16/90

SUPREME COURT OF VICTORIA — CIVIL APPEAL DIVISION

SCUTCHINGS v GEORGE

Kaye, McGarvie and Ormiston JJ

8, 9 November 1989; 19 March 1990

[1991] VicRp 39; [1991] 1 VR 732; (1990) 94 ALR 557; (1990) 11 MVR 1

MOTOR VEHICLES – RADAR DETECTOR – USE OF PROSCRIBED BY STATE ACT – WHETHER USE PERMITTED BY COMMONWEALTH ACT – EXTENT AND APPLICATION OF BOTH ACTS – WHETHER ANY DIRECT INCONSISTENCY – WHETHER COMMONWEALTH ACT "COVERS THE FIELD" – WHETHER STATE ACT TRESPASSES ON SUCH FIELD – WHETHER INCONSISTENCY – WHETHER STATE ACT SECTION INVALID: *RADIOCOMMUNICATIONS ACT* 1983; *ROAD SAFETY ACT* 1986, S74.

Whilst the *Radiocommunications Act* 1983 ('RCA') expresses exhaustively the law for management of the radio frequency spectrum, such management does not require control of transmitters and receivers for all purposes, nor does it state exhaustively and exclusively the law relating to the ownership, sale, use or possession of receivers. The subject matter of s74 of the *Road Safety Act* 1986 ('RSA') is quite different from any of the matters set out in the RCA. In other words, the RCA is concerned with the regulation of the frequency spectrum, the RSA with road safety. Accordingly, there is no direct inconsistency between the two Acts, nor could it be said that s74 of RSA is invalid in that it has trespassed into a field covered by the RCA.

ORMISTON J: [*with whom Kaye and McGarvie JJ agreed] [after setting out the nature of the charges and relevant provisions of the* Radiocommunications Act*, continued*] **... [16]** With that legislation is to be compared the provision said to give rise to the inconsistency, namely s74 of the *Road Safety Act* 1986 of this State. That Act has among its purposes, stated in s1 thereof, the provision of "safe, efficient and equitable road use," the improvement and simplification of registration procedures of motor vehicles and licensing of drivers, and the equitable distribution within the community of the costs of road use. Section 74 is contained within that part of the Act, Part VI, concerned with offences and legal proceedings, those offences being primarily related to the driving of motor vehicles. There are a number of sections concerned with speeding offences and in particular with the detection of persons speeding in motor vehicles, although in general speed limits are prescribed by regulation. Section 74 has been set out at the beginning of this judgment and from its terms is clearly concerned with the ownership, sale, use or possession of a device the sole or principal purpose of which is "to prevent the effective use of a prescribed speed measuring device: or to enable the detection by a driver of the use of such a device: **[17]** sub-s (1). Sub-section (2) requires a person to surrender any device referred to in sub-s(1) if required to do so by a member of the police force or a member of the Road Traffic Authority. Sub-section (3) permits a court upon conviction for an offence under the section to order that the device be forfeited and under sub-s(4) directs that all devices so forfeited must be destroyed at the direction of the Chief Commissioner of Police.

It is thus necessary to see whether, within the meaning of s109 of the Constitution the provisions of s74 are inconsistent with the *Radiocommunications Act* of the Commonwealth. As I have previously said, there is no question of any direct contradiction of the provisions of the Commonwealth legislation in the State Act, nor is this a case where a permit or licence granted under the Commonwealth legislation is limited in its practical operation by the State law. Not only was no such licence issued for the subject receiver but it was not the kind which required a licence as a condition for its operation, for this class of receiver had and has not been proclaimed for the purposes of Part VII of the Act. As stated above, whereas all transmitters with specified exceptions require a licence under Part V it is only those declared classes of receiver which require a licence under Part VII.

