

**LOCAL GOVERNMENT (APPEALS)  
AMENDMENT ACT.**

**New South Wales**



ANNO VICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 34, 1975.**

An Act to make further provisions with respect to the practice and procedure of the Local Government Appeals Tribunal; for this and other purposes to amend the Local Government Act, 1919, and the Strata Titles Act, 1973; to validate certain matters; and for purposes connected therewith. [Assented to, 16th April, 1975.]

BE

*Local Government (Appeals) Amendment.*

**B**E it enacted by the Queen's Most Excellent Majesty, by No. 34, 1975  
 and with the advice and consent of the Legislative  
 Council and Legislative Assembly of New South Wales in  
 Parliament assembled, and by the authority of the same, as  
 follows:—

1. This Act may be cited as the "Local Government Short title.  
 (Appeals) Amendment Act, 1975".

2. (1) Except as provided in subsection (2), this Act Commence-  
 shall commence on the date of assent to this Act. ment.

(2) Sections 6 (e) and 7 (1) (f) shall commence  
 on such day as may be appointed by the Governor in respect  
 thereof and as may be notified by proclamation published in  
 the Gazette.

3. The Local Government Act, 1919, is in this Act Principal  
 referred to as the Principal Act. Act.

4. (1) Part XI of the Principal Act is amended— Amendment  
of Act No.  
41, 1919.  
(Part XI.—  
Building  
Regulation.)

(a) by inserting at the end of section 317D the following Sec. 317D.  
 subsection :— (Fire  
escapes,  
fire-fighting  
equipment,  
etc.)

(3) A direction under this section—  
 (a) to carry out works shall specify the period  
 within which the works are to be commenced  
 and a further period within which the works  
 are to be completed;

(b) to provide equipment shall specify the period  
 within which the equipment is required to  
 be provided; or

(c)

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(c) not to use a building for any purpose or any specified purposes shall specify the period at the expiration of which the building is not to be so used.

Sec. 317E.  
(Notice to  
owners and  
others.)

(b) (i) by omitting from section 317E (b) the words “the resolution of the council may be adopted by the board and that such person shall in all respects be finally bound by the adoption” and by inserting instead the words “every person entitled to object against the resolution shall in all respects be finally bound by the resolution”;

(ii) by omitting section 317E (c) and (d) and by inserting instead the following paragraphs :—

(c) that, subject to any decision of the board under section 317G, works to be carried out in accordance with the resolution shall be begun before the expiration of such period as may be specified in the notice (being the period specified in the resolution) and shall be completed within such further period as may be so specified ;

(d) that, subject to any decision of the board under section 317G, equipment to be provided in accordance with the resolution shall be provided before the expiration of such period as may be specified in the notice (being the period specified in the resolution) ;

(iii) by omitting from section 317E (e) the words “if the resolution is adopted” and by inserting instead the words “subject to any decision of the board under section 317G”;

(iv)

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- (iv) by omitting from section 317E (e) the words No. 34, 1975 “next following the date of adoption”;
- (v) by inserting in section 317E (e) after the word “notice” the words “(being the period specified in the resolution)”;
- (c) (i) by omitting from section 317G the words “The Sec. 317G. board may, if no person objects, adopt the (Procedure.) resolution of the council; but if” and by inserting instead the word “If”;
- (ii) by omitting from section 317G the words “adopt the resolution with or without modification, or may refuse to adopt it” and by inserting instead the words “confirm the resolution with or without modification, or may refuse to confirm it”;
- (d) by omitting from section 317H the word “adopting” Sec. 317H. and by inserting instead the word “confirming”; (Extension of time.)
- (e) by omitting section 317I and by inserting instead Sec. 317L the following section :—

317I. Where—

- (a) no objection is made to the Tribunal in accordance with section 317F against the council’s resolution; or
- (b) an objection is so made and the board confirms the council’s resolution with or without modification,

Effect of resolution.

every person entitled to object against the resolution shall in all respects be finally bound by the resolution or, as the case may be, by the resolution as so confirmed.

(f)

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Sec. 317J.  
(Completion  
of work.)

