



Queensland

# Public Service Regulation 2008

## Subordinate Legislation 2008 No. 209

made under the

*Chemical Usage (Agricultural and Veterinary) Control Act 1988*

*Criminal Code Act 1899*

*Electricity Act 1994*

*Fisheries Act 1994*

*Forestry Plantations Queensland Act 2006*

*Land Protection (Pest and Stock Route Management) Act 2002*

*Nature Conservation Act 1992*

*Parliamentary Service Act 1988*

*Police Service Administration Act 1990*

*Public Service Act 2008*

*Summary Offences Act 2005*

*Superannuation (State Public Sector) Act 1990*

*Supreme Court of Queensland Act 1991*

*Transport Operations (Road Use Management) Act 1995*

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## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Public Service Regulation 2008*.

### 2 Commencement

This regulation commences on 1 July 2008.

### 3 Definitions

In this regulation—

*column 1 entity* see section 4.

*employee*, of a column 1 entity, means a person employed by or in the entity who is not a public service employee.

*employee record* see section 10(1).

*health service employee* means a person appointed under the *Health Services Act 1991*, section 24.

*possession*, for an employee record, see section 11.

*relevant investigation or inquiry* means an investigation or inquiry into—

- (a) an allegation of conduct that, if proved, may make a public service employee liable to disciplinary action; or
- (b) a grievance involving a public service employee lodged under a directive or industrial instrument.

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## **Part 2            Public service offices**

### **Division 1            Declared public service offices and applied provisions**

#### **4            Declared public service office—Act, s 21**

- (1) For section 21(1)(b) of the Act, an entity mentioned in schedule 1, column 1 (*column 1 entity*), is declared to be a public service office.
- (2) The person mentioned in schedule 1, column 2, opposite the name of the office, is declared to be the head of the office.

#### **5            Provisions of the Act applied under the Act, s 23**

- (1) The provisions of the Act applied to a column 1 entity are stated in schedule 1, column 3, paragraph (a), opposite the entity's name.
- (2) The provisions of the Act applied to a column 1 entity's employees are stated in schedule 1, column 3, paragraph (b), opposite the entity's name.
- (3) A provision applied to a column 1 entity under subsection (1) applies to the entity and its employees as if—
  - (a) the entity were a department; and
  - (b) the head of the entity stated in schedule 1, column 2, opposite the entity's name were the chief executive of the department; and
  - (c) the employees were public service employees.
- (4) A provision applied to a column 1 entity's employees mentioned in subsection (2) applies to the entity and the employees as if—
  - (a) the entity were a department; and

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- (b) the head of the entity stated in schedule 1, column 2, opposite the entity's name were the chief executive of the department; and
- (c) the employees were public service employees.

## **Division 2                    Things prescribed because of the    declaration of public service    entities or the application of applied    provisions**

### **6                    Transfer or redeployment of employees under applied                                  provisions**

- (1) On the transfer or redeployment of an employee of a column 1 entity under an applied provision—
  - (a) the employee is employed under the Act; and
  - (b) the employee retains and is entitled to all rights that have accrued to the employee because of the person's employment with the column 1 entity; and
  - (c) the employee's service as an employee of the column 1 entity is taken to be service of a like nature in the public service for deciding the employee's rights as a public service employee; and
  - (d) the transfer or redeployment does not break the employee's continuity of service.
- (2) On the transfer or redeployment of a public service employee to or into a column 1 entity under an applied provision—
  - (a) the employee is employed under the Act under which the entity is established; and
  - (b) the employee retains and is entitled to all rights that have accrued to the employee because of the person's employment as a public service employee; and
  - (c) the employee's service as a public service employee is taken to be service of a like nature with the column 1

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entity for deciding the employee's rights as an employee of the column 1 entity; and

- (d) the transfer or redeployment does not break the employee's continuity of service.

## **7 Application of appeal provisions**

- (1) This section applies to a column 1 entity to which chapter 7 of the Act applies.
- (2) The commission chief executive must declare, under a directive, the employees of the column 1 entity to whom section 195(1)(g) of the Act applies as if they were senior executives or senior officers.

