THE NATURE AND IMPLICATIONS OF TEXT OF INCONSISTENCY OF STATE LAW WITH THE COMMONWEALTH ACT UNDER SECTION 109 OF THE CONSTITUTION OF THE AUSTRALIAN FEDERATION

Abstract
In the main, under the sanction of the federal constitution of Australian Federation there is a concurrent legislature field were both federal legislature termed the Commonwealth parliament and States can make laws concurrently. Taxation, health, marriage, weights and measures being some examples of such areas were the commonwealth shares concurrent legislative powers with the states. Essentially, the Australia federal constitution allows the states to make laws in areas over which the commonwealth has power with a provision that such state laws do not conflict with those of the commonwealth. In light of the foregoing, this paper examines the nature of inconsistency that may occur between the commonwealth Act and the state Law and the implications under section 109 of the constitution under the doctrine of covering the field and as further judicially explained in terms of judicial inconsistency.
***Key words**: 'Inconsistency', 'Covering the Field' and 'Judicial Inconsistency'.*

1.0 Introduction

The Australian Constitution is framed into a federal model like the American model. In this sense the nature of governments called into existence as captured by Alexander Hamilton in federalist paper is apposite in Federalist No. 46 reasoned that: "The federal and state governments are in fact but different agents and trustees of the people constituted with different powers and designated for different purposes"[1]. On the premises of the foregoing Quick brought to the fore the fact that:

> The government of the Commonwealth, as distinct from the states, is one of enumerated powers. The specification of particular powers in the constitution assigned to the Commonwealth excludes all pretentions of general legislative authority in the Commonwealth. The federal parliament is supreme in dealing with matters which are expressly or by necessary implication given to it. The state parliaments are supreme in dealing with matters not taken from them or assigned to the Commonwealth.[2]

It is within the context of supremacy of the commonwealth law over state law that such doctrine of covering the field as one of the grounds the issue of an inconsistency envisaged under s. 109 of the constitution may come into the fore. When it does, it will be said that the commonwealth covers the field and the state enter the field.

The relationships which are the subjects of s. 109 includes those ones judicially deveined. Judiciary inconsistency" apart from the type of relation termed 'judicial inconsistency' just given covers three other judicially recognized relations which are inter alia: impossibility to

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[1] Story Joseph, *Story on Constitution* cited – J. Quick, legislative Powers of the Commonwealth and the states of Australia with proposed Amendments.

[2] Quick, *ibid.*

obey both laws; commonwealth permits or confers state prohibits, it deprives and commonwealth confer or imposes state modifies[3]. This judicial meaning is an expansion of a narrow connotation of word "inconsistency" which etymologically arises between two things "when they stand together at the same time"[4]. Thus it is a derivative of three operative word "in" (privative) and "con" (together) and "*sistence*" (stand)[5]. The inconsistency issue to becomes the least of s. 109 and the subject of covering the field.

S. 109 of Commonwealth constitution reads "when a law of a state is inconsistent with a law of the commonwealth, the latter shall prevail and the former shall to the extent of the inconsistency be invalid". In the first place, before this provision will be activated, two valid laws must be activated, two valid laws must be in place and it is equally envisaged that the state law alleged to be inconsistent with a commonwealth power must have been put into motion.[6] The operating premises for this statement seem to be that "law" refers primarily to legislation, a statute but s. 109 also operates through the medium of state or federal awards, regulations, ministerial orders proclamations, by-laws- indeed, any legislative authorization to make rules. This underscored the fact that s. 109 is predicated on the existence of two valid laws operating on a common subject. This valid and operative commonwealth and state laws taken as a whole or in part when found to be actually or judicially inconsistent with another, the state law become inoperative to the extent of its inconsistency with the commonwealth power. Thus the offending part will be rendered inoperative or invalid solely on ground of inconsistency. The implication is that the word "invalid" does not translate to ultra vires or a nullity, but inoperative only. In this wise in the case of *Butler v. Attorney General*[7] it was held that a state law on preference to ex-servicemen in employment which was found inconsistent with commonwealth defence legislation on preference to ex-servicemen becomes an operative law without more ado when the defence legislation is subsequently declared invalid as a peace-time measures. The import of this is that the state law may be inchoate, suspended, in abeyance, dead even buried, but once the commonwealth law is no longer in existence, the state law becomes automatically and legally revived and validated in a succinct and explicit manner smith itemized the cooperativeness of state law on the face of other inoperativeness of state laws because of inconsistency as inconsistency is only to the extent of inconsistency in the manner following:[8]

> [W]here a state law conflicts with a Federal award, the State may still be operative as applied to persons not within the award. (ii) where a State law as applied to the facts of the instant case conflicts with the Federal law, it may yet be operative as applied to another set of facts and (iii) where a state law in some of its ss. conflicts with the Federal law it may remain operative in its other sections Whether the state law thus found partially in operative yet has a residual operation depends on the doctrine of severability.