By way of negative implication it was argued that the owner operator or possessor of the

type of receiver presently under consideration had some form of implicit licence to operate that receiver. This flowed, as I understood it, from the deliberate policy of deregulating receivers which might be gleaned from the form of Part VII, in contrast to the **[18]** requirements of the *Wireless Telegraphy Act* 1905 of the Commonwealth, which purpose was confirmed by the Minister's second reading speech.

However, it is one thing for the Minister to say, as he did, that "the overall effect of this part ... is deregulatory" and another to conclude that by reason of its provisions all those owning, operating or possessing receivers not in a declared class were intended to be given an unrestricted right or licence to own, operate or possess them. Rather it would seem that the structure of Part VII was designed only to be consistent with the then stated policy of the Government "to prescribe as few classes of receivers as possible consistent with our object of efficient spectrum management". It is difficult in those circumstances to find any implied licence given to the appellant by Part VII other than the limited "licence" which flows from the absence of any present requirement under the Act to obtain any formal licence or permit. Thus there can be no direct inconsistency seen in the legislation under consideration.

However, rather than rely on any inconsistency flowing from any overt contrariety, the inconsistency was argued to arise from an intention of the Commonwealth legislation to "cover the field", as that expression is well understood, and thus to deny the State the right to place any restriction upon the ownership, sale, use or possession of this kind of receiver, whether pursuant to the *Road Safety Act* or any other legislation. The section in the latter Act is expressed in simple terms and it may be conceded that its operation is comparatively wide in that the prohibited acts do not contain any qualification **[19]** which would require proof of any intention to avoid detection in the commission of any offence under or created by virtue of that legislation, such as speeding, nor does it require proof that the accused intended to prevent the Victoria Police from operating the Kustom Falcon radar gun or any similar device. Instead the section is directed to ownership sale use or possession of a device of which the objective purpose is to prevent the effective use of, or to detect, a "prescribed speed measuring device". Thus, for example, the mere possession of a receiver of the kind so described would appear to be sufficient to amount to an offence without regard to its actual or intended use or operation at any particular time or place. If a licence had been granted under the Commonwealth Act, then some issue might have arisen as to the width of s74 in the light of a positive grant of a right to use the receiver, but that is not the present case and it need not be further considered.

As to what is meant by the concept of "covering the field", or "covering the subject matter" as it is sometimes called, it is unnecessary to examine in any detail the slightly differing ways in which the High Court has from time to time expressed the relevant principles. Both parties in argument agreed that the Court should follow and apply the statement of Dixon J in *Ex parte McLean* [1930] HCA 12; (1930) 43 CLR 472 at p483; 36 ALR 377, which has been frequently cited in the High Court and has very recently formed the basis of the reasoning of the joint judgment of the Full Court in *McWaters v Day* [1989] HCA 59; (1989) 168 CLR 289; (1989) 89 ALR 83; (1989) 64 ALJR 41 at p42; (1989) 10 MVR 1 in these terms:

> **[20]** "It is true that a difference in penalties prescribed for conduct prohibited by Commonwealth and State laws has been held to give rise to inconsistency between those laws for the purposes of s109: *Hume v Palmer* [1926] HCA 50; (1926) 38 CLR 441; 33 ALR 66; *Ex parte McLean* [1930] HCA 12; (1930) 43 CLR 472; 36 ALR 377; *R v Loewenthal; Ex parte Blacklock* [1974] HCA 36; (1974) 131 CLR 338; (1974) 4 ALR 293; 48 ALJR 368. Equally, a difference between the rules of conduct prescribed by Commonwealth and State laws might give rise to such inconsistency. But the mere fact that such differences exist is insufficient to establish an inconsistency in the relevant sense. It is necessary to enquire whether the Commonwealth statute, in prescribing the rule to be observed, evinces an intention to cover the subject matter to the exclusion of any other law: *Ex parte McLean*, at 483; *Blacklock*, at 347; *R v Winneke; Ex parte Gallagher* [1982] HCA 77; (1982) 152 CLR 211 at 218, 224, 233; 44 ALR 577; 57 ALJR 99; *University of Wollongong v Metwally* [1984] HCA 74; (1984) 158 CLR 447 at 456; (1984) 56 ALR 1; (1984) 59 ALJR 48; [1984] EOC 92-119. In the words of Dixon J in *Ex parte McLean*, at 483:
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> > 'The inconsistency does not lie in the mere coexistence of two laws which are susceptible of simultaneous obedience. It 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.'"