*Editor's note—*

Section 195 (Decisions against which appeals can not be made) of the Act.

- (3) The commission chief executive may make the declaration only if he or she considers that the employee is performing duties that would, if the employee were a public service officer, be duties of—
- (a) for an employee to whom the section is to apply as if the employee were a senior executive—a senior executive; or
- (b) for an employee to whom the section is to apply as if the employee were a senior officer—a senior officer.

## **8 Application of rulings**

- (1) For a column 1 entity, a ruling stated in schedule 1, column 3, paragraph (c), opposite the entity's name applies to the entity and its employees mentioned in column 3, paragraph (b), with all necessary changes.
- (2) If section 53 or 54 of the Act apply to a column 1 entity or a column 1 entity's employees, the section applies only to the extent that a ruling made under the section applies to the entity and its employees under subsection (1).

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## **9 References to replaced rulings**

- (1) This section applies if a ruling mentioned in schedule 1 is repealed and a new ruling dealing with substantially the same subject matter is made to replace it.
- (2) A reference in schedule 1 to the repealed ruling is taken to be a reference to the new ruling.

# **Part 3 Provisions about employment**

## **Division 1 Key concepts**

### **10 Meaning of *employee record***

- (1) Subject to subsection (2), each of the following documents, to the extent it contains information about a public service employee, is an *employee record* about the employee—
  - (a) a report, correspondence item or other document about the employee's work performance, work conduct or work history;
  - (b) a medical report about the employee;
  - (c) a written allegation of misconduct by the employee.
- (2) None of the following documents is an employee record about a public service employee—
  - (a) a medical report about the employee indicating that disclosure of information in it to the employee might be prejudicial to the employee's mental or physical health or wellbeing;
  - (b) an employee assistance provider document about the employee;
  - (c) a Whistleblowers Protection Act document about the employee;



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- (d) a document about the employee relating to suspected official misconduct under the *Crime and Misconduct Act 2001* or its investigation;
  - (e) a document about the employee relating to a suspected criminal offence or its investigation;
  - (f) a document to which legal professional privilege applies.

(3) In this section—

***employee assistance provider*** means a person with a qualification to provide professional counselling services.

***employee assistance provider document*** means a document about any public service employee created by an employee assistance provider for the primary purpose of providing a professional counselling service to a public service employee.

***misconduct*** see the Act, section 187(2).

***Whistleblowers Protection Act document*** means a document that—

- (a) is a public interest disclosure, or record of a public interest disclosure, made under the *Whistleblowers Protection Act 1994*; or
- (b) was brought into existence for that Act's administration.

## 11 When an employee record is in an entity's ***possession***

- (1) An employee record is in an entity's ***possession*** if the entity has the record in its possession, under its control, or is otherwise entitled to have access to the record.
- (2) An employee record is also in an entity's ***possession*** if the record is in the possession, or under the control, of an employee of the entity in the employee's official capacity.
- (3) For subsection (2)—
  - (a) if the entity is the Minister, a person is an employee of the entity if the person is an employee of the department administered by the Minister; or

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- (b) if the entity is the chief executive of a department, a person is an employee of the entity if the person is an employee of the department.

## **Division 2                    Dealing with employee records**

### **12            Dealing with employee record if detrimental to employee's interests**

- (1) This section applies if a public service employee's chief executive intends to—
  - (a) use an employee record about the employee in a way that could reasonably be considered to be detrimental to the employee's interests; or
  - (b) place on the employee's employment file an employee record about the employee that could reasonably be considered to be detrimental to the employee's interests.
- (2) Subject to subsection (3), the chief executive must ensure that, at least 14 days before taking the action mentioned in subsection (1) (the *detrimental action*)—
  - (a) the employee is given the opportunity to read the record and to acknowledge having read it by initialling it; and
  - (b) the employee is given a copy of the record; and
  - (c) if the employee has refused to read the record or to acknowledge having read it by initialling it, the refusal is noted on the record; and
  - (d) the employee is given the opportunity to respond in writing at any time to the record's contents; and
  - (e) any written response by the employee is attached to the record.
- (3) Subsection (4) applies if the chief executive reasonably considers that giving the employee access to the record under subsection (2) would be likely to prejudice an existing relevant investigation or inquiry.