- (f) (i) by omitting section 317J (1);
- (ii) by omitting from section 317J (2) the words "If such works have not been begun and completed or such equipment has not been provided within such respective times" and by inserting instead the following words :—

Where—

- (a) no objection is made to the Tribunal in accordance with section 317F against the council's resolution; or
- (b) an objection is so made and the board confirms the council's resolution with or without modification,

and the works or equipment specified in the council's resolution have not been begun and completed or provided within the respective times specified in the resolution or, as the case may be, in the resolution as so confirmed";

- (iii) by omitting section 317J (5) and by inserting instead the following subsection :—

(5) The owner of a building on whom a notice has been served under section 317E and who fails—

- (a) where no objection is made to the Tribunal in accordance with section 317F against the council's resolution set forth in the notice, to comply with a direction contained in the resolution; or
- (b) where an objection is so made and the board confirms the resolution set forth in the notice with or without modification, to comply with a direction contained in the resolution as so confirmed,

is guilty of an offence against this Act.

**Penalty**

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Penalty : \$500 and, for each day the No. 34, 1975  
offence continues, a further \$50.

- (iv) by omitting from section 317J (6) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";
- (v) by omitting from section 317J (7) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";
- (g) (i) by inserting in section 317L after the word "within" the words "a period of"; Sec. 317L.  
(Appeals.)
- (ii) by omitting from section 317L the word "Tribunal." and by inserting instead the following word and paragraphs :—

**Tribunal—**

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or a period of forty days after service of the application on the council had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

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**No. 34, 1975** (2) Notwithstanding the amendments made by subsection (1), a resolution passed by a council under section 317D of the Principal Act as in force before the date of assent to the Local Government (Appeals) Amendment Act, 1975, shall, if a notice relating to that resolution had before that date been served by the council pursuant to section 317E of the Principal Act as so in force, have effect and continue to be dealt with as if those amendments had not been made.

Further amendment of Act No. 41, 1919. (Part XII.—Town Planning.) Sec. 341. (Appeals.)

**5. Part XII of the Principal Act is amended—**

- (a) by inserting in section 341 after the word “within” the words “a period of”;
- (b) by omitting from section 341 the word “Tribunal.” and by inserting instead the following word and paragraphs :—

**Tribunal—**

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council’s decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council’s decision on the application was given before that date or a period of forty days after service of the application on the council had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

**6.**

*Local Government (Appeals) Amendment.***6. Part XIIA of the Principal Act is amended—****No. 34, 1975**

Further  
amendment  
of Act No.  
41, 1919.  
(Part XIIA.—  
Town and  
Country  
Planning  
Schemes.)

- (a) (i) by inserting in section 342N (2) after the word “within” the words “a period of”;
- (ii) by omitting from section 342N (2) the word “Tribunal.” and by inserting instead the following word and paragraphs :—

Sec. 342N.  
(Powers,  
etc., of  
responsible  
authority.)

**Tribunal—**

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the responsible authority’s decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the responsible authority’s decision on the application was given before that date or a period of forty days after service of the application on the responsible authority had elapsed before that date without the responsible authority having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

**(b)**



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Sec. 342NA.  
(Modification of  
prescribed  
schemes.)

(b) (i) by inserting after section 342NA (2) the following subsection :—

(2A) Any person who would, but for any minimum requirements of a prescribed scheme, be entitled to carry out development without the approval, consent or permission of the responsible authority may lodge with the responsible authority an objection that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

(ii) by omitting from section 342NA (3) the words “Any such objection” and by inserting instead the words “Any objection referred to in subsection (2) or (2A)”;

(iii) by inserting in section 342NA (4) after the matter “subsection (3)” the words “in respect of an objection referred to in subsection (2)”;

(iv) by omitting from section 342NA (4) the words “that subsection” and by inserting instead the matter “subsection (3)”;

(v) by inserting after section 342NA (4) the following subsection :—

(4A) Any direction given by the Tribunal under subsection (3) in respect of an objection referred to in subsection (2A) shall have effect according to its tenor.

Sec. 342v.  
(Permission for interim  
development.)