For present purposes one may add Dixon J's own restatement, frequently cited, of the relevant principles in *Victoria v The Commonwealth* [1937] HCA 82; (1937) 58 CLR 618 at p630; [1938] ALR 97:

> "When a State law, if valid, would alter, impair or detract from the operation of the law of the Commonwealth Parliament, then to that extent it is invalid. Moreover, if it appears from the terms, the nature or the subject matter of a Federal enactment that it was intended as a complete statement of the law governing a particular matter or set of rights and duties, then for a State law to regulate or apply to the same matter or relation is regarded as a detraction from the full operation of the Commonwealth law and so is inconsistent."

[21] The essential questions, therefore, are whether the Commonwealth statute in the present case was intended as a complete statement of the law upon a particular subject and, if so, upon what precise subject was it so intended to legislate and what is the subject matter of the impugned State Act. The answers to these questions frequently appear to be a matter of impression, but a correct analysis of the legislation will ordinarily provide the required solution. Unfortunately the appellant has placed too much weight on the first stage of the inquiry, as did the learned County Court judge whose detailed and careful judgment in an earlier appeal provoked this reference to the Full Court. It may be conceded that the *Radiocommunications Act* is sufficiently detailed in form and content to justify a conclusion that it was intended by the Commonwealth Parliament to be an exhaustive and exclusive statement of the law relating to "radiocommunications". One must, nevertheless, ask what is connoted by that description and what subjects are in fact comprehended by it.

In the first place the Commonwealth Act is not, in my opinion, an Act intended exhaustively or exclusively to lay down the law relating to the transmission and reception of radiocommunications generally. It is primarily concerned with the method and manner of communication and the physical means whereby that may be effected, but it is not intended to control the content of that which is transmitted or received except to a very limited extent (cf. s25(1)(d) and s65(10)), nor is it intended to control the uses to which radiocommunications **[22]** may be put or the purposes for which they may be used, except in so far as those may have effects upon others engaged in radio transmission and reception in the broadest sense of those terms. Correctly the appellant's written submission asserted that the Commonwealth Act disclosed "an intention by the paramount legislature exhaustively to express by its enactment the law 'for management of the radio frequency spectrum'". Incorrectly that submission assumed that such management required control of transmitters and receivers for <u>all</u> purposes. It will have been seen that, wide-ranging as the legislation may have appeared, it was primarily directed to technical matters intended to achieve efficient and fair use of the radio frequency spectrum, together with a number of incidental matters such as standards for radiocommunications equipment and qualifications for operators of that equipment. Throughout the Act there are references to the object of reducing interference to radiocommunications and in general terms the only other general objects of regulation under the Act are to maintain equipment standards, to prevent harm and danger arising from the use of equipment and to protect defence, police, and other emergency communications.

Contrary to what was submitted on behalf of the appellant, there is no avowed intent exhaustively and completely to legislate in respect to radiocommunication receivers. Indeed, other than control of receiver standards, the Act is primarily directed to control of transmissions and the means of transmission, for it is that element of radiocommunication which is critical to the **[23]** control of the frequency spectrum. One may fairly contrast the detailed provisions relating to the licensing of transmitters with the bare controls granted for the licensing of receivers. Although the powers given are broadly expressed, it would appear that control of receivers is otherwise primarily directed to the prevention of interference with transmissions and to the efficient management of that frequency spectrum.