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- (4) The chief executive must give the employee access to the record in the way mentioned in subsection (2)(a) to (e) immediately after whichever of the following happens first—
- (a) the chief executive no longer reasonably considers that giving the employee access to the record would be likely to prejudice a relevant investigation or inquiry;
  - (b) the end of the period of 6 months after the detrimental action is taken.

### **13 Employee record in possession of another chief executive**

- (1) This section applies to a chief executive of a department (the *relevant chief executive*) if—
- (a) an employee record about a public service employee is in the relevant chief executive's possession; and
  - (b) the relevant chief executive is not the employee's chief executive.
- (2) The relevant chief executive must give possession of the record to the employee's chief executive as soon as practicable.
- (3) However, if the employee has been seconded to another department for a total period of less than 6 months, subsection (2) only applies if the relevant chief executive and the employee's chief executive agree in writing that the relevant chief executive give possession of the record to the employee's chief executive.

*Note—*

The relevant chief executive may still need to comply with a commission chief executive directive about giving the employee's personal and employment details to the employee's chief executive.

- (4) Also, subsection (2) does not apply to a referee's report or other document received for a selection process to fill an employment vacancy in the department.

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## **14 Access to employee record**

- (1) This section applies if an employee record about a public service employee is in the possession of any chief executive.
- (2) The employee may, on request—
  - (a) inspect the record; or
  - (b) take an extract from, or obtain a copy of details in, the record.
- (3) Subject to subsection (4), the inspection, taking of the extract or obtaining of the copy (the *requested action*) must be allowed at a time and place convenient to the chief executive within 21 days after the request.
- (4) Subsection (5) applies if the chief executive reasonably considers the requested action would be likely to prejudice an existing relevant investigation or inquiry.
- (5) The chief executive must allow the requested action immediately after whichever of the following happens first—
  - (a) the chief executive no longer reasonably considers the requested action would be likely to prejudice the relevant investigation or inquiry;
  - (b) the end of the period of 6 months after the employee requests the requested action.
- (6) In taking the requested action, the employee must not remove anything from the record.

## **15 Exemption from requirement for chief executive to obtain police information in particular circumstances—Act, s 157**

For section 157(4) of the Act, each of the following is an exempt person—

- (a) a person who holds full registration, provisional registration or permission to teach under the *Education (Queensland College of Teachers) Act 2005*;

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- (b) the holder of a current positive notice issued under the *Commission for Children and Young People and Child Guardian Act 2000*;
- (c) the following persons under the *Legal Profession Act 2007*—
- (i) an Australian lawyer employed by a government service provider as defined in the *Commission for Children and Young People and Child Guardian Act 2000*;
  - (ii) an Australian legal practitioner;
- (d) a health practitioner registered under any of the following Acts—
- *Chiropractors Registration Act 2001*
  - *Dental Practitioners Registration Act 2001*
  - *Dental Technicians and Dental Prosthetists Registration Act 2001*
  - *Medical Practitioners Registration Act 2001*
  - *Medical Radiation Technologists Registration Act 2001*
  - *Nursing Act 1992*
  - *Occupational Therapists Registration Act 2001*
  - *Optometrists Registration Act 2001*
  - *Osteopaths Registration Act 2001*
  - *Pharmacists Registration Act 2001*
  - *Physiotherapists Registration Act 2001*
  - *Podiatrists Registration Act 2001*
  - *Psychologists Registration Act 2001*
  - *Speech Pathologists Registration Act 2001*.

