Counsel (QC), which was received by Roma Mitchell in 1962, is accorded to barristers in recognition within the legal profession of their achievements as barristers. The appointment of Queen's Counsel provides a public identification of barristers whose standing and competence justify an expectation that they will provide outstanding service as advocates. In some states (such as NSW), the Queen's Counsel title has been changed to Senior Counsel (SC).

One reason for celebrating Dame Roma's achievements as a woman in law is the difficulty women experienced at the time entering into a legal career. Roma was one of only a handful of lawyers practising in South Australia in the 1930s and was paid far less than her male counterparts. Historically, law has been a profession dominated by men, partly because legal work was perceived as requiring 'male attributes'.

While historically the legal profession has been perceived as a 'club for the boys', in recent decades there has been an increasing trend towards greater equality.

- What attracted Dame Roma to law? Think of other things that might motivate a person to choose a legal career.

- According to Dame Roma, what is the role of a lawyer in relation to their client?
- Why is it desirable that a lawyer not judge their client? How might this be challenging?
- How are lawyers popularly thought of? What are some of the influences on these images?
- What does Dame Roma mean about not trading upon the fact that she was a woman in her legal career?
- Identify some challenges women might have faced in moving up in the legal profession in Roma's days. Have things changed, and if so, why?

Judges and Juries

Two other key players in the Australian legal system are judges and juries – both important decision-makers in the trial process.

Between 1965 and 1983, Roma served as a judge of the Supreme Court of South Australia. Supreme courts are the highest court in each state and territory, below which sit the district and local courts, as well as specialised courts. At the federal level, the two main courts are the Federal Court and the High Court, the latter being Australia's final court of appeal. The court hierarchy provides for the right to appeal decisions and allows higher courts to review the application of legal principles by lower courts.

In the common law system, the role of judge is often compared to that of a referee. A judge's primary role is to control proceedings, ensure rules of procedure and evidence are followed, and thus ensure litigants receive a fair trial. Impartiality is fundamental to the successful execution of this role.

After listening to arguments from both parties, judges decide and rule on any points of law (such as the admissibility of evidence) and hand down a final decision (which may also include a sentence in criminal matters or an award of damages in civil matters). In the course of handing down decisions, judges also develop the law by interpreting legislation, modifying existing precedents and creating new precedents.

In many criminal matters and some civil ones, juries are used to make decisions about the facts of a dispute. (Judges decide on questions of law.) Once each party has presented its case, the judge has a duty to sum up the various arguments impartially and inform the jury about the law.

Candidates for jury service are randomly selected from electoral rolls, although some people are automatically excluded (eg politicians, legal professionals or those unable to perform the functions required of a jury). Each party to a dispute also has a limited ability to challenge selection of particular jurors in open court.

The jury system has a long history in the common law tradition. It strengthens the impartiality of the court process, involves the community in the dispensation of justice and helps minimise the gap between the law and prevailing social values. However, the use of juries has not gone without criticism. Such criticism points to the high cost of using juries, questions around the competency of jurors to make just determinations (particularly where complex facts are involved or possible prejudice) and undue influence from the media.

Concerns over the use of juries have emerged most recently with proposals to move from a requirement of unanimous to majority verdicts.

- How did Dame Roma feel about being a judge? What differences might there be between working as a barrister and as a judge?
- What qualities does she say were relevant to her selection to be a judge? What other qualities do you think a judge should possess?
- Do you think men and women bring different qualities to judicial roles? What is Dame Roma's view on this?
- What do you understand by the difference between questions of fact and questions of law?
- Why might diverse representation on jury panels be desirable?
- Identify other arguments for and against using juries.
- For what reasons might counsel in a trial want to challenge admittance of particular jurors?

Activities

Women in law. Here are the names of some other celebrated women who have made careers in law: Susan Crennan, Mary Gaudron, Barbara Holborow, Pat O'Shane, Joan Mavis Rosanove, Marilyn Warren. Ask students to choose one of these women to research and write a report on. Discuss in class suitable headings and content.

Film and television review. Students are to write a review of a courtroom or legal drama they have seen depicted in film or on television. Ask students to comment on how lawyers and the legal system are portrayed, how the portrayal might differ from real life in Australia and any issues the lawyers face in representing their clients.

Role play. Students work in groups of two to three and role-play an interview between a lawyer and client based on a given scenario. (There are links to useful client interviewing material in the reference section of these notes.)

Mock trial. Students participate in a mock trial based on given scenarios. (See the reference section of these notes for links to suitable material.)

Essay. Is it more desirable to require majority or unanimous jury verdicts in criminal trials?

AUSTRALIAN POLITICAL SYSTEM

State Governors

Between 1991 and 1996, Dame Roma Mitchell was Governor of South Australia – the first female governor in Australia.

As Australia is a federation, each state has its own constitution and political institutions, which reflect those of the federal parliamentary structure. Just as the Australian head of state is formally the Queen represented by the Governor-General, so too governors represent the Queen as head of state in each state. The position has its origins in the pre-Federation colonial governments.