Moreover, whether one looks to the controls placed on transmitters or receivers, the content or subject matter of transmissions is touched upon by the Act only for very specific purposes. Under s25(1)(d) there is a general condition imposed on the operation of licensed transmitters in that they may not be used in a manner likely to cause serious alarm or affront or so as to harass any person. There is likewise an offence created by s65(10) prohibiting the conveying of information likely to induce the false belief that any person is dying or has been injured or that property is being destroyed or damaged, or that there is any plan, proposal, attempt, conspiracy or threat to

cause harm of those kinds. That being the limit of the Act's control of content, in no way can it be seen that the legislation has covered the field in that respect, especially having regard to other legislation on that subject.

Further, the purposes to which radiocommunications equipment may be put are controlled but only for the limited purposes described above, being primarily the control of the frequency spectrum but also to prevent danger to the safety of ships and aircraft, danger to life or limb, and destruction of or **[24]** damage to property. So, again, the subject matter of the regulation of the use of equipment is specific and limited and cannot be seen as intended to exclude State legislation controlling other aspects of the use of equipment.

Outside the limited areas already described the Act says nothing as to the use to which radiocommunications devices can or should be put, nor as to the content of material transmitted or received. As to content, that is otherwise left, so far as it is controlled by the Commonwealth, to the legislation affecting the broadcasting of radio and television programmes and to a limited extent to that relating to telecommunications. The various devices referred to in the regulations described above give but a partial picture of the variety of uses to which radiocommunications equipment is or may be put, but, apart from the matters already described, the purposes for which these devices are used are not controlled by this legislation.

With the Commonwealth Act may be contrasted the Victorian Act which deals with an entirely different subject matter. The State Act has as its purpose the control of vehicular traffic on the roads and, in particular, road safety. It is not, of course, sufficient for this purpose merely to look at the overall purpose of the State legislation in question, for if the particular section trespasses into other fields, then the character of the particular provision must itself be identified, although the context in which the provision appears may have a bearing upon its proper characterisation.

Without condescending to answering the first two questions in the **[25]** stated case there can be little doubt that s74 of the *Road Safety Act* is directed to the ownership, sale, use or possession of receivers of a kind which would be covered by the general definition in the *Radiocommunications Act* and that the prohibited purposes are the prevention and detection of the use of devices which may equally be within the general definition of a transmitter in the Commonwealth Act. That much conceded, nevertheless the subject matter of s74 is quite different from any of the matters which are the subject of detailed or complete exposition in the *Radiocommunications Act*. Section 74 says nothing, nor would one expect it to say anything, about the radio frequency spectrum nor is it designed to lay down the law relating to interference with radiocommunications for the general purposes prescribed under the *Radiocommunications Act*, as it is designed only to defeat any activities intended to prevent the effective use of speed measuring devices and thus to conduce to the more effective detection of those committing speeding offences.

Doubtless there are aspects of the ownership, sale, use or possession of receivers which are or may be regulated by the *Radiocommunications Act* but those aspects are so regulated for the purposes of that Act and not generally. This is not even a case where the appellant claims rights derived from a licence granted pursuant to Part VII or any other part of the Commonwealth Act, for this type of receiver is not within the class declared pursuant to the definition in that part. Some emphasis was placed on the "deregulatory" purpose of the Act so far as receivers were concerned, so that it was submitted that **[26]** there was by reason of its absence from the declared classes of receivers an implicit licence under the Commonwealth Act to use the Whistler Q3000 for any purpose whatsoever, so long as that use and purpose was not inconsistent with the specific requirements of the *Radiocommunications Act*.

Such a conclusion could not rationally be reached in the context of this legislation, for the objects of regulation under the Act are the management of the frequency spectrum, prevention of interference and the other limited matters to which I have referred. If this Act is itself confined in the manner so far defined, in that it deliberately eschews regulation of a number of matters related to transmission and reception of radiocommunications, of which content (in general) is but one, then it is hardly likely that the absence of any requirement of a licence under Part VII can be construed as an implied licence to own, sell, use or possess receivers for any purpose not related to the matters regulated by the *Radiocommunications Act*.