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**16 Entities with whom chief executive may enter into arrangements about police information—Act, s 165**

For section 165(1) of the Act, a chief executive may enter into an arrangement with the Commission for Children and Young People and Child Guardian in relation to a matter under chapter 5, part 6, division 3 of the Act.

## **Part 4 Repeal**

**17 Repeal of Public Service Regulation 2007**

The Public Service Regulation 2007, SL No. 213 is repealed.

## **Part 5 Transitional provisions**

**18 References to Public Service Regulation 2007**

A reference in any document to the repealed *Public Service Regulation 2007* is, if the context permits, taken to be a reference to this regulation.

**19 Officer employed in a department on probation**

- (1) This section applies to an officer employed in a department on probation immediately before 1 July 2008.
- (2) Part 2, division 2, of the repealed *Public Service Regulation 1997* continues to apply to the officer despite the repeal of that regulation.

## **Part 6**

# **Amendment of other subordinate legislation**

### **20 Subordinate legislation amended in sch 2**

Schedule 2 amends the subordinate legislation it mentions.

## Schedule 1      Public service offices, their heads and applied provisions and rulings

sections 4, 5 and 8

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Public service office</b>	<b>Public service office head</b>	<b>Applied provisions and rulings</b>
1	Australian Agricultural College Corporation ABN 65 259 790 558 or Australian Agricultural College Employing Office under the <i>Agricultural College Act 2005</i>	director or executive officer	(a) chapter 3 part 3, section 138 and chapter 5 part 6 divisions 1, 2, 4 and 5 (other than section 172) and chapter 7; and  (b) all of the entity's employees—chapter 3 part 3, section 138, chapter 5 part 6, divisions 1, 2, 4 and 5 and chapter 7; and  (c) directives 18/97, 6/03, 10/05 (other than schedule A, clause 2.1), 11/05, 4/06, 11/07 and 4/08.



Column 1	Column 2	Column 3
Public service office	Public service office head	Applied provisions and rulings
2 an administrative unit mentioned in section 34A of the <i>Health Services Regulation 2002</i>	chief executive of the department in which the <i>Health Services Act 1991</i> is administered	<p>(a) not applicable; and</p> <p>(b) for health service employees—chapter 1 part 3, chapter 3 part 3, sections 115, 133, 134, 137, 138, 149 and 186 and chapter 5 parts 6 and 7, chapter 6 and chapter 7; and</p> <p>(c) for health service employees—directives 10/96, 18/97, 24/99, 4/02, 6/03, 10/05, 11/05, 14/05, 16/05, 18/05, 4/06, 5/06, 6/06, 7/07, 8/07, 11/07, 12/07 and 4/08.</p>
3 Legal Aid Queensland under the <i>Legal Aid Queensland Act 1997</i>	chief executive officer	<p>(a) chapter 1 part 4, chapter 3 part 3, sections 103(1) and (3), 128, 133, 134 and 138 and chapter 5 part 7, chapter 6 and chapter 7; and</p> <p>(b) all of the entity's employees—the provisions mentioned in paragraph (a); and</p> <p>(c) directives 18/97, 6/03, 10/05 (other than schedule A, clause 2.1), 11/05, 4/06 (other than clauses 7.3, 7.4 and 7.15), 9/07 and 11/07.</p>

## Schedule 1

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Public service office</b>	<b>Public service office head</b>	<b>Applied provisions and rulings</b>
4	Queensland Ambulance Service under the <i>Ambulance Service Act 1991</i>	commissioner	<p>(a) chapter 1 part 4, chapter 3 part 3, sections 133(2), (3) and (4) and 138 and chapter 7; and</p> <p>(b) all of the entity's employees—the provisions mentioned in paragraph (a); and</p> <p>(c) directives 18/97, 4/99, 4/02, 6/03, 10/05 (other than schedule A, clause 2.1), 11/05, 4/06 and 11/07.</p>
5	Queensland Art Gallery under the <i>Queensland Art Gallery Act 1987</i>	director	<p>(a) chapter 3 part 3, section 138 and chapter 7; and</p> <p>(b) all of the entity's employees—the provisions mentioned in paragraph (a); and</p> <p>(c) directives 18/97, 6/03, 10/05 (other than schedule A, clause 2.1), 11/05, 4/06 and 11/07.</p>

