negated the effect of anti-avoidance provisions such as section 260 of the *Income Tax Assessment Act* 1936 (Cth). The Gibbs Court began to alter this approach. It no longer took a literal approach, and sought the intention of the provisions (*Cooper Brookes v FCT* (1981)). It revived the effectiveness of section 260 as an anti-avoidance provision in *Commissioner of Taxation v Gulland* (1985), and upheld the penalties for 'bottom of the harbour' schemes in *MacCormick v FCT* (1984).

In summary, the Gibbs Court moved away from 'strict **legalism**', took a more expansive view of Commonwealth legislative power, and asserted its own role as the pre-eminent judicial authority for Australia.

Anne Twomey

Gleeson, (Anthony) Murray (*b* 30 August 1938; Chief Justice since 1998) was the first Chief Justice of a **state Supreme Court** to be appointed as **Chief Justice** of the High Court since **Griffith**, whose Queensland Chief Justiceship predated the High Court.

Gleeson was born at Wingham on the north coast of NSW, the son of a local garage proprietor. From the age of 11, he was educated at St Joseph's College, Hunters Hill in Sydney, where he excelled at cricket (as a spin bowler) and at the more vocational debating and oratory. After gaining a first-class honours degree at the University of Sydney and spending a year as a solicitor with Messrs Murphy & Moloney, he was called to the Bar in 1963, reading with Laurence Street, on the same floor as another leading **equity** and commercial junior, **Mason**. Gleeson thus started his career in chambers with his future predecessor as Chief Justice of NSW and in company with one of his future predecessors as Chief Justice of Australia.

The demand for Gleeson as a junior **counsel** was high—as was the quality of his practice. He appeared in the High Court frequently, from his first year, mainly in **taxation** and commercial cases, along with important constitutional arguments. His leaders included Maurice Byers, **Dawson**, and, more often, **Deane**. Opponents included **Aickin** and **Wilson**.

Murray Gleeson, Chief Justice since 1998

His public law briefs included *R v Anderson; Ex parte Ipec-Air* (1965) concerning government contracts, the *Payroll Tax Case* (1971) concerning the Commonwealth taxing the states, the *Tasmanian Breweries Case* (1970) concerning **judicial power**, *Strickland v Rocla Concrete Pipes* (1971) and *R v Trade Practices Tribunal; Ex parte St George County Council* (1974) concerning the **corporations power**, *Kailis v WA* (1974) on state licence fees as **excise duties**, and *Barton v Commonwealth* (1974) confirming the prerogative right to extradition. These were a tiny fraction of his industry as a junior, largely in the robust world of Sydney commercial litigation.

Ironically, in the days before section 78A of the ***Judiciary Act*** 1903 (Cth) (added in 1976) entitled the Commonwealth, states, and eventually the **territories** to **intervene** as of right in constitutional litigation in the High Court, Gleeson's early briefs for the Commonwealth and for NSW seeking to intervene in constitutional cases both resulted in the High Court refusing to hear him.

Gleeson took silk early, in 1974. His career as senior counsel remains second to none. He dominated wherever his varied practice took him. The emphasis remained heavily commercial and constitutional, but his success before a jury in defending Ian Sinclair, Federal Leader of the National Party, against criminal charges, showed that his skills were versatile. The law reports record his dominance of appellate and other High Court cases, but his standing was based equally on his impact at trial. His trademark analytical skills reduced legal propositions to aphoristic principle, and citation of authority to the truly essential. As a cross-examiner, his precision was displayed to a high degree—not always appreciated by the witnesses, but leaving an economical **transcript** full of facts. In appellate **argument**, the transcripts of Gleeson's addresses have a coherence that many other lawyers could hope to attain only in their written submissions.

Constitutional arguments in which Gleeson appeared as silk include the *PMA Case* (1975) concerning the double-dissolution trigger under section 57 for the 1974 re-election of the **Whitlam** government; the *Seas and Submerged Lands Case* (1975) concerning the territorial limits of states; *Hematite Petroleum v Victoria* (1983) concerning pipeline fees as an excise; *Pioneer Concrete v Trade Practices Commission* (1982) and *Re Cram; Ex parte Newcastle Wallsend Coal* (1987) concerning judicial power; *MacCormick v FCT* (1984) concerning the taxation power and 'bottom-of-the-harbour' companies; *University of Wollongong v Metwally* (1984) and *AMP v Goulden* (1986) concerning section 109 **inconsistency** and anti-**discrimination** law; *Northern Land Council v Commonwealth* (1986) concerning the territories power and the Ranger uranium project; and the ***Tasmanian Dam Case*** (1983) and *Richardson v Forestry Commission* (1988) concerning natural heritage legislation and the **external affairs power**, among other important issues.