Not only does the Act not purport, either explicitly or implicitly, to give any general licence or permission in respect to ownership, sale, use or possession of receivers for purposes controlled or intended to be controlled by other legislation within Commonwealth powers, such as those related to broadcasting and television and telecommunications, but it would also follow that the want of regulation under Part VII is not intended to interfere with the power of the State Parliaments to legislate on ownership, sale, use or possession of receivers for purposes which remain within the State's legislative **[27]** powers.

Except to the extent that any State Legislature might trespass upon the field regulated by the Commonwealth *Radiocommunications Act*, there would seem to be no basis for concluding that State laws could not or should not operate. It would be surprising, in the context of this legislation, if State laws as to the use of either transmitters or receivers for criminal purposes were intended to be overridden or that statutes and regulations made pursuant to laws within the powers of State Legislatures should in this indirect way be set at nought. Whether those laws concern the environment, defamation, nuisance, the general criminal law or road safety, there would seem no intent on the part of the Commonwealth Parliament indirectly to permit otherwise the uncontrolled and unregulated use of transmitters and, in particular, receivers.

It is apparent from a reading of what are now a large number of cases dealing with s109 of the *Constitution* that it is difficult, indeed undesirable, to draw analogies from other cases dealing with different legislation. That is probably why the relevant principles have changed so little over the years, although many statutes have created problems of analysis. One may, of course, point to cases where licences or implied permission to operate particular enterprises under Commonwealth legislation have been seen as consistent or inconsistent with State Acts dealing with similar subject matters. For example the conclusion reached in *O'Sullivan v Noarlunga Meat Limited* [1954] HCA 29; (1954) 92 CLR 565; [1955] ALR 82; [1956] UKPCHCA 4; (1956) 95 CLR 177; [1956] ALR 1051, (1956) 95 CLR 177 (PC) differed from that in *Swift Australian Co (Pty) Limited* **[28]** *v Boyd Parkinson* [1962] HCA 41; (1962) 108 CLR 189; [1963] ALR 724; 36 ALJR 148 largely because, whereas in the first case both Commonwealth and State laws attempted to regulate the slaughter of meat for export and were thus inconsistent, in the latter case the State Regulations concerned the slaughter of poultry meat generally, so that they were not held to be inconsistent with the Commonwealth *Meat Export Regulations*. Other examples could be given, but they would be of little direct use in resolving the present dispute.

Again it is clear that State laws directed to the regulation of matters within State powers and quite separate in character from those dealt with in Commonwealth legislation will rarely be struck down as inconsistent, unless they be directly inconsistent. Even then, it has been said that: "There can be a collision under s109 of the Constitution between a Commonwealth law on one subject and a State law on another but such a collision is less likely to occur than it is where the two laws are dealing with the same subject matter": per McTiernan, Williams, Fullagar and Taylor JJ in *Clarke v Kerr* [1955] HCA 55; 94 CLR 489 at p509; [1955] ALR 1055, approved by Stephen J in *Ansett Transport Industries (Operations) Pty Ltd v Wardley* [1980] HCA 8; (1980) 142 CLR 237 at p250; (1980) 28 ALR 449; 54 ALJR 210.

