

## Unit 1 Designing our political and legal systems

# Designing our political and legal systems

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## chapter 17

### 17A

How is Australia's political system shaped by the constitution?

- 1 What do you think is the role of the Australian Parliament?
- 2 Why do you think it is important for people to vote on really important decisions that affect the whole nation?

### 17B

What are key principles of Australia's legal system?

- 1 Why do you think it is important to be able to express your political opinion?
- 2 What are some of the ways in which people can express their opinion?

**Source 1** Australia has a representative democracy in which people vote for a political party or politician that best reflects their opinions on most political issues.



# 17.1 Australia's constitution

The Australian Constitution is a written document that sets out the rules that govern our nation. It came into effect on 1 January 1901, when six British **colonies** federated, or united, to form one country. The constitution established the democratic government of the **Commonwealth** of Australia, defined its structure, powers and procedures, and defined the rights and duties of the states in relation to the **federal** government.

The Australian Constitution is divided into eight chapters and 128 sections. It is considered by many as the 'birth certificate' of the nation.

## The separation of powers

The first three chapters of the Australian Constitution define the separate roles of three main branches of government. They are the **legislature**, the **executive** and the **judiciary**. These three powers of government are independent of each other. This means that one cannot influence the other.

## Legislature

The legislature is responsible for creating the law. The legislature is made up of the two houses of parliament —the Senate (the upper house) and the House of Representatives (the lower house). Both the Senate and the House of Representatives are responsible for debating and passing new laws.

## The lower house

The House of Representatives is made up of 150 members of parliament (MPs), each representing one of Australia's federal electorates. The role of the lower house is to represent the views of Australian citizens and to make and scrutinise laws based on these views. A majority of proposed laws, called **Bills**, are introduced into parliament by the House of Representatives.

## The upper house

The Senate is made up of 76 senators who represent the states and territories. It shares the role of making laws with the House of Representatives and reviews laws before they are made. The Senate can reject laws proposed by the lower house but it can also approve a Bill, with or without changes.



**Source 2** Parliament House is located in Canberra. It is home to both the House of Representatives, known as the lower house, and the Senate, known as the upper house.



**Source 3** The High Court decides on special cases that can affect the entire nation and on how the constitution is applied.

## Executive

The executive is responsible for approving laws and putting them into action. It is made up of the prime minister, ministers and the Governor-General who is the Queen's representative in Australia.