Column 1	Column 2	Column 3
Public service office	Public service office head	Applied provisions and rulings
6 Queensland Building Services Authority or Queensland Building Service Employing Office under the <i>Queensland Building Services Authority Act 1991</i>	general manager or executive officer	(a) chapter 3 part 3, sections 133(2), (3) and (4), 134 and 138 and chapter 7; and (b) all of the entity's employees—the provisions mentioned in paragraph (a); and (c) directives 18/97, 6/03, 10/05 (other than schedule A, clause 2.1), 11/05, 4/06 and 11/07.

## Schedule 1

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Public service office</b>	<b>Public service office head</b>	<b>Applied provisions and rulings</b>
7	Queensland Fire and Rescue Service under the <i>Fire and Rescue Service Act 1990</i>	commissioner	<p>(a) chapter 1 part 4, chapter 3 part 3, sections 120, 133(2), (3) and (4), 134, 138, 183 and 184 and chapter 7; and</p> <p>(b) all of the entity's employees—the provisions mentioned in paragraph (a); and</p> <p>(c) directives—</p> <p>(i) for employees other than auxiliary fire officers—18/97 (other than clause 5(e)), 4/02, 6/03 (other than part 3), 10/05, 11/05 and 4/06 (other than clauses 7.1 and 7.9); or</p> <p>(ii) for auxiliary fire officers—6/03, part 2.</p>
8	Queensland Museum under the <i>Queensland Museum Act 1970</i>	director	<p>(a) chapter 3 part 3, section 138 and chapter 7; and</p> <p>(b) all of the entity's employees—the provisions mentioned in paragraph (a); and</p> <p>(c) directives 18/97, 6/03, 10/05 (other than schedule A, clause 2.1), 11/05, 4/06 and 11/07.</p>

Column 1	Column 2	Column 3
Public service office	Public service office head	Applied provisions and rulings
9 Queensland Nursing Council under the <i>Nursing Act 1992</i>	executive officer	(a) chapter 3 part 3 (other than section 55), sections 128, 138 and 185 and chapter 5 part 5 (other than section 149) and chapter 7; and (b) all of the entity's employees—the provisions mentioned in paragraph (a); and (c) directives 8/96 to 10/96, 3/97, 18/97, 6/03, 2/05, 10/05 (other than schedule A, clause 2.1), 11/05, 22/05, 1/06, 4/06, 8/06, 1/07, 6/07 to 9/07 and 11/07.
10 Queensland Theatre Company under the <i>Queensland Theatre Company Act 1970</i>	director	(a) chapter 3 part 3, section 138, and chapter 7; and (b) all of the entity's employees—the provisions mentioned in paragraph (a); and (c) directives 18/97, 6/03 (other than part 3), 10/05 (other than schedule A, clause 2.1), 11/05 and 4/06.

## Schedule 1

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Public service office</b>	<b>Public service office head</b>	<b>Applied provisions and rulings</b>
11	Residential Tenancies Authority or Residential Tenancies Employing Office under the <i>Residential Tenancies Act 1994</i>	chief executive officer or executive officer	<p>(a) chapter 3 part 3 (other than section 55), sections 101, 103(1) and (3), 133(2), (3) and (4), 183, 184, 185 and 186 and chapter 5 part 7, chapter 6 and chapter 7; and</p> <p>(b) all of the entity's employees—the provisions mentioned in paragraph (a); and</p> <p>(c) directives 8/96, 10/96, 3/97, 6/03, 1/07 and 11/07.</p>
12	State Library under the <i>Libraries Act 1988</i>	State librarian	<p>(a) chapter 3 part 3, sections 115, 133 and 138 and chapter 7; and</p> <p>(b) all of the entity's employees—the provisions mentioned in paragraph (a); and</p> <p>(c) directives 18/97, 6/03, 10/05 (other than schedule A, clause 2.1), 11/05, 4/06 and 11/07.</p>

Column 1	Column 2	Column 3
Public service office	Public service office head	Applied provisions and rulings
13 an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose	The person who, under the Act or State authorisation under which the entity is established, has the functions that most closely resemble the functions of a chief executive	(a) chapter 3 part 1, section 46 and chapter 3 part 4 division 4 and 5; and (b) all of the entity's employees—the provisions mentioned in paragraph (a).