On the other hand, as Mason J said in *Wardley's* case at p260, in terms applied by the High Court in *Commercial Radio Coffs Harbour v Fuller* [1986] HCA 42; (1986) 161 CLR 47 at p56; (1986) 66 ALR 217; (1986) 60 ALJR 542; (1986) 60 LGRA 68 and *Dao v Australian Postal Commission* [1987] HCA 13; (1987) 162 CLR 317 at p335; (1987) 70 ALR 449; (1987) 61 ALJR 229; [1987] EOC 92-193:

> "If, according to the true construction of the Commonwealth law, the right is absolute then it inevitably follows that the right is intended to prevail to the exclusion of the other law. A **[29]** State law which takes away the right is inconsistent because it is in conflict with the absolute right and because the Commonwealth law relevantly occupies the field. So also with the Commonwealth law that grants a permission by way of positive authority. The Commonwealth legislative intention which sustains the conclusion that the permission is granted by way of positive authority also sustains the conclusion that the positive authority was to take effect to the exclusion of any other law. Again, it produces inconsistency on both grounds: cf *Airlines of NSW Pty Ltd v NSW (No 2)* [1965] HCA 3; (1965) 113 CLR 54; [1965] ALR 984; (1964-1965) 38 ALJR 388, where the permission for which Commonwealth law provided was neither absolute nor comprehensive."

In the present case neither express nor implied permission was given to the appellant or to any other person to use or possess the device found in the truck he was driving. Even if a licence could have and had been granted for its use under the Commonwealth Act, I would doubt that it would have been intended to permit use or operation otherwise than in conformity with any other relevant laws, both State and Federal, so long as a State law did not trespass into the field of "spectrum management" and the related subject matters of the *Radiocommunications Act*. In the end it is unnecessary to decide that issue, but I am even less impressed by the argument that the lack of a requirement for a receiver licence gave the appellant or the device's owner any general permission or "absolute right" to do as they wished with the Whistler Q3000. No intent can be seen in this legislation, and in Part VII in particular, to state exhaustively and exclusively the law relating to the ownership, sale, use or possession of receivers.

Accepting again the need for care in referring to seemingly analogous cases, nevertheless one may see similarities in the considerations which the High Court emphasized in *Commercial Radio Coffs Harbour v Fuller* **[30]** (*supra*). There an express licence to operate a radio transmitter was granted under the *Broadcasting and Television Act* 1942 (Cth) and indeed an obligation to commence the licensed service was ostensibly imposed by ss89C and 132 of that Act, although the majority (Wilson, Deane and Dawson JJ) chose to give those latter provisions a somewhat limited effect. At the same time, however, the licensee sought the necessary approval under the *Height of Buildings Act* 1912 (NSW) and the relevant consent to a development application under the *Environmental Planning and Assessment Act* 1979 (NSW), each to permit the erection of its transmitter towers.

As the latter application wended its way into the Land and Environment Court of New South Wales, the appellant sought to challenge the jurisdiction of that Court on the ground of inconsistency between the Commonwealth and State Acts. In many respects the case for inconsistency was much stronger than the present in that the appellant was required to hold and did hold a licence under the *Broadcasting and Television Act*, which gave rise to certain obligations. Nevertheless the High Court in a judgment of Wilson, Deane and Dawson JJ concurred in for this purpose by Gibbs CJ and Brennan J said this in reaching the conclusions that the two Acts were not inconsistent (at pp56-67):

> "The (Commonwealth) Act prohibits broadcasting without a licence. The prohibition is removed upon the ground of a licence, subject to certain conditions. Failure to comply with the conditions may result in the revocation or suspension of the licence thereby reinstating the prohibition. The licence confers on the grantee a permission to broadcast. There is nothing in the Act which suggests that it confers an absolute right or positive authority to broadcast so that the grantee, because he has a licence. **[31]** is immune or exempt from compliance with State laws. On the contrary, in concentrating on the technical efficiency and quality of broadcasting services, the Act leaves room for the operation of laws, both State and Commonwealth, dealing with other matters relevant to the operation of such services."

Later, in saying that the Commonwealth did not purport to lay down the "whole legislative framework within which the activity of broadcasting is to be carried on" the judgment continued (at pp57-58):

> "It is intended to operate within the setting of other laws with which the grantee of a licence will be required to comply."

