

FEDERAL FOI DECISIONS

Administrative Appeals Tribunal

DRUG HOUSES OF AUSTRALIA AND ANOR and DEPARTMENT OF HEALTH

No. N87/527

Decided: 20 November 1987 by R.A. Balmford (Senior Member), H.C. Trinick and J.H. Wilson (Members)
Access sought by third party to documents lodged by the applicant with the respondent — claim for exemption under s.43.

This was an application lodged by Drug Houses of Australia Ltd (DHA) for review of a decision by the respondent to release certain documents to Messrs Corrs Pavey Whiting and Byrne (CPWB). The background to this matter is outlined in *Re Corrs Pavey Whiting and Byrne and Department of Health* ((1988) 13 *Fol Review* 10).

In this case DHA made submissions in respect of three items in the material which the respondent had decided to release:

- the purpose of the application;
- the active ingredient in the product the subject of the application; and the 'country' component of information comprising the addresses of various manufacturers, suppliers, etc.

The Tribunal rejected DHA's claim for exemption in respect of the second item in view of the fact that the release of the name of the product the subject of DHA's application had already been effectively disclosed during the course of proceedings.

It, however, upheld claims for exemption under s.43(1)(c)(ii) in respect of the remaining items as it was satisfied that disclosure 'could reasonably be expected to prejudice the future supply of information to the Commonwealth for the purpose of the administration of matters administered by an agency'. It was influenced in this regard by evidence to the effect that the respondent relied on the provision of full and frank information by applicant drug companies and that drug companies would only feel free to supply such information if they could be assured of confidentiality.

CZUCZOR and DEPARTMENT OF SOCIAL SECURITY

No. V87/350

Decided: 11 December 1987 by R.A. Balmford (Senior Member), L.J. Cohn and L.S. Rodopoulos (Members)
Deemed refusal of access — whether

documents sought ever existed — remedies available to Tribunal.

The applicant had made two requests for access to documents on his personal file and was granted access to all of the documents which the respondent admitted as having in its possession. He had sought review by the Tribunal on the basis that there were additional documents coming within the terms of his requests for access which had not been supplied to him. The documents in question were dealt with by the Tribunal in three groups.

The first group consisted of a number of documents which had not been supplied in response to the applicants requests but which he subsequently reviewed during the course of the hearing. The Tribunal concluded that, as access to these had now been supplied, there was no decision to refuse access which it could review and no order which it could usefully make.

The second group consisted of documents which were known to have existed but which it was claimed had been destroyed in accordance with normal procedures relating to files where there had been no client contact for a period of 12 months. The Tribunal was satisfied, on a balance of probabilities, that the documents in question had been destroyed and were accordingly no longer in the possession of the respondent, and thus no longer 'documents of an agency' in terms of s.4(1).

The final group consisted of a number of documents which were claimed by the applicant to have existed but which had not been located. The Tribunal held in relation to these that it was not satisfied that some of these documents had ever existed and, to the extent that they did exist, it was not satisfied that they had not been destroyed. It also accepted the respondent's evidence that no such documents had been located despite extensive searches and concluded that there was no other avenue of inquiry which it could suggest.

In view of its conclusions the Tribunal found that there was no action which it could take other than to formally affirm the decision under review.

THROSSELL and AUSTRALIAN ARCHIVES (NO. 2)

Nos A86/14 and A86/15

Decided: 11 December 1987 by Neave J. (Presidential Member)
Request for access to records of ASIO — open access period — Archives Act 1983 s.33(1).

This matter concerned two applications by the applicant under the *Archives Act* for access to records in the 'open access period' (i.e. records in respect of which a period of 30 years has elapsed since the end of the year ending 31 December in which the record came into existence — s.3(7) *Archives Act*). These documents related to the applicant and to his deceased mother, respectively. Access to records in dispute was denied on the basis that the records were exempt records under the following sub-sections of s.31 *Archives Act*.