Gleeson appeared for William McMahon, former **Prime Minister**, in *Evans v Crichton-Browne* (1981), successfully preventing the rhetoric of political debate from being subjected to judicial scrutiny under the Commonwealth *Electoral Act* 1918. He argued the application of the privilege against self-incrimination in *Sorby v Commonwealth* (1983), the requirements of **natural justice** in *National Companies*

and Securities Commission v News Corporation (1984), the availability of **contempt** powers in *Australasian Meat Industry Employees Union v Mudginberri Station* (1986), and fundamental matters of market power in *Queensland Wire Industries v BHP* (1989). Commercial briefs included *Carlton & United Breweries v Castlemaine Tooheys* (1986) concerning defences arising from the *Trade Practices Act* 1974 (Cth) in Supreme Court proceedings, and *Oceanic Sun Line Co v Fay* (1988) concerning the stay of proceedings because another jurisdiction is more suitable. The commercial field of football litigation saw Gleeson against the Western Suburbs Rugby League Club in *Wayde v NSW Rugby League* (1985).

Meantime, Gleeson continued to appear in the High Court regularly in taxation and other commercial cases, his practice being truly national. His opponents in the High Court included future members of and colleagues on the High Court, namely Aickin, Deane, Dawson, Wilson, **McHugh**, **Gaudron**, and **Gummow**. Gleeson's practice was not confined to Australia, and he won the last appeal by leave to the **Privy Council** from the High Court, being *Port Jackson Stevedoring v Salmond & Spraggon* (1980). (Appeals by leave to the Privy Council were abolished in 1975, apart from cases already commenced.)

Gleeson became President of the NSW Bar Association in 1984. The next year, he received the AO for service to the law. His direct approach proved effective. Answering a criticism that abolition of the two-counsel rule (which made a junior compulsory whenever a silk appeared) threatened the established social order, Gleeson stated the case for modernised professional regulation—'That rule was necessary only for cases where it should not exist'.

Allied with Gleeson's crisp vigour professionally was, and is, a sense of **humour** shared mostly in private with friends, family, and colleagues. However, as a leading barrister—and frequently during his judicial life—his characteristic dry wit and mordant understatement have been displayed in nearly all his public speeches.

Gleeson's appointment as Chief Justice of NSW—the first barrister to be thus elevated directly since Frederick Jordan in 1934—was popular, although the prospect of the continuation of his cross-examination skills was daunting for advocates. The next decade saw considerable change as the Supreme Court grappled with the spiral of growing demand, cost stringencies, and delay, all in a climate of heightened consumer scrutiny. On many occasions, Gleeson set out to mark, in public utterances, appropriate boundaries for the political debate concerning litigation: he insisted that the administration of justice was no mere consumer service, but rather an integral part of civilised government, and decried suggestions that supposed the invisible hand of the market, or productivity measures, to have any legitimate claim to dictate the way improvement of the legal system should proceed. In an era where mercantile functionalism sometimes appeared to dominate thinking about the profession, Gleeson continued and deepened the tradition of the Supreme Court Chief Justice declaring and explaining the elementary idealism and duties that should characterise the profession.

Gleeson also continued the tradition of the Chief Justice presiding frequently in the Court of Criminal Appeal—an area of work in which he was much more heavily involved on the Bench than he had been at the Bar. A notable decision was *R v Birks* (1990), where the availability of trial counsel's incompetence as a ground of appeal was explained. Another was *A-G (NSW) v Milat* (1995), where the Court refused to allow the issue of representation, as a basic requirement of fairness in a serious criminal trial, to be determined by current rates of professional remuneration. Strong statements of principle concerning criminal contempt by media publication came from Gleeson in *A-G (NSW) v TCN Channel Nine* (1990), and in *A-G (NSW) v Dean* (1990), concerning a confessed murderer.