Examples of those laws were given in the judgment, such as the *Air Navigation Regulations* (imposing requirements as to consent for wireless towers), State property laws, the law of defamation and planning legislation. The *Radiocommunications Act*, though wide-ranging in its operation, has a not dissimilar restriction in its scope: indeed it is for many purposes legislation complementary to the *Broadcasting and Television Act* concentrating on technical matters concerning the use by all transmitters of the frequency spectrum. Likewise one should conclude that those whose activities come within its purview should also be required to operate within the setting of other relevant Commonwealth and State laws.

It might, however, be said that, whereas the State legislation under consideration in *Commercial Radio Coffs Harbour v Fuller* (*supra*) was not directed to broadcasting stations, s74 of the *Road Safety Act* is specifically concerned with the use and operation of devices which could

be characterized as transmitters and receivers. That characterization is superficial and provides no solution to **[32]** the present question, as the *Road Safety Act* is directed towards fulfilling a different purpose. Even where legislation deals with essentially the same subject matter, two Acts, Federal and State, may operate side by side if, e.g., "each employed a licensing system to serve a different end" as in *Airlines of NSW Pty Ltd v New South Wales* [1964] HCA 2; (1964) 113 CLR 1; [1964] ALR 876; (1964) 37 ALJR 399, using the expression adopted to analyse that decision in *Commercial Radio Coffs Harbour v Fuller* (*supra*) at p57.

The present case does not concern the holder of a licence, but the arguments in *Commercial Radio Coffs Harbour v Fuller* were based on the "covering the field" test, as well as on the general tests of inconsistency. The conclusion that this kind of legislation, as with the *Broadcasting and Television Act*, is not intended to state exhaustively or exclusively the law relating to the use of transmitters and receivers is amply justified in the present case, for the reasons I have endeavoured to explain.

There remains only one collateral aspect, namely that s74 purports to protect transmitters, as well as to restrict the use of receivers. It may be said that such a provision trespasses onto the field of protection of transmitters from interference, direct and indirect. Again the simple answer that each Act is directed to different ends, the one concerned with regulation of the frequency spectrum and the other with road safety. Insofar as it may be said that different penalties are imposed for the same act, ie, interference with transmitters, so as "to prevent (its) effective use" cf. s74(1)), then again each Act is **[33]** directed to a different purpose and may be enforced independently. It should be remembered that such a potential conflict in penalties does not necessarily lead to inconsistency within the meaning of s109. Even conflicting provisions may not necessarily form the basis of a claim of inconsistency, for, as was stated by Wilson, Deane and Dawson JJ in *Commercial Radio Coffs Harbour v Fuller* (*supra*) at p58-59:

> "However, the fact that the combined operation of two laws, each of which deals with a different topic, may create a situation of deadlock does not give rise to an inconsistency: see *Airlines of NSW Pty Ltd v New South Wales (No 2)* [1965] HCA 3; (1965) 113 CLR 54; [1965] ALR 984; (1964-1965) 38 ALJR 388 ... "

So this other aspect of s74, namely the protection of the operation of police transmitters designed to detect speeding vehicles, cannot be characterized as trespassing onto the field taken up and regulated by the *Radiocommunications Act*. There is thus no relevant inconsistency between the provisions of the *Radiocommunications Act* and s74 of the *Road Safety Act* and the third question in the stated case should be answered: "No, none of it."

This conclusion renders it both unnecessary and undesirable to reach any final conclusion as to the first two questions in the stated case which enquire whether the Whistler Q3000 is a "receiver" within the meaning of the *Radiocommunications Act* and whether transmissions of the kind made by the Victorian Police's Kustom Falcon are "radiocommunications" within the meaning of the Commonwealth Act. Although I see no reason to doubt that the answer to each question should be "yes", those **[34]** questions concern the interpretation of the Commonwealth Act and are now irrelevant to the present prosecution and appeal. It is thus unnecessary to answer questions 1 and 2. Otherwise the appeal should be remitted to the County Court for hearing and determination.

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