- (1) For the purposes of this Act, a Commonwealth record is an exempt record if it contains information or matter of any of the following kinds:
 - (a) information or matter the disclosure of which under this Act could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth;
 - (b) information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation to the government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth, or of an authority of the Commonwealth, being information or matter the disclosure of which under this Act would constitute a breach of that confidence;
 - (c) . . .
 - (d) information or matter the disclosure of which under this Act would constitute a breach of confidence;
 - (e) information or matter the disclosure of which under this Act would, or could reasonably be expected to:
 - (i) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
 - (ii) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the

enforcement or administration of the law;

(iii) . . .
(f) . . .

(g) information or matter the disclosure of which under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).

In order to facilitate the examination of the claim the documents were divided into 12 categories.

Foreign intelligence

The first category considered by the Tribunal comprised records which were said to contain records supplied to ASIO by a foreign intelligence service. These records were the subject of a conclusive certificate under s.34(1) to the effect they contained information or matters of the kind referred to in ss.33(1)(a) and 33(1)(b). Although the certificate was not signed until after the application for review was made and the Tribunal had commenced to hear that application, it concluded from a consideration of the legislation as a whole that, if a certificate was signed before it had adjudicated upon the application for review, it was precluded from reviewing the decision to refuse access on the merits and was limited to determining whether there existed reasonable grounds for the claim that the records were exempt.

The Tribunal referred to evidence to the effect that the information in question had been provided on an understanding of strict confidentiality and that the relevant overseas agencies were still opposed to its disclosure. It also noted with approval its comments in relation to the interpretation of s.33(1)(a)(iii) of the *Fol Act* in *Re Maher and Attorney-General's Department* (1985) 7 ALD 731, 742. It concluded that disclosure of the records in question could have had the result of impairing the degree of trust and confidence placed on the Commonwealth government by foreign governments and, in consequence, of inhibiting inflow of security information and damaging the security and international relations of the Commonwealth. It therefore concluded that reasonable grounds existed for the claim that the records were exempt under s.33(1)(a).

In the case of the claim for exemption under s.33(1)(b), the Tribunal rejected an argument by the applicant that it was necessary for disclosure to amount to a breach of confidence according to common law and equitable principles (see *Corrs Pavey Whiting and Byrne v Collector of Customs* 1987 74 ALR 428). After

examining the records in question, it concluded that the documents were communicated in confidence and that, despite the passage more than 30 years since their creation, the documents could not be said to be of historical interest only. (See *Attorney-General v Jonathan Cape Ltd* [1976] QB 752, 771.) It was therefore satisfied also that there existed reasonable grounds for the claims in relation to ss.33(1)(b).

ASIO notations

A second category comprised documents which were said to contain symbols, code words, file numbers and notations which indicated part of the internal structure of ASIO. It was claimed that their disclosure would disclose part of the *modus operandi* of the organisation and that they were exempt under ss.33(1)(a) and 33(1)(e)(i). The Tribunal concluded that these records were exempt under ss.33(1)(a) and that it was unnecessary to consider the claim under s.33(1)(e)(i). It was, however, also satisfied that it would be practicable to provide access to copies of the records from which the relevant symbols etc had been deleted.

ASIO sources

A further category was found to contain information the disclosure of which would reveal the identity of a covert human source or would assist in revealing such identity through the application of the 'mosaic' method of analysis. The Tribunal commented that, while it might be accepted that the disclosure of a covert ASIO source could, in many cases, reasonably be expected to cause damage to the security of the Commonwealth, this would not necessarily always be the case. (See *Alister v The Queen* (1984) 154 CLR 404, 413, 452-3.) It, however, concluded that the evidence provided as to the circumstances in which the information was obtained, the nature of the activities in which the agent or agents concerned were engaged and the effect that disclosure might have had on the willingness of other agents to continue with their activities and on the recruitment of other agents provided a legitimate basis for a claim under s.33(1)(a) in respect of a number of the documents in question. It noted in this regard that s.33(1)(a) did not require the decision-maker to balance the interest of the individual in obtaining access (or any other interest in disclosure) against the public interest in preserving national security: what the paragraph required was a finding as to whether the circumstances were such that disclosure could reasonably be expected to damage national security. The Tribunal also upheld a further

claim for exemption in relation to various records which disclosed the identity of a covert source whose role had been revealed in relation to the activities in question.

Personal information

The Tribunal next considered a claim for exemption in respect of information obtained from telephone intercept operations. The applicant was a party to some but not all of the telephone conversations in question.

