Inconsistent State Laws in Australia

Australian commentators have long speculated about whether the federal Constitution contains any rule that would resolve a direct conflict between the statute law of two States. Thus far, the High Court has defused potential conflicts without the need for such a constitutional rule. In *John Pfeiffer Pty Ltd v Rogerson* (2000) 203 CLR 503, the potential conflict between ACT and NSW law was resolved by a common law choice of law rule; and in *Sweedman v Transport Accident Commission* (2006) 226 CLR 362 a potential conflict between NSW and Victorian law was resolved by a process of statutory construction.

Most recently, in *Betfair Pty Limited v Western Australia* [2008] HCA 11, the High Court resolved a potential conflict between the laws of Tasmania and Western Australia by striking down the Western Australian statute because it infringed s 92 of the Constitution (which prevents protectionist burdens on interstate trade and commerce). The Court noted in passing that its conclusion about s 92 made it "unnecessary to consider whether [the WA law] is invalid by reason of the alleged direct conflict between it and … the Tasmanian Act. This is not the occasion to consider what may be the controlling constitutional principles were there demonstrated to be such a clash of State legislation." Since no such occasion has yet arisen in the 108 years of Australian federation, the direct conflict between State laws is perhaps a problem of greater theoretical than practical importance.