A governor's main responsibility is to do all that can be done to ensure a state's democracy works. In a way, the role of governor acts as a guardian of a state's constitution, making sure the system works properly and regularly, without stalling or abuse. This requires governors to act apolitically and without preference to a particular political party or set of policies.

Governors are usually chosen by premiers, and then the Queen, acting on the premier's advice, appoints that person. The Queen can dismiss a governor on the premier's advice.

A governor has a number of powers, perhaps the most important being to assent to legislation passed by parliament, at which stage the legislation becomes law. In giving assent, a governor is bound to act on the advice of ministers. There is, however, no requirement of passive acceptance, with governors having a constitutional right to 'counsel' ministers against advising the governor to act in that way. A governor may defer action upon a recommendation by ministers until adequate information is provided and considered.

Perhaps the most controversial power of governors is their 'reserve power', which enables them to dismiss a government. This is a limited effective power of last resort that is to be used solely to protect the democratic system from stalling or being abused. It was used, for example, in NSW in 1932 when the Governor, Sir Philip Game, dismissed then Premier Jack Lang and called fresh elections. Governor Game determined that Lang was acting illegally in matters concerning state finances and the commonwealth. A more recent example, though at the federal level, was the Governor-General's dismissal of the Whitlam Government in 1975.

While the positions of governor and governor-general have attracted controversy and debate, they remain an integral part of Australia's existing constitutional system and an important check on government power.

- How does Dame Roma describe her role as Governor?
- Who is the governor in your state? (If you reside in a territory, you will not have a governor, but find out about how the roles a governor performs are organised.)
- What justification does Dame Roma give for using the reserve powers?

Activities

Job description. Students imagine they are appointing a governor or president. They are to write a set of selection criteria showing what values and skills are required of applicants. They are also to make a position advertisement from this. Students could undertake similar tasks as above for the position of school captain or president.

Research report. Students prepare a report on one of the following: the dismissal of Jack Lang by the NSW Governor; the dismissal of the Whitlam Government in 1975 by the Governor-General; the resignation of former Governor-General, Dr Peter Hollingsworth, in 2003. Brief students to include a discussion on the issues and concerns that arose from the event they select.

REFERENCES AND FURTHER RESOURCES

Dame Roma Mitchell

AustLII – Australian Reconciliation Convention speech by Dame Roma Mitchell
<http://beta.austlii.edu.au/au/other/IndigLRes/car/1997/3/speeches/plenary3/mitchell.htm>

Susanna de Vries, **Great Australian Women – From Federation to Freedom**, HarperCollins, Sydney, 2001

State Library of South Australia – Women & Politics in South Australia
www.slsa.sa.gov.au/women_and_politics/mr24.htm

Speech by then Australian Governor-General Sir William Deane at the state funeral service for Dame Roma Mitchell
www.gg.gov.au/html/fset_speeches_media_vr.html

Women and War

Australians at War – www.australiansatwar.gov.au

If you do a site search on 'letters', examples of condolence and other letters from the warfront are provided.

Australian War Memorial – www.awm.gov.au

Legal System

South Australian Courts Administration Authority – mock trial
www.courts.sa.gov.au/schools/index.html

The Blackstone Society

- client interviewing scenario – www.blackstone.asn.au/clientint.php
- trial advocacy scenario – www.blackstone.asn.au/trialad.php

Suggested films are **Australian Biography: Barbara Holborow** (2002), **A Cry in the Dark** (1988), **Erin Brockovich** (2000), **Secrets of the Jury Room** (2004), **The Staircase** (2004), **To Kill a Mockingbird** (1962), **12 Angry Men** (1957) and **Witness for the Prosecution** (1957).

Law Council of Australia (includes links to the various law societies and bar associations) – www.lawcouncil.asn.au

High Court of Australia website, which includes some noteworthy speeches from judicial members:

- 'Speaking to the modern jury – new challenges for judges and advocates', 1998 speech by Michael Kirby
www.hcourt.gov.au/speeches/kirbyj/kirbyj_london.htm
- 'Women in the law – what next?', speech by Michael Kirby
www.hcourt.gov.au/speeches/kirbyj/kirbyj_vicwomen.htm

Women Lawyers' Association of NSW – speech by Judge Gay Murrell SC, 'Judicial appointments – diversity, transparency and quality'
www.womenlawyersnsw.org.au

NSW Law Reform Commission – report on majority verdicts by juries
www.lawlink.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/pages/LRC_cref111

State Library of South Australia – Women on Juries
www.slsa.sa.gov.au/women_and_politics/polit7.htm

Australian Political System – Governors

Governor of South Australia – www.governor.sa.gov.au

Governor-General of Australia (includes links to state governor sites)
www.gg.gov.au

The Whitlam Dismissal website – <http://whitlamdismissal.com>

NSW Constitution website (includes a section on the Lang dismissal)
www.schools.nsw.edu.au/nswconstitution/html/default.htm

Suggested films are **Australian Biography** episodes on **Sir Zelman Cowen** (2006), **Malcolm Fraser** (1994) and **Marjorie Jackson-Nelson** (2004).