The Tribunal concluded that the records related to the personal affairs of the person's concerned and that, in the case of those containing information about the affairs of persons other than the applicant and his mother, that the disclosure of such information would be unreasonable. It commented that it had given considerable weight to the fact that the records had emanated from ASIO and to the significance that members of the public might rightly or wrongly attribute to the disclosure that a person's name and some details of his or her personal affairs had emanated from that source.

The Tribunal also considered a claim for exemption under s.33(1)(g) in relation to various documents which were obtained otherwise than by telephone interception and upheld the claim in relation to the majority of them.

Identity of ASIO Officers/ASIO organisational structure

The Tribunal also upheld claims for exemption under s.33(1)(a) in relation to various documents which contained information about the identity of ASIO officers and about ASIO's internal organisational structure.

Confidential information

The Tribunal also considered claims for exemption under ss.33(1)(a), (d), (e)(i), (e)(iii) and (g) in relation to various records which were described as containing information provided in confidence by members of the public. In its view, it was necessary for the respondent to establish a proper basis for concluding that the information was, in fact, given on a confidential basis and it concluded that it had failed to do so in relation to the documents in question.

THROSSELL and DEPARTMENT OF FOREIGN AFFAIRS No. A86/42

Decided: 11 December 1987 by Neames J (Presidential Member)
Documents relating to applicant — conclusive certificates — claim for exemption under s.33 and s.36.

The applicant, a former officer of the respondent had requested access to his personal file. Various of these

documents were claimed to be exempt under ss.33(1)(a) and s.36(1) and were made the subject of conclusive certificates under ss.33(2) and 36(3). The material in question related to action taken in connection with the applicant's request for restoration of his full security clearance.

On the basis of its inspection of the documents in question and its consideration of the oral evidence presented, the Tribunal found that it might reasonably be apprehended that their disclosure would reveal or assist in revealing, the source from which certain information about the applicant was communicated on a basis of strict confidentiality to the Australian Security Intelligence Organisation. It was therefore satisfied that there existed reasonable grounds for the claim that disclosure of the documents could reasonably be expected to cause damage to the security of the commonwealth and, in the case of two of them, could reasonably be expected also to cause damage to the international relations of the commonwealth. The Tribunal added that, even if, contrary to the view expressed in *Re Throssell and Australian Archives* (see above), it was appropriate to take into account the interests of the applicant who had a strong case to be informed of the basis on which he was denied a full security clearance, the public interest in maintaining the secrecy of the documents was of such high order that there existed reasonable grounds for concluding that the public interest in non disclosure far outweighed the individual interest of the applicant.

The Tribunal took the view that, in view of its conclusion in relation to the s.33 certificate, it was unnecessary to consider the claim under s.36(1) as the effect of that certificate was to make each of the documents as a whole exempt irrespective of the fact that, in the case of some of them, the conclusion that they were exempt was reached by reason only if material contained in parts of them. This was because, in the absence of any obligation arising under s.22, access might not be given to any part of the documents. It took the view that, in the case of the documents in question, the exempt material was an essential part of the deliberative processes recorded and the provision of access to expurgated copies might not totally avoid the damage which s.33(1)(a) was designed to avoid and might well be misleading.

The Tribunal nevertheless proceeded to deal shortly with the s.36(1) claim. It found that the documents in question all fell within

the description in s.36(1)(a) and that the matters which supported the conclusion that there existed reasonable grounds for the claim under s.33(1)(a) also required a similar conclusion in relation to claim that disclosure would be contrary to the public interest. Although this aspect of the public interest was not specified in the certificate under s.36(3), the Tribunal pointed out that the question for it was whether there existed reasonable grounds for the claim that disclosure would be contrary to the public interest and not whether the grounds specified in the certificate had been made good.

VAN NOORD and COMMISSIONER OF TAXATION

No. T87/75

Decided: 18 February 1988 by Deputy President R.C. Jennings QC.

Request for access to documents relating to applicant's taxation affairs — claims for exemption under ss.37(1)(a), 38 and 42(1).