Despite the extent of his commitments to **criminal law** and to administration, Gleeson also presided relatively frequently in the Court of Appeal, where his strength of analysis and enunciation of doctrine, coupled with logical presentation of argument (often exceeding the logic shown by counsel), are displayed in areas including **constitutional law**, **administrative law**, **commercial law**, and equity. He presided in *Greiner v Independent Commission Against Corruption* (1992), which exculpated (too late) a Premier of statutory corruption. His concern for the necessary tensions and balance in a system of **responsible government** is shown in *Egan v Willis* (1996)—upheld by a Bench of six in the High Court, after his own **appointment** to the High Court—concerning the power of a house of parliament to compel the executive to produce documents. In *Ballina Shire Council v Ringland* (1994), Gleeson noted the High Court's implied freedom of **political communication** as reinforcing the conclusion that local councillors could not sue for **defamation** on statements about their performance.

Systemic issues concerning the overlapping or fragmentation of jurisdictions received attention from Gleeson in the Court of Appeal in *National Parks and Wildlife Service v Stables Perisher* (1990), concerning the limited powers of the Land and Environment Court and the important doctrine of accrued or pendent jurisdiction, *Goliath Portland v Bengtell* (1994), concerning so-called forum shopping and extra-territorial jurisdiction, and *Falls Creek Ski Lifts v Yee* (1995), concerning the territorial restrictions on the District Court.

In the area of **civil liberties**, he addressed the limits of arrest without warrant in *Lippl v Haines* (1989), the balance between public hearings and damage to reputation in *Independent Commission Against Corruption v Chaffey* (1993), and the publication of telephone taps in *John Fairfax Publications v Doe* (1995), where he called in aid European human rights jurisprudence. Concerning the **legal profession**, he addressed immunity of advocates in *Keefe v Marks* (1989)—in a way side-stepped a decade later in the High Court in *Boland v Yates Property Corporation* (1999)—and the inappropriateness of charging solicitors' costs on a 'simple flat, hourly rate' in *NSW Crime Commission v Fleming and Heal* (1991).

Unsurprisingly, Gleeson's Court of Appeal jurisprudence includes notable commercial and **property** cases. Significantly, he used the ambit of **law-making** permitted to an intermediate appellate court to update case law in light of changed social circumstances. Thus, in *Green v Green* (1989), he declined to count the lack of formal marriage against an equity arising in circumstances of cohabitation, and in *Brown v Brown* (1993), he refused to distinguish between fathers and mothers concerning presumptions arising from

the advancement of money. As to the burgeoning use of mediation, he emphasised the limits imposed by its consensual nature in *Gain v Commonwealth Bank* (1997).

Too short a time has passed since Gleeson's translation to Chief Justice of the High Court on 22 May 1998 to generalise about his individual jurisprudence in that Court. One striking feature of his first two years has been the very large majority of **joint judgments**. Nearly all of Gleeson's judgments so far have been together with other Justices—and no pattern has emerged of repeated alliance with one or other of his colleagues. Relatively frequently, he is party to a majority judgment that plainly provides the High Court's ***ratio decidendi***. A good example is *John Pfeiffer v Rogerson* (2000), where Gleeson joined with Gaudron, McHugh, Gummow, and **Hayne** in a joint judgment changing the **common law** governing choice of law in intranational **torts**. A number of his judgments efficiently summarise and argue for the majority conclusion. Gleeson's judgment in *Re Wakim* (1999), where he joined with other Justices in rejecting the **cross-vesting** scheme, is an ideal explanatory exposition of the problems with this solution to the politically difficult issue of separate jurisdictions in a federation. His judgment in *Katsuno v The Queen* (1999) about the fundamental requirements for **jury trial** is in the same mould.

So far, Gleeson has very rarely dissented. The dangerous task of attributing judicial prose in a joint judgment to one of its declared authors should not be attempted; nevertheless, the pellucid exposition of issues and statement of determinative principles at the commencement of judgments to which Gleeson has been party is unlikely to be free of his influence. Nor is the stern limitation of the role of a Chief Justice, in relation to judicial **independence**, in *Re Colina; Ex parte Torney* (1999).