## **Schedule 2      Subordinate legislation amended**

section 20

### **Chemical Usage (Agricultural and Veterinary) Control Regulation 1999**

- 1      Section 28(2), ‘Public Service Act 1996’—**  
*omit, insert—*  
*‘Public Service Act 2008’.*

### **Criminal Code (Animal Valuers) Regulation 1999**

- 1      Section 19(3)(b), ‘Public Service Act 1996’—**  
*omit, insert—*  
*‘Public Service Act 2008’.*

### **Electricity Regulation 2006**

- 1      Sections 201(1)(a) and 202(1), ‘Public Service Act 1996’—**  
*omit, insert—*  
*‘Public Service Act 2008’.*



## **Fisheries Regulation 2008**

- 1 Section 700(2)(a), ‘Public Service Act 1996’—**  
*omit, insert—*  
*‘Public Service Act 2008’.*

## **Forestry Plantations Queensland Regulation 2006**

- 1 Section 4(4), definition *FPQO*, ‘Public Service Act 1996’—**  
*omit, insert—*  
*‘Public Service Act 2008’.*

## **Land Protection (Pest and Stock Route Management) Regulation 2003**

- 1 Schedule 6, definition *government entity*, ‘Public Service Act 1996, section 21.’ and footnote—**  
*omit, insert—*  
*‘Public Service Act 2008, section 24.’.*

## **Nature Conservation (Protected Areas Management) Regulation 2006**

**1 Section 28(5), definition *government entity*, ‘*Public Service Act 1996*, section 21’—**

*omit, insert—*

*‘Public Service Act 2008, section 24’.*

## **Parliamentary Service Rule 2000**

**1 Section 17(3), ‘*Public Service Act 1996*’—**

*omit, insert—*

*‘Public Service Act 2008’.*

**2 Section 17(7), ‘*Public Service Act 1996*, section 78(2)’ and footnote—**

*omit, insert—*

*‘Public Service Act 2008, chapter 1, part 4’.*

## **Police Service Administration Regulation 1990**

**1 Section 7.2(1), first dot point, ‘as defined in the *Public Service Act 1996*’—**

*omit.*

## Summary Offences Regulation 2006

- 1 **Schedule, definition *government entity*, ‘*Public Service Act 1996*, section 21.’ and footnote—**

*omit, insert—*

‘*Public Service Act 2008*, section 24.’.

## Superannuation (State Public Sector) Notice 2000

- 1 **Schedule, entry for the Department of the Premier and Cabinet, column 2, ‘*Public Service Act 1996*, section 112’—**

*omit, insert—*

‘*Public Service Act 2008*, section 147’.

## Transport Operations (Road Use Management—Driver Licensing) Regulation 1999

- 1 **Schedule 7, definition *exempted police driver*, ‘*Public Service Act 1996*, part 9,’—**

*omit, insert—*

‘*Public Service Act 2008*, chapter 5 part 5,’.

## **Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999**

**1 Section 71(2), ‘Public Service Act 1996’—**

*omit, insert—*

*‘Public Service Act 2008’.*

## **Uniform Civil Procedure (Fees) Regulation 1999**

**1 Sections 11(1)(b) and 12(1), ‘Public Service Act 1996’—**

*omit, insert—*

*‘Public Service Act 2008’.*

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### ENDNOTES

- 1 Made by the Governor in Council on 26 June 2008.
- 2 Notified in the gazette on 27 June 2008.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of the Premier and Cabinet.

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