This decision concerned an application for review of a decision by the respondent to deny access to a number of documents relating to a tax investigation of the applicant's affairs. The documents in issue, which related to the circumstances by reason of which the applicant's affairs became the subject of investigation, the results of those investigations and subsequent investigations, were claimed to be exempt under ss.37(1)(a), 37(2)(b), 38 and 42.

The respondent, in support of the claim under s.37, gave affidavit evidence to the effect that disclosure of such documents might be expected to frustrate its investigations by enabling persons connected with the investigation to anticipate questions and to frame answers so as to mislead or divert the investigating officer and also by making them aware of how much information the Commissioner did not possess and thereby facilitating the concealment of relevant facts and the implementation of counter measures. The Tribunal was satisfied on the basis of the evidence that disclosure of the documents 'could reasonably be expected to prejudice the conduct of an investigation of a breach, or possible breach of the law, or failure to comply with a law relating to taxation' as required under s.37(1)(a). In view of this finding, the Tribunal found it unnecessary to consider a further claim for exemption under s.37(2)(b).

The Tribunal also upheld a further claim for exemption under s.38 and s.16 of the *Income Tax Assessment*

Act 1936 (the *ITAA*). It referred to the decision of the full Federal Court in *Federal Court v Swiss Aluminium Australia Ltd* 66 ALR 159, in which it was held that s.16 of the *ITAA* was an enactment to which s.38 applied, and concluded the documents in question contained no matter other than exempt matter.

Finally, the Tribunal also upheld an additional claim for exemption under s.42 in respect of a number of documents comprising letters to and from the Australian Government solicitor's office and internal memoranda concerning legal advice on the investigation and debt collection procedures. In so doing it applied the sole purpose test used by the High Court in *Grant v Downs* 11 ALR 577.

REITH and MINISTER OF STATE FOR ABORIGINAL AFFAIRS

No. A88/7

Decided: 15 March 1988 by Deputy President R.K. Todd.

Transfer of request from Minister to Department — whether Tribunal bound by assertion that request transferred within meaning of s.16.

The applicant had made an application to the Minister for access to certain documents. In a subsequent response from the Minister's Department, the Department had stated, inter alia, his request had been transferred to it for processing and, after stating that the documents in question would come within various exemption provisions, stated that the 'decision' was subject to internal review. The Minister had also written to the applicant confirming that he had transferred the request to his Department on the basis that it would have had copies of all the documents in his possession and could also have had other relevant documents. The question which arose for determination in this decision was whether the Tribunal was bound by the assertion that the request had been transferred and was required to make the assumption that such a transfer came within the terms of s.16.

It was argued on behalf of the respondent that, while the Tribunal was empowered to consider whether there was a deemed refusal within the meaning of s.50, it was not entitled to do other than to take at face value what appeared to be purported decision to transfer the request. (See *Collector of Customs (NSW) v Brian Lawlor Automotive Pty Ltd* (1979) 24 ALR 307, 401 and *Richards v Watson* (1986) 66 ALR 524). This argument was rejected by the Tribunal which did not consider that its responsibility was

so confined. It commented that, if it had to accept a bald assertion that a request had been transferred on grounds of administrative convenience, be placed in the position of denying to a person, who had made an application to it, a right apparently conferred by statute and in respect of which it was required by statute to make a decision.

After analysing the evidence before it, the Tribunal commented that:

- the Department's letter to the applicant did not mention s.16 but rather spoke of the request having been transferred 'for processing', and the Minister's letter, while stating that the Department could have 'other relevant documents', acknowledged that the Minister was in possession of some documents relating to the request. It concluded that the facts then before it suggested that it should arrive at the conclusion that the respondent, by not having given notice of a decision on the request within the stipulated time, was deemed to have refused the request. It did not, however, express any final conclusion on this point, as it had agreed that the respondent should be given an opportunity to tender further evidence. The matter was therefore relisted for further directions.

At a subsequent directions hearing, the Minister stated that he was agreeable to the Tribunal proceeding on the basis of a deemed refusal. There was, however, a complication in that the bulk of the documents sought had been transferred to the Department. In view of this, it was agreed that the procedural difficulties would most appropriately be resolved by the Department making application to be added as a party to the proceedings.

The Tribunal therefore made a direction for the preparation of the usual schedule and affidavits in a manner which would show distinctly which documents were transferred by the Minister to his Department prior to the making of the request for access.