(c) by omitting from section 342v (5) (b) the word “Tribunal.” and by inserting instead the following word and subparagraphs :—

**Tribunal—**

(i) except as provided in subparagraph (ii), within twelve months after the date on which he received notice of the council’s decision or after the expiration of the

**period**

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period at the expiration of which the council is to be deemed, under subsection (1B), to have refused the application, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or

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- (ii) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or the period, at the expiration of which the council is to be deemed, under subsection (1B), to have refused the application, had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

- (d) (i) by inserting after section 342VA (2) the following subsection :—

Sec. 342VA.  
(Modification of interim development orders.)

(2A) Any person who would, but for any minimum requirements of an interim development order or Ordinance No. 105, be entitled to carry out development without the consent of the council, may lodge with the council an objection that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

- (ii) by omitting from section 342VA (3) the words "Any such objection" and by inserting instead the words "Any objection referred to in subsection (2) or (2A)";

(iii)

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- (iii) by inserting in section 342VA (4) after the matter "subsection (3)" the words "in respect of an objection referred to in subsection (2)";
- (iv) by omitting from section 342VA (4) the words "that subsection" and by inserting instead the matter "subsection (3)";
- (v) by inserting after section 342VA (4) the following subsection :—

(4A) Any direction given by the Tribunal under subsection (3) in respect of an objection referred to in subsection (2A) shall have effect according to its tenor.

Sec. 342ZA.  
(Objections to residential flat buildings and certain other development.)

- (e) by omitting from section 342ZA (7) the words "may apply" and by inserting instead the words "shall be given notice of the appeal by the responsible authority or the council, as the case may be, and may, in the manner and within the time prescribed, apply to the Tribunal".

Further amendment of Act No. 41, 1919. (Part XII B. —Appeals.)

## 7. (1) Part XII B of the Principal Act is amended—

Sec. 342AX.

- (a) by omitting section 342AX and by inserting instead the following section :—

Boards of Appeal.

342AX. (1) Subject to section 342BEA, as soon as practicable after—

- (a) an appeal is made to the Tribunal under this or any other Act;
- (b) a member of the Tribunal appointed under section 342BEA to arrange a conference in relation to an appeal reports to the senior chairman that the appeal has not been disposed of under section 342BEA (3); or

(c)

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- (c) an appeal is remitted to the senior chairman No. 34, 1975  
under section 342BF (2) (m),

the senior chairman shall constitute a Board of Appeal to deal with the appeal.

(2) A board shall, at the discretion of the senior chairman exercised having regard to the nature of the appeal to be dealt with—

- (a) if the parties consent consist of any one member of the Tribunal; or
- (b) consist of—
- (i) three members each of whom has been appointed to the Tribunal under paragraph (a), (b) or (c) of section 342AV (1) so that one person appointed under each such paragraph is a member of the board; and
  - (ii) a number, determined in accordance with subsection (7), of other members selected from the persons appointed to the Tribunal under paragraphs (d), (e), (f), (g) and (h) of section 342AV (1).

(3) Notwithstanding subsection (2), where—

- (a) a member of the Tribunal has, in respect of an appeal, reported to the senior chairman as referred to in subsection (1) (b), the board constituted to deal with that appeal shall not, unless the parties consent, consist of or include that member; or
- (b) an appeal is remitted to the senior chairman under section 342BF (2) (m), the board constituted to deal with the appeal shall not, unless the parties consent, consist of one member of the Tribunal.

(4)

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(4) The member or members of a board shall be appointed by instrument in writing executed by the senior chairman, who may appoint himself as the member or a member of a board.

(5) A reference in this Act to the chairman of a board includes a reference to the member of the Tribunal who, under subsection (2) (a), constitutes a board.

(6) Where a board consists of members of the Tribunal as referred to in subsection (2) (b), the member of the board appointed to the Tribunal under section 342AV (1) (a) shall be chairman of that board.

(7) The number of members to be appointed to any board pursuant to subsection (2) (b) (ii) shall be as determined by the senior chairman, but not more than one member of any board shall be a person appointed to the Tribunal pursuant to any one of paragraphs (d), (e), (f), (g) and (h) of section 342AV (1).

(8) In appointing the members to be appointed to any board pursuant to subsection (2) (b) (ii) the senior chairman shall have regard to the nature of the appeal with which the board is to deal and the qualifications of the members to be appointed pursuant to subsection (2) (b) (ii).

