Welcome to Chief Justice the Hon (Anthony) Murray Gleeson AC on the occasion of a special sitting of the High Court of Australia

The following is an extract from the welcome to Chief Justice the Hon Murray Gleeson AC on his appointment to the High Court of Australia by the Attorney-General the Hon Daryl Williams AM QC MP on 22 May 1998. Of particular interest to readers of *Admin Review* is that part of the speech concerned with joint judgments by the Justices of the High Court.

The Attorney-General congratulated the Chief Justice on his appointment to the highest judicial office in Australia. He went on to describe his early childhood, his education at St Joseph's College at Hunters Hill in Sydney and his attendance at the Law School at Sydney University.

Following graduation from Sydney University with the degree of Bachelor of Laws, with first class honours, his Honour was admitted to practise as a barrister of the New South Wales Supreme Court in 1963. At the Bar, he practised in most areas of the law, but displayed particular expertise in the equity and commercial jurisdictions. He was appointed at a relatively young age as Queen's Counsel in 1974. His reputation at the bar was as an advocate with formidable analytical and technical skills.

Beyond day to day life at the Bar, his Honour served as a member of the Council of the Bar Association of New South Wales between 1979 and 1986 and as President of that organisation from 1984 to 1986. He was created an Officer of the Order of Australia in the Queen's Birthday Honours in 1986.

In 1988, his Honour's considerable talents, personal qualities and standing in the legal profession brought him to appointment as Chief Justice of the Supreme Court of New South Wales. That appointment was the first in over 50 years to have been directly from the Bar.

The Attorney-General referred to the many challenges and changes facing the Supreme Court, and the justice system in general, during the period his Honour served as Chief Justice of the Supreme Court. These included the political debate and media scrutiny of sentencing decisions in the criminal jurisdiction and the delays in the criminal justice system and the effect of this on defendants held in custody.

His Honour initiated reforms to improve efficiency within the Court including the adoption of case management strategies, and the appointment of a public information officer to the Court.

The Attorney-General said:

> The members of this Court will be aware of the desire of some within the legal profession and elsewhere to see reform in relation to multiple judgments.
>
> In the High Court it has generally been the practice for justices to write separate judgments, sometimes even when legal principle is enunciated in very similar terms in some of those separate judgments. The reader has to examine similar judgments, searching for nuances in the different expositions, in order to identify the ratio of the case.
>
> Of course, each judge, through the oath or affirmation of office, undertakes a

personal obligation to reach his or her own decision in every case. One of your predecessors, Sir Harry Gibbs, thought that "there is no surer way of discharging that obligation than by writing a judgment for oneself".

Joint judgments, Sir Harry has warned, "may lead to the danger of compromise and... may prevent the expression of individual lines of thought which may prove to be the source of new and valuable developments of legal principle".[4]

Although there are undoubtedly occasions when this will be true, there are other occasions when joint judgments can encourage the development of legal principle by stating the law more clearly than separate judgments can. Separate judgments sometimes lead to confusion, a fact realised by the four justices of this Court in the majority in the *Wik* case, when their Honours endorsed a short postscript clarifying the effect of their four separate judgments.[5]

In the highest courts in some other jurisdictions, mechanisms exist to encourage single majority judgments, without limiting the independence of individual judges.

In the United States, the Supreme Court has a system of assignment of judgments. The most senior judge in the majority assigns the task of writing the joint majority judgment to one of the majority judges. If there are judges in dissent, they will usually choose a judge, from amongst themselves, to write a joint dissenting judgment.

Of course, this procedure does not prevent a judge from writing a separate judgment if he or she is not prepared to join the resulting majority or minority judgment.

In the Canadian Supreme Court, too, the judges confer after a hearing and one of the judges who is a member of the group that appears likely to form a majority usually writes a first draft of what may become a joint majority decision.[6]

Once again, nothing prevents a judge from writing a separate judgment, whether joining the majority or dissenting.

I commend to the Court for its consideration, the possibility of adopting a procedure that encourages the preparation of joint judgments yet does not interfere with individual responsibility. Such a system could enhance the clarity of the law enunciated by this Court whose responsibility it is to state the law for all of the country. It could also produce significant economy and efficiency for those obliged to read, comment upon and report judgments, with the potential for significant savings for the community in legal and other costs.

On his appointment as Chief Justice of New South Wales his Honour also became President of the Judicial Commission of that State. This body is unique in Australian jurisdictions, with responsibilities for both judicial education and the examination of complaints against New South Wales judicial officers.

In the area of judicial education, the Commission has used information technology to make information available to judicial officers in a more easily accessible and timely manner. To this end, the Judicial Information Research System allows judicial officers and researchers easy access to research and education materials.

---

4 Gibbs, Sir Harry, "Courts and Tribunals in Australia", Address to the Lord Denning Appreciation Society, Sydney University Law School, 24 September 1984, at 9.

5 *Wik Peoples v Queensland* (1996) 187 CLR 1 at 132–133.

6 Wilson, Bertha, "Decision Making in the Supreme Court" (1986) 36 *University of Toronto Law Journal* 227 at 236.

The Sentencing Information System enables judicial officers to access sentencing statistics, and material on sentencing principles and practice. Needless to say, the ready availability of sentencing statistics is of considerable benefit to judicial officers contemplating the imposition of appropriate penalties.

The Attorney-General said:

> Needless to say, the ready availability of sentencing statistics is of considerable benefit to judicial officers contemplating the imposition of appropriate penalties.
>
> In a paper[7] presented to the Annual Conference of the Supreme Court of New South Wales in 1995, your Honour speculated that in 20 years time the Supreme Court:
>
> > "will be a 'paperless court,' operating without paper files. Solicitors will institute proceedings electronically. There will be no need for people to attend a court registry in order to file documents. The court will be both unable and unwilling to act as the repository of masses of paper".
>
> Anybody who has witnessed the advances in information technology over the last 10 years would not question the accuracy of your Honour's predictions. It is vitally important that scarce taxpayer resources expended on the application of information technology in our courts produce maximum benefits for all jurisdictions.
>
> I would hope that the Council of Chief Justices might adopt a leadership role in this area by encouraging sharing between jurisdictions of information on technological change to ensure that the benefits of initiatives to improve the workings of our courts are shared by all.

[7] The Supreme Court in Twenty Years Time

In 1989, his Honour was appointed Lieutenant Governor of New South Wales. That same year, he was made an Honorary Bencher of Middle Temple of the Inns of Court in London. In 1992, his Honour's services to the law were further recognised with his appointment as a Companion of the Order of Australia.

On behalf of the Government and himself, the Attorney-General extended to his Honour congratulations, best wishes and a very warm welcome on his appointment as Chief Justice of Australia.

Third Parliamentary Report on the Australian Legal Aid System

On 27 May 1998, the Government tabled its response to the first and second reports of the Senate Legal and Constitutional References Committee's Inquiry into the Legal Aid System. These reports have been discussed in previous issues of *Admin Review.*

Essentially, the Government's response is that the major recommendations of those reports are already being addressed, that a number of matters are the responsibility of State Governments or the legal profession and that the Government is already fully committed to resolving the impact of the *Dietrich*[8]

[8] In *Dietrich v The Queen* (1992) 177 CLR 292, the High Court of Australia considered the question of the right of an indigent accused to legal representation in a case in which legal aid had been refused. The majority concluded that where a trial judge is faced with an application for adjournment or stay by a person charged with a serious offence, who, through no fault, is unable to obtain legal representation, then in the absence of exceptional circumstances the trial should be adjourned, postponed or stayed until representation is available. If a trial proceeds in those circumstances without representation, the