BLEICHER and AUSTRALIAN CAPITAL TERRITORY HEALTH AUTHORITY

No. A87/74

Decided: 23 March 1988 by B.J. McMahon (Senior Member).

Request for amendment of documents under s.48 — whether documents of an agency — no power to amend sworn evidence — meaning of 'personal affairs'.

The applicant, who had been involved in previous proceedings before the

Tribunal, had applied for the amendment of various affidavits and statements by the officers of the respondent which were contained in the Tribunal's file of proceedings. She sought to deny the validity of the opinions expressed about her in the subject documents to which she had had access and proffered other more favourable comments from other persons on the same subject matter. This application had been refused by the respondent.

The Tribunal, after considering the evidence before it concluded that no other decision was possible in the circumstances. Its first reason for this conclusion was that s.48 was inapplicable in that none of the subject documents was 'a document of an agency' and, in particular, a document of the respondent, and none of the documents therefore was being used or was available for use by the respondent for an administrative purpose.

The Tribunal also pointed out that the applicant, in effect, was asking that documents tendered in evidence in proceedings before it should be altered by the respondent. It felt that, even if such alteration had been possible, its effect might have been to allow those proceedings to be reopened, an occurrence which would obviously not be in conformity with the legislative intention of Part V of the *Fol Act* or of s.43 of the *Administrative Appeals Tribunal Act 1975*. Furthermore, it commented that the opinions expressed in the documents had been the subject of an open, contested, administrative adjudication.

In those circumstances, the Tribunal felt that a refusal to amend was not only preferable but legally correct. In its view, it was hard to understand how the respondent could have been thought to have power to amend sworn evidence. Furthermore, even if the witnesses had consented to any proposed amendment, it was beyond the power of the respondent to amend documents which were no longer documents of the Agency.

Finally, the Tribunal having examined the subject documents, concluded that they all dealt with matters associated with the pursuit of the applicant's vocation as an occupational therapist. In the light of its earlier decision in *Re Williams* 8 ALD 219 and the decision of the Federal Court in *Young v Wicks* 11 ALN N76, it concluded that such matters could not be regarded as 'personal affairs' within the meaning of s.48.

In the circumstances the decision under review was affirmed.

PORTER and DEPARTMENT OF COMMUNITY SERVICES

No. A87/24

Decided: 24 March 1988 by Deputy President R.K. Todd.

Australia Card — costs to private sector — conclusive certificates — Cabinet documents — internal working documents — whether reasonable grounds for claims.

The applicant, who was the Shadow Minister for Health, had requested access to documents showing the costs to be incurred by the private sector or business in implementing the Australia Card proposal. The documents, which were in issue here, were subject to conclusive certificates under ss.34(2) and 36(3).

Effect of issue of certificate

Before proceeding to consider the reasonableness of the certificated claims, the Tribunal made some preliminary comments about its role where a certificate had been issued.

It noted that it might reject a certificated claim where it found that there had been some misapprehension of the document, where it considered that some provision had not been correctly interpreted and applied or where it considered that neither the preferred grounds nor any other grounds were anything other than irrational, absurd or ridiculous. However, in its view, where a certificate had been issued, the administration, at a very high level, had claimed and accepted responsibility in a very special way for a decision not to disclose. As a result, it felt that its role in reviewing a certificated claim was one which was different in character, and not merely in degree, from that which applied in cases of bald exemption claims.

Cabinet documents

The Tribunal first considered the meaning of the word 'deliberation' in s.34(1)(d). It concluded that it seemed to connote what was actively discussed in Cabinet so that it was not to be concluded that there was deliberation in respect of matter contained in a document merely because a document was before Cabinet at one of its meetings. In view of this, there were not, in its view, any reasonable grounds for the certificated claims based on s.34(1)(d). With regard to the claim under s.34(1)(a), the Tribunal concluded that that provision should be read as referring to:

a document that had been submitted to Cabinet, or a document proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of

submission for consideration by Cabinet.