Sec. 342BB.  
(Sittings of  
a board.)

(b) (i) by omitting from section 342BB (3) the words "Subject to" and by inserting instead the words "Except where, pursuant to section 342AX (2) (a), a board consists of one member, and subject to";

(ii) by omitting from section 342BB (4) the words "and the parties to the matter before the board consent to that member's acting as chairman";

(iii)

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(iii) by omitting from section 342BB (4) the words No. 34, 1975  
 “, but if the parties do not so consent—

(a) the remaining members of the board present at that sitting may adjourn the sitting and for that purpose shall form a quorum; or

(b) the senior chairman may appoint another board to deal with the appeal”;

(c) by inserting after section 342BE the following Sec. 342BEA.  
 section :—

342BEA. (1) The senior chairman may, without Conferences between parties. having constituted a board to deal with an appeal, appoint a member of the Tribunal to arrange a conference, to be presided over by that member, between the parties to the appeal with a view to disposing of the appeal in accordance with this section.

(2) The member of the Tribunal appointed under subsection (1) shall as soon as practicable after his appointment notify the parties to the appeal of the time and place fixed by him for the conference.

(3) Where the parties to the appeal agree, at a conference, to the appeal being decided in a particular manner or to the appeal being withdrawn, the member of the Tribunal before whom the conference is held may decide the appeal in the manner agreed upon or permit the appeal to be withdrawn, and the decision of that member shall, for the purposes of this Part, be deemed to be a decision of a board made in proceedings before a board.

(4)

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(4) Evidence of anything said or of any admission made in the course of a conference held pursuant to this section shall not unless the parties consent be admissible in proceedings before a board constituted to deal with the appeal.

Sec. 342BF.  
(Powers of  
a board.)

(d) (i) by omitting section 342BF (2) (i) and by inserting instead the following paragraph :—

(i) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), by the member constituting the board make any inquiry or inspection necessary or expedient for the purposes of the proceedings or where it consists of members of the Tribunal, as referred to in section 342AX (2) (b), appoint any one or more of its members to make any such inquiry or inspection;

(ii) by omitting from section 342BF (2) (k) the word “or” where thirdly occurring;

(iii) by inserting at the end of section 342BF (2) (1) the following word and paragraph :—  
; or

(m) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), remit the appeal to the senior chairman to be dealt with by a board consisting of members of the Tribunal, as referred to in section 342AX (2) (b).

(iv) by inserting at the end of section 342BF (3) (a) the word “or”;

(v) by omitting section 342BF (3) (b);

(vi)

*Local Government (Appeals) Amendment.*

(vi) by inserting after section 342BF (5) the No. 34, 1975 following subsection :—

(6) Notwithstanding any other provision of this section, if an appeal relates to any application made to a council or responsible authority and that council or responsible authority may not approve of, consent to, or deal with, or grant a permission in respect of, the application except after consultation with, or with the concurrence or approval of, any person or body, other than the Minister, a board may determine the appeal notwithstanding that the consultation has not taken place or that the concurrence or approval has not been sought, or having been sought, has not been given.

(e) by inserting after section 342BG the following Sec. 342BGA. section :—

342BGA. (1) Where an appeal has been made to the Tribunal, the senior chairman, if a board has not been constituted to deal with the appeal, or the chairman of the board, if a board has been so constituted, may, before the board commences to deal with the appeal, by notice in writing served on any person, order that person—

Production  
of docu-  
ments and  
inspection  
of land  
before  
hearing of  
appeal  
commences.

- (a) to produce any document specified in the notice or any document of a class or description so specified to any party to the appeal so specified during such times on such days and at such places as may be so specified; or
- (b) to permit any party to the appeal specified in the notice to enter and inspect any land so specified or any part of any land so specified, being land or a part of land to which the appeal relates during such times and on such days as may be so specified.

(2)



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(2) A reference in subsection (1) to a party to an appeal includes, in respect of an order under that subsection made by the senior chairman, a reference to an objector entitled to apply, under section 342ZA (7), for leave to appear and be heard as if he were a party to the appeal.

Sec. 342B1.  
(Records of  
boards.)