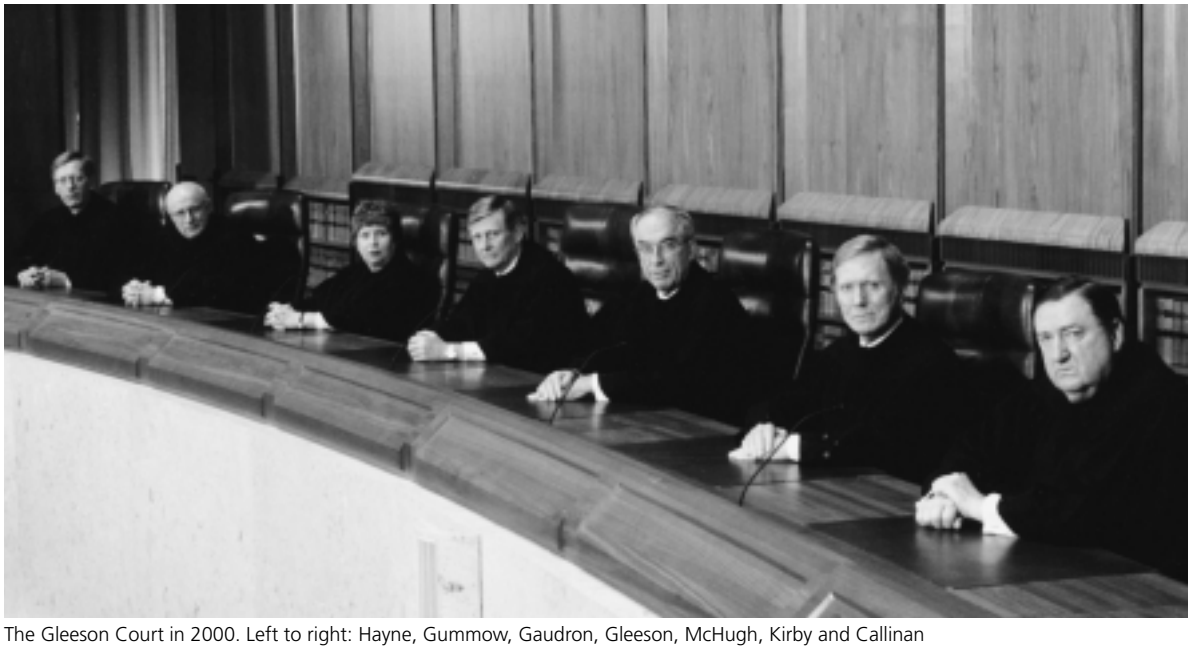
It is nonetheless possible to discern a continued attention by Gleeson to bright lines between legislative, executive, and judicial power, particularly where merit review is sought (for example, *Bachrach v Queensland* (1998); *Re East; Ex parte Nguyen* (1998); *Northern Territory v GPAO* (1999); *A-G (Cth) v Breckler* (1999); *Abebe v Commonwealth* (1999); and *Minister for Immigration v Eshetu* (1999)).

In 2000, the Australian Law Reform Commission suggested the establishment of an Australian Judicial College. As head of the Australian judicature, Gleeson's approach to that suggestion is likely to be important, and his energetic role as President of the NSW Judicial Commission would give him unparalleled insights into such an innovation. His Chief Justiceship may, therefore, be marked by a contribution off the Bench as enduring as service on the Bench.

Bret Walker

Gleeson Court (22 May 1998–). At the end of 2000, **Gleeson** remained the most recently appointed Justice. A few months before his appointment, **Dawson** and **Toohey** retired and were replaced by **Hayne** and **Callinan**. Four members of the Gleeson Court were, therefore, also members of the **Brennan Court** throughout all or most of its duration (**Gaudron**, **McHugh**, **Gummow**, and **Kirby**).

It is too early to discern any pronounced characteristics or trends in the judgments of the Court, although there has been some tendency to place more emphasis on 'the text and structure' of the Constitution or a statute as a basis for interpretation. In an address to the Australian Bar Association in New York in 2000, the **Chief Justice** extolled the virtues of '**legalism**' and 'legal reasoning' in a manner reminiscent of **Dixon** and **Barwick**. He did not explain how it differed from other forms of reasoning or examine the problem of choice of interpretation where more than one result is possible. This address contrasted with those given by **Mason** as Chief Justice (see also **Law-making role: reflections**). Similarly, Gummow and Hayne distinguished arguments based on



The Gleeson Court in 2000. Left to right: Hayne, Gummow, Gaudron, Gleeson, McHugh, Kirby and Callinan