Section 36

The Tribunal then considered the question as to the extent to which s.36(1) had a role to play in relation to Cabinet documents. It commenced its discussion by pointing out that s.32 and a number of Tribunal decisions made it clear that, notwithstanding that the legislation made specific provision in relation to a class of documents, s.36(1) had to be applied if the facts called for its application. A limitation which the Tribunal had, however, sought to emphasise was that s.36 did not permit the making of 'disguised class claims'.

With this in mind, the Tribunal concluded that a document which did not fall within s.34(1) might nevertheless contain deliberative processes information the disclosure of which would be contrary to the

public interest because it would breach the necessary confidentiality applying to the deliberations and processes of Cabinet. It therefore considered that, *always subject and having regard to the information contained in the document in question*, it was open to find that reasonable grounds of the kind made in the present certificate might exist under s.36.

The documents

Before analysing the documents in issue, the Tribunal considered the position with regard to what it referred to as 'co-ordination comments'. It found that a system existed for the addition to draft Cabinet proposals of submissions of co-ordination comments under the heading 'consultation'. It therefore followed that a co-ordination comment, prepared in proper form, would go before Cabinet as part of a Ministerial submission that

was finalised and approved and would therefore come within the terms of s.34(1)(a).

The first document considered by the Tribunal was a memorandum of response to a request from an officer of the respondent for an input on certain matters for a particular Cabinet submission. Although it held there were no reasonable grounds for certificated claims under s.34(1)(a) or (d), the Tribunal found that the material in the document was drawn on in preparing a Cabinet submission, was reflected in a co-ordination comment and was itself the subject of particular comment in the submission. In view of this, it concluded that there were reasonable grounds for considering that it would be contrary to the public interest for the document to be disclosed.

The Tribunal also upheld certificated claims in respect of nine further documents.

RECENT DEVELOPMENTS

REVIEW OF VICTORIAN FOI ACT

The Legal and Constitutional Committee has received a reference from the Victorian Government to review the Freedom of Information Act. The Committee's terms of reference are as follows:

The Governor in Council under Section 4F of the *Parliamentary Committees Act 1968* refers the following matter to the Parliamentary Legal and Constitutional Committee:

The *Freedom of Information Act*, in particular:

(a) examination of

- whether certain statutory officers are being adversely affected in the proper performance of their public duties by the accessibility of the documents of their agencies, and
- whether, there should be provision for exemption of agencies from the application of the Act and if so, which agencies,

(b) problems posed by voluminous and expensive applications and in particular whether limits need to be placed on such applications and especially

- whether access charges should be related to the cost of providing that access,
- whether members of Parliament should continue to have free access,

— whether the Act should provide a power to agencies to limit unreasonably voluminous requests, and

— the extent to which departmental priorities are being affected by Freedom of Information requests including relevant comparisons with the *Commonwealth Freedom of Information*.

- (c) consideration of the means to preserve Cabinet confidentiality and to safeguard the confidentiality of working and other documents leading up to or forming part of the Cabinet process to ensure effective Government administration, and
- (d) consideration of the interrelationship between the *Freedom of Information Act* and the *Public Records Act* for access to public records and in particular, the introduction of a general open access right for all non-personal documents based on the ten-year time limit referred to in section 28(2) of the *Freedom of Information Act*.

The Committee is required to report to Parliament by 31 December 1988.

Any person interested in making a submission to the Committee should forward it to The Secretary, Legal and Constitutional Committee, 19th Floor, Nauru House, 80 Collins Street, Melbourne 3000.

LITERATURE REVIEW

LEGAL AND CONSTITUTIONAL COMMITTEE 11TH REPORT ON SUBORDINATE LEGISLATION

In its 11th report on subordinate legislation the Legal and Constitutional Committee examined the Freedom of Information (Exempt Offices) Regulations 1987 and the Public Service (Unauthorised Disclosure) Regulations 1987. Its recommendations were that both should be disallowed by the Parliament.

Under s.14(1) of the *Subordinate Legislation Act 1962* the Committee may report to Parliament where it

considers that a statutory rule:

- does not appear to be within the powers conferred by the Act under which the statutory rule was made;
- does not appear to be within the general objectives, intention or principles of the Act under which the statutory rule was made;
- makes unusual or unexpected use of the powers conferred by the Act under which the statutory rule was made having regard to the general objectives, intention or principles of that Act; or