(f) (i) by omitting section 342B1 (1) and (2) and by inserting instead the following subsections :—

(1) Proceedings before a board shall be recorded but any such record which is made by means of shorthand, stenotype or sound-recording apparatus shall not be transcribed unless the senior chairman directs that the recording be transcribed or the transcription is otherwise required by law or on the application of a party to the appeal.

(2) Any transcription so made shall be supplied to any party to the appeal upon payment of the prescribed fee corresponding to the fee referred to in section 73 (2) of the Justices Act, 1902, for copies of depositions.

(2A) Every decision of a board shall be in the form of an instrument in writing signed by the chairman of that board and, where any of the parties or objectors in an appeal notifies the board before it gives its decision on the appeal that reasons for its decision are required or where the chairman of the board considers it appropriate, the instrument shall, except in the case of a decision on an objection or reference, include the reasons for the decision of the board.

(ii) by omitting from section 342B1 (5) the words “and an extract from the minutes of the board’s proceedings so far as they relate to that decision,”;

(g)

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(g) (i) by omitting from section 342BJ (1) the words "proceedings before a board and of the decision thereon" and by inserting instead the words "appeal to the Tribunal, including any expenses incurred by the Tribunal or a board in connection with the appeal,";

No. 34, 1975  
Sec. 342BJ.  
(Costs.)

(ii) by omitting from section 342BJ (3) the words "enforced and recovered in like manner as costs awarded in a court of summary jurisdiction" and by inserting instead the words "recovered as a debt in any court of competent jurisdiction";

(iii) by inserting after section 342BJ (3) the following subsections :—

(4) Any costs payable to the Tribunal under this section may be recovered in accordance with subsection (3) on behalf of the Tribunal by any person authorised in writing by the senior chairman to take proceedings for their recovery.

(5) A certificate purporting to be signed by the chairman of a board and containing a statement as to any matters relating to the award of costs under this section is admissible as prima facie evidence of those matters.

(2) Notwithstanding the amendments made by subsection (1), paragraph (d) (vi) excepted, where a board has, before the date of assent to this Act, been constituted to deal with an appeal and that appeal has not been completed, that appeal shall be dealt with in all respects as if those amendments had not been made.

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No. 34, 1975      **8.** Part XXIII of the Principal Act is amended by omitting  
 Further amendment of Act No. 41, 1919.      from section 510 (3) the words “may appeal to the Tribunal against the decision of the council.” and by inserting instead the following matter :—

(Part XXIII.  
 —Miscellaneous Powers.)  
 Sec. 510.  
 (Advertisements.)

may—

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council’s decision or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- (b) where the council’s decision was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow,

appeal to the Tribunal against that decision.

Amendment of Act No. 68, 1973. Sec. 40. (Appeal against local council refusing approval.)

**9.** The Strata Titles Act, 1973, is amended—

- (a) by inserting in section 40 (4) after the word “within” the words “a period of”;
- (b) by omitting from section 40 (4) the words “may appeal to the Local Government Appeals Tribunal constituted under Part XII B of the Local Government Act, 1919.” and by inserting instead the following matter :—

may—

- (c) except as provided in paragraph (d), within twelve months after the date on which he received notice of the local council’s decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or

(d)

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(d) where the application was made before <sup>No. 34, 1975</sup> the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the local council's decision on the application was given before that date or a period of forty days after service of the application had elapsed before that date without the local council having notified its approval of the application, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow,

appeal to the Local Government Appeals Tribunal constituted under Part XII<sup>B</sup> of the Local Government Act, 1919.

**10.** (1) A decision on an appeal made before the commencement of this Act by a board of appeal constituted under Part XII<sup>B</sup> of the Local Government Act, 1919, shall be as valid and effectual as it would have been had the amendment made by section 7 (1) (d) (vi) been in force when the decision was made. **Saving.**

(2) Subsection (1) does not apply to or in respect of the decision of a board of appeal in an appeal in the proceedings referred to in the Schedule in the Supreme Court of New South Wales.

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SCHEDULE

Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd and Anor. A.L.D. 13 of 1974.

The Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd and Anor. C.A. 133 of 1974.

Ward v. Warringah Shire Council and Local Government Appeals Tribunal. A.L.D. 58 of 1974 and C.A. 191 of 1974.

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NOISE