Remarks on the final sitting in Sydney of Gleeson CJ [2008] HCATrans 302 (26 August 2008)

Sydney, as you know, is a scene of much activity for the High Court. As it happens, applications for special leave to the High Court are not currently increasing. The number for the year end 30 June 2008 was almost exactly the same as the number for the year end 30 June 2007, but 72 per cent of those were filed in the Sydney Registry.

There is a certain symmetry about this occasion. In October 1988, I was appearing in my last case as a barrister. It was a commercial arbitration, at that stage being heard in London. I was appearing with Mr Kenneth Hayne QC, and Mr Mukhtar of the Victorian Bar. In the finest traditions of the New South Wales Bar, I left them both and flew back to Sydney. I was sworn in as chief justice in early November. When I came to the New South Wales Bar, I had read with Mr L W Street, and he was my predecessor as chief justice. He arranged to retire on All Saints Day in 1988, giving himself the best possible opportunity of salvation, and I was sworn in on 2 November. Here, today, I am sitting on my last case as a judge in company with Justice Hayne.

Thank you for your observations.

Special sitting of the High Court of Australia to welcome French CJ, Sydney, 30 September 2008

FRENCH CJ: Mr Gageler and Mr Macken and ladies and gentlemen, I thank you for the welcome that you have accorded me on behalf of the legal profession in New South Wales.

The legal system in this state has been contentiously compared to a judicial vortex. In its metaphorical application, the term 'vortex' is defined as a state of affairs likened to a whirlpool for violent activity and irresistible force. In 22 years as a judge of the Federal Court who sat many times in Sydney at first instance and on appeals, I can say that I have never found the local profession to be violent in its activity or more than usually irresistible.

On the other hand, I have, both in practice, before I joined the Federal Court and while serving on that court, made many friends among the practitioners and judges of this jurisdiction. Western Australians saw quite a number of Sydney counsel in their courts from the 1970s when barriers to entry were lowered to practitioners from anywhere in Australia accompanied by the equivalent of a local collective shout of 'Bring it on'.

Both the Sydney and Perth professions were early and enthusiastic proponents of the idea of a national legal profession. A class of person known as 'West Australian entrepreneurs', for a time a term of national abuse, generated much work for both professions. One of the earliest cases of large-scale prosecutions for criminal conspiracy in the 1970s attracted to Western Australia, among others, as they then were, William Deane and Malcolm McLelland.

I enjoyed working with and against Sydney counsel in Perth, appearing as junior to Robert Ellicott in a case about dredging where we were opposed to Tom Hughes and James Allsop, with Richard Conti in the middle. James Allsop, I remember, came to town with 15,000 interrogatories. All I had to confront him was an ancient authority called *American Flange*.

The Australian Broadcasting Tribunal was active in Perth in the early 1980s and many of us in the local profession saw quite a lot of the Sydney Bar in that jurisdiction. I recall appearing in one hearing before the tribunal where Mr Stuart Littlemore foreshadowed an unspecified constitutional point. I inquired through the tribunal what the point was. Mr Littlemore said it was all there in section 51. He added, gratuitously, that I probably had not had much of an opportunity to peruse that section. I have looked forward as a judge, and still do, to having him appear and explain section 51 to me.

I have made many friends amongst the judiciary on both the Federal and the Supreme Court. The experience of sitting on the Supreme Court of Fiji with Chief Justice Spigelman, former president of the Court of Appeal, Keith Mason, Justice David Ipp and Justice Ken Handley, was very enjoyable and stimulated my own ideas about the desirability of judicial exchange. These ideas have focussed upon horizontal exchange between courts of co-ordinate jurisdiction which I am delighted to see has been taken up with enthusiasm in New South Wales.

Vertical exchange, where appellate judges sit on trials, and vice versa, is also to be recommended, although it can be hazardous. Chief Justice Rehnquist, when he was on the Supreme Court of the United States, sat at first instance in a human rights case in Virginia and was reversed on appeal. I will not be emulating his example.

To be welcomed by the Sydney profession is to be welcomed by familiar and friendly faces. I thank you and look forward to my new task and to sitting from time to time in this jurisdiction.