[3] S.A De Smith, *The New Commonwealth and it Constitutions* (London; Stevens & sons, 1964) 109.

[4] *Clyde Engineering C. Ltd v. Cowburn* [1926] 37 C.L.R 466, at 503

[5] Ibid.

[6] Carter v Egg & Egg Pulp Marketing Board [1942] 66 C.L.R 557.

[7] [1961] 106 C.L.R. 268

[8] De Smith, (n 3) 224 – 225.

To examine the nature and implication of the doctrine of covering the field weaved around s. 109 of the constitution it is helpful at this juncture to first untie the judicially recognized "inconsistency" relationships thereto as well identified earlier.

2.0 Impossibility to obey both laws and direct collision:

This kind of situation inconsistency is equated to repugnancy of state law when it conflicts with Commonwealth Act. As explained by *Higgins J*.: "the test of (inconsistency) that both laws cannot be "obeyed"… as when one legislature says 'do' and the other says 'don't'".[9] Practically speaking such a direct collision of contradictory duties would arise, for example, if commonwealth regulations prescribed drained concrete flooring for abattoirs, state law sieve-brick flooring.[10] A further example can be taken from the case of *Blackley v. Devondale Cream*[11]. In this case the defendant employed one Macdonald on certain work in Victoria. This work was covered by wages determination *SXFY* made by Frozen Goods Board, established under the Labour and Industry Act 1958 (vict.). When prosecuted for not paying the prescribed wage, the Defendant (Devondale Cream) argued that the state law was inconsistent with the Transport workers (General) Award made under the Conciliation and Arbitration Act 1904-1961 (cth). The Federal Award stipulated wages of *SX which as well bound Devondale Cream.* It was impossible for Devondale Cream to obey both provisions on wages. Hence, Devondale Cream's argument that the provisions were inconsistent sailed through. In *Barwick's C.J.* Judicial words: -

> In my opinion, there is no need in this case to seek to define the intended field of the Federal legislation in other to resolve the question of inconsistency. The case, to my mind, is one of direct collision in which the state law, if allowed to operate, would impose an obligation greater than that which the federal law has provided should be the amount which the employer should be sound by law to pay. Obedience to the one, the award is disobedience to the other, the determination. Payment by the respondent of wages conforming to the award involved it in disobedience of the state provisions. Of course both may be obeyed by the employer by abandoning the protection of the (conciliation and Arbitration) Act and award and paying the larger sum. **But in my respectful opinion, that they may both be obeyed in that sense indicates their inconsistency** (Emphasis Supplied)[12].

The emphasized words of the foregoing statement seem to suggest that even where it is not impossible to obey both laws at the same time it is not conclusive to input judicial consistency to the laws in question. Thus "the double obedience test" is not a decisive test for consistency. The question at all material times is not the possibility of obeying both state laws and Federal laws on a subject but the fact is whether the commonwealth intended an

[9] Clyde Engineering Co. Ltd case, (n 4).
[10] Smith, (n 3) 228.
[11] [1968] 117 C.L.R 253.
[12] Ibid., 258-259.

exhaustive coverage of the same subject matter, that the state trenched on the same field. In that case alone inconsistency will readily be said to have occurred.

3.0 Commonwealth Permits or Confers: State Prohibits or Deprives:

Under the inconsistency rule within s. 109 of the constitution of the following two sets of illustrations given by Smith falls within:-

> A commonwealth law may simply permit X subject to certain prerequisites, and a state law may prohibit X absolutely or permit X conditionally upon its prerequisites being fulfilled. A commonwealth law may (more positively) confer on immunity or jurisdiction, and a state law may deny immunity or jurisdiction[13].

In this vein an "express permission by a commonwealth authority to employ females … on a milling machine" is held to be inconsistent with an express prohibition by a state authority of the employment of females on a milling machine[14]. Again a state Trade Unions Act which prohibits political levies was held to be an inconsistent law on the face of Commonwealth Conciliation and Arbitration Act via which waterside workers federation (WWF) of Australia made and registered rules permitting political levies[15]

4.0 Commonwealth Confers or Imposes State Modifies:

In this category a relationship of contradiction is not inferred but that of qualification unlike the previous two discussed. In this unique, aspect of inconsistency an analogy can further be drawn to situation where two inconsistent laws stand as two sections. in one statute. In this wise, often a substantive or main provision exist in such an Act with a subsequent provisions acting as a modifier. Essentially the inconsistency described does not occasion a denial of the operation of commonwealth law by state but an attempt at modification. It is this modification when it comes in a great degree that it will be pronounced, inconsistent as opposed to modification that is *de minimis*[16]. This reckoning by degree is a rider not found in the formulation of *Dixon C.J* on this aspect of inconsistency but authorities are not lacking from its other exponents[17]. Inconsistency results if a "state law… would alter, impair or detract from the operation of a law of the commonwealth[18] which either confers right or imposes duty".

> For example a commonwealth supernatural Act gives pension rights to retired public servants, certainly, those rights could not be modified by a state taxing law which singles out those rights for taxation[19].

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[13] Smith (n 3) 229.

[14] *Colvin v. Bradley Bros. Pty Ltd* [1943] 68 C.L.R 151 at 160.

[15] *Williams v. Hursery* [1959] 103 C.L.R 30 at PP. 63, 67-69 in W.W.F rules no specific reference was made to imposition of political levies, however fullager inferred such permission from W.W.F object" to foster the best interests of the members.

[16] Smith, (n 3)230.

[17] Ibid.

[18] *Commissioner of Probate Duties (vict.) v. Mitchell* [1960] 105 C.L.R 126, at 142.

[19] Smith, (n 3).

In the above scenario "the invalidity of the state law would then be a result of s. 109"[20]. In *Stock Motor Ploughs Ltd v Forsyth*[21] a state law was held invalid where a holder of a promissory note obtains a right under commonwealth law to enforce payment and that right is varied by a state law which prescribes the prerequisite of court leave before the holder can enforce payment. But in a different way the case described a situation where the commonwealth permits enforcement while the state forbids enforcement subject only to obtaining of courts consent.

5.0 Commonwealth Covers the Field. The State Enters the Field:

The laurel for the formulation of the cover-the-field description of the commonwealth law via which the state law is declared inconsistent should go to both *Dixon J.* and *Isaac J.* In *Ex* parte *Mclean*[22] *Dixon* stated that:

> Inconsistency "depends upon the intention of the paramount legislature to express by its enactment completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed when a Federal law discloses such an intention, it is consistent with it for the law of a state to govern the same conduct or matter.

In more pungent and concise words Isaac J. stated in similar context to the effect that when

> A competent legislature expressly or impliedly evinces its intention to cover the field that is a conclusive test of inconsistency where another legislature assumes to enter to any extent upon the same field.

This statement of *Isaac J.* is earlier in time however the same effect became more elaborately pronounced in *Dixon J's* statement. Notably there has been a recognition of certain elements within the cover the field description of *Dixon*. According to *De Smith* such elements are:

> A field - a topic or subject matter or some conduct with which the commonwealth law is concerned. A coverage of that field – the commonwealth law is said to have covered the topic or subject matter or some conduct either completely, exhaustively or exclusively; accurately, this means merely a comprehensive coverage. A state law regulates some matter judicially placed within the field covered.[23]

This test obviously harbours certain weaknesses and ambiguities starting with difficulty in isolating the field from a situation where the same law can be subjected to different

[20] *West v. Commissioner of Taxation* (N.S.W) [1937] 56 C.L.R 657 at 681.
[21] [1932] 48 C.L.R 128, at PP. 136, 140, 141.
[22] [1930] 43 C.L.R 472 at 483.
[23] De Smith, (n 3) 231.

characterization[24]. In any event, there are pointers suggestive of commonwealth's parliament intended coverage of field which state law trespassed on. This obviously can be presumed from firstly "multiplicity of the regulations prescribed in"[25] such nature that the court will be persuaded that a particular topic is completely covered by the commonwealth. Secondly the kind of subject matter covered by the commonwealth law may be an indication of the field covered. The rationale is that the subject matters dealt with by national government require a uniform and systematic treatment throughout the commonwealth; in which case any state law on the subject would break down that uniformity[26]. Invariably when the commonwealth legislates under the Placitas of current powers in s. 51 of the constitution i.e s. 51(1) overseas and inter-state commerce s. 51(1) telegraphic, telephonic services etc among others it is safe to assume that uniformity is intended. However, if there is presence of competing state legislations based on states interest such competing claims or put differently two sets of interest are solved by judicial umpiring implicit in the formulary descriptive of the inconsistency of laws. That is to say that such competing claims of the Federal and State units are solved by accommodation and evaluation of the two sets of interest[27].

The trend of the present discourse it must be boldly stated is a conscious effort to isolate the doctrine of covering of field from the rest of the test of inconsistency. It is discovered that the covering field test is the ruling test of inconsistency. However much other tests of inconsistency may fall under covering field, occasion may arise where obvious or direct in consistency may be relevant. A lucid adumbration of this could be gleaned from the statement Lane that:

> An obvious or direct inconsistency of detail may apply to invalidate state law to limited extent where court decides that commonwealth did not intend to cover the whole field but only to regulate it in part"[621].

The covering the field test of inconsistency obviously was developed to enable s. 109 of the constitution be read widely. A narrow construction of s. 109 will not bring within its ambit an inconsistency that arises between commonwealth and state legislation without any direct conflict between the particular terms of the Act.[28] *Isaac J*. in clear expression of covering field test, in *Clyde Engineering Co. Ltd v. Cowburn* [29] after a comment on the inadequacies of the obedience to both laws test he stated that:

> But surely the vital question would be: was the second Act on its time construction intended to cover the whole ground and, therefore, to supersede the first? If it was so intended, then the inconsistency would consist in giving operative

[24] See *Tasmanian Steams Pty Ltd v. Lang* [1938] 60 C.L.R 111 at 137. Where three characterization of the same law was given, i.e assuming a commonwealth law imposes a duty on an employer to xyz amount to his employee and such a law characterized as a law concern in minimum (cash) wage - it may conflict with employer to subtract amount as tax from his employees wages. As well a law characterized as creation of debt may not conflict with state law.

[25] See *Forsyth* (n 21) 147.

[26] See *Forsyth* (n 21) 147.

[27] *O' Sullivan v. Noarhinga Meat Ltd* [1959]92 C.L.R 565 at 586.

[28] Ibid 36 – 37.

[29] (n 4).

> effect at all to the first Act, because the second was intended entirely to exclude it [30]

Additionally:

> If such a position as I postulated be in fact established, the inconsistency is demonstrated, not by comparison of detained provisions, but by the mere existence of the two sets of provisions, where that wholesale inconsistency does not occur, but the field is partly open, then it is necessary to inquire further and possibly to examine and contrast particular provisions. If one enactment makes or acts upon as lawful which the other unlawful; or if one enactment makes unlawful that which the other makes or acts upon as lawful, the two are to that extent inconsistent. It is plain that it may be quite possible to obey both simply by not doing what is declared by either to be unlawful and yet; there is palpable inconsistency. In the present case there is inconsistency in both of the senses 1 have described[31].

Decipherable from the above passage is clearly a relationship or connection of covering the field to what we had earlier been termed obvious or direct inconsistency of detail. In this case if on one hand there is no legislative intent indicated to cover the field inconsistency based on obvious or direct inconsistency of detail will suffice. In another sense, if there is a legislative intent on the part of the commonwealth to cover the fields, then all state legislation on the subject is invalidated. Again if the commonwealth does not intend to cover the field, then the invalidation of the state legislation is only to the extent to which inconsistencies of detail arise.

The fullest adumbration of the principle can be sifted in this statement of *Dixon J*: When the parliament of the commonwealth and the parliament of a state each legislate upon the same subject and prescribe what the rule of conduct shall be, they make laws which are inconsistent, notwithstanding that the rule of conduct is identical which each prescribes and s 109 applies. That this is so settled at least when the sanctions they impose are diverse as explained *Hume v. Palmer*[32]. The reason is that, by prescribing the rule to be observed, the Federal statute shows an intention to cover the subject matter and provide what the law upon it shall be. If it appeared that the Federal law was intended to be supplementary to or cumulative upon state law, then no inconsistency would be exhibited in imposing the same duties or in inflicting different penalties. The inconsistency does not lie in the mere co existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount legislature … to govern the same conduct or matter[33] The case of *Ex parte Mclean* is also illustrative of the point that the co-existence of different penalties for

[30] Ibid., 489.
[31] Ibid.
[32] [1926] 38 C.L.R 441.
[33] Ex parte Mclean above [1937] 48 C. L. R. 128

the same act ordinarily does not necessary indicates inconsistency. In Dixon's illustration as follows: -

> For example if the award in this case expressly forbade shearers to injure sheep when shearing, it would not be a necessary consequence that a shearer unlawfully and maliciously wounding an animal[34].

The light thrown in the example shines brighter by the characterization or the legislation considered in *Ex parte Mclean* itself as stated

> It may be assumed that provisions of the state law which prohibits acts or omissions irrespective of relation of employer and employee and without regard to any other industrial relation or matter are not superseded under s. 109 merely because it happens that in their industrial aspect the same acts or omissions by parties to a dispute are forbidden by Federal award and by this means made punishable under the Federal Statute, but in this case, the state law…deals directly with the relation of employer and employed and in virtue of that industrial relation makes penal the very default which the Federal law punishes somewhat differently in the regulation of the same relation. The case therefore, is not one, in which conduct made punishable by state law on grounds which do not affect industrial relations is forbidden by an award as a regulation of industry and thus brought also within the penalties of the commonwealth conciliation and Arbitration Act[35].

The case under consideration interestingly produced no inconsistency upon application of covering the field test but a comparison of the two provisions in detail did. For the reason that the existence of two different punishments for the same conduct each attracted to that conduct in the same context of industrial relation inconsistency existed. It stands to reason that if the shearer had broken the award by conduct which offended against the Conciliation and Arbitration Act of the Commonwealth because it was a breach of the prescribed relationship between employer and employee and at the same time infringed a State Act which had no link thereto, there would have been no inconsistency. Lane reasoned that in such a situation: -

> The two penal provisions would have operated in entirely different contexts. Their simultaneous applicability to the same facts would have been a coincidence and no more … legal coincidence is not necessarily an inconsistent. The conception of covering the field test in the foregoing direction leaves no one in doubt as to why there was an inconsistency of detail in an earlier case of Hume v. Palmer. In that case, as in Ex parte Mclean it could

[34] Ibid, 485 – 486.
[35] Ibid. 486.

> not be assumed that the penalties that applied to the same conduct was a mere legal coincidence. They applied in the same context, the regulation of collision at sea to the extent that they came within the ambit of general inconsistency under the covering the field test as well[36].

The mere fact of a commonwealth statute and a statute are expressed in the same terms and overlap in their operation does not *Ipso facto* produce inconsistency. This fact alone makes covering the field test to be clothed with a character that easily yields to being misunderstood. However, this misunderstanding will fizzle out when one bears in mind that covering the field text depends largely on a decision as to legislative intention and not on a mechanical comparison of true sets of statutory wordings. In other words inconsistency will only result when on a true construction of the commonwealth act there is a manifestation of an intention to displace relevant state law. It is salutary to observe that based on the influence of immunity questions, the covering the field test of inconsistency does not apply completely to tax legislations: As *Lane* puts it "it seems to be the case that the covering the field test of inconsistency is not applicable to tax power: the commonwealth cannot exclude state tax power …" without limitations. s. 114 of the commonwealth constitution prohibits the taxation by either commonwealth or states of each other property. Presently the position is that the state has no power to tax the commonwealth but subject to certain limitations, paramount one being that the commonwealth cannot enact laws which discriminates against the states, the states can be made subject to tax laws of the commonwealth to the tax power: the commonwealth cannot exclude state tax power in this way[37].

The case of *R v. L*[38] further explains the application of covering the field principle only in situations where it can be inferred that the commonwealth intended to cover the legislative field completely. In this case the respondent was charged before the Supreme Court of South Australia with raping his wife under s. 73(3) of the Criminal Law Constitution Act 1935 (SA), which provided that a spouse was not, by reason only of marriage, to be presumed to have consented to sexual intercourse with the other partner. The respondent contended that the above provision was inconsistent with s. 114( ) of the family law act (cth), which gave the court power to relieve a spouse from any obligation to perform marital services or render conjugal rights. The respondent claimed that the later provision therefore preserved the common law notion of conjugal rights, including the proposition that a wife by virtue of marriage gave an irrevocable consent to sexual intercourse. Under s. 109 of the constitution, where a state and commonwealth law were in conflict, the latter prevailed and the former invalid to the extent of inconsistency.

The question of whether there was any inconsistency between the two Acts, and thereby any invalidity was removed on the application of the attorney general for South Australia, for determination by the High Court and the respondent awaited a retrial upon the resolution of the questions by the High Court. All the questions submitted to the High Court were answered in the negative and the matter remitted to the Supreme Court to be dealt with in consonance with the answer given by the High Court. The answer given to the invalidity issue on grounds of covering the field is noteworthy. It was held that the commonwealth

[36] P H Lane, *The Australian Federal System* (Sydney: The Law Book Company Ltd, 1979) 369.
[37] Ibid.
[38] [1992] LRC (crim) 533.

parliament had power to enact laws concerning the institution of marriage under s. 51 of the constitution but had not attempted to comprehensively regulate the law on marriage, its rights or obligation in fact, save as to their extinguishment by divorce or suspension by decree. Therefore there was no question of marriage being a field which commonwealth legislation had intended to cover exclusively and the criminal law consolidation Act 1935 (SA) could not be excluded for seeking to regulate a field already covered by the commonwealth parliament[39]. Quite solitarily the High Court per s *Mason C.J* held that;

> Whatever the scope of the power of the parliament to make laws with respect to marriage (constitution s. 51 (xxi), it is apparent that the commonwealth Act does not attempt comprehensively to regulate the rights and obligations of the parties to a marriage and in particular says nothing to express or imply an obligation to consent to sexual intercourse by a party to a marriage… for the more there is no indication of an intention on the part of the parliament even to tough upon behavior within marital relationships which may amount to a criminal offence involving serious personal violation. Indeed, of such an intention were evident, a question would arise whether such a law could be characterized as a law with respect to marriage[40].

The identifiable space within the legislative field relating to marriage which the state could legislate on relates to rights and obligations of the parties to a marriage. This is for the reason that the Marriage Act 1961 (cth) is concerned with capacity to marry the formalities required for the solemnization of marriages in Australia and recognition of foreign marriages. In these situations neither the Marriage Act nor Commonwealth Act sought to cover the field in terms argued by the respondent the court rightly reasoned[41] in absence of the two rules actually contradicting one another. It is a question of legislative intention, or characterization, to be inferred from the legislative context, whether the laws in question complement one another or are inconsistent[42]. Therefore when there is federal legislative intention to cover the field and inconsistent is produced, then the state law is invalidated as long as the commonwealth law is operating per adventure the commonwealth law is repealed, and the state law is not, the state law without more becomes operational.

6.0 Conclusion:

In conclusion, it is clear that when both a valid Commonwealth and Act a valid State Law apply to the same facts a question of inconsistency may arise. In a situation where the Commonwealth Act either from its own terms or as shown in a subsidiary legislation manifests an intention to cover the whole field or subject matter it relates, an inconsistency which invalidates state legislation on the same matter is seen. However, when no such general intention is discovered, the mere concurrence of the two laws is not in itself an

[39] Ibid 538, 552.
[40] Ibid., 538.
[41] Ibid.
[42] Ibid., 45.

inconsistency, notwithstanding that the detailed rules in the statutes lead to different results on the same facts.

It stands to reason that within the exclusive competence of the commonwealth and the state parliaments no question of conflict can arise, in as much exclusiveness is attached to the federal power or state power, the competence of the other power is altogether extinguished. This is for the reason that all situation of inconsistency refer in the main to laws standing in their own would otherwise be valid laws of the state or commonwealth but for the operation of the inconsistency test. Example, there can be no inconsistency where the commonwealth taxes for federal purposes, the state for state purposes. This presupposes that each entity the state or the commonwealth is sovereign in her own right.

In Australia Federal relationship like most Federation, there is both separateness and dependent relationship. In striving to exist as inter-dependent units, each one completing the other, where conflicts occur in common legislative playing ground the federal government laws will displace the state law. This is the implication of the inconsistency text envisaged under s. 109 of the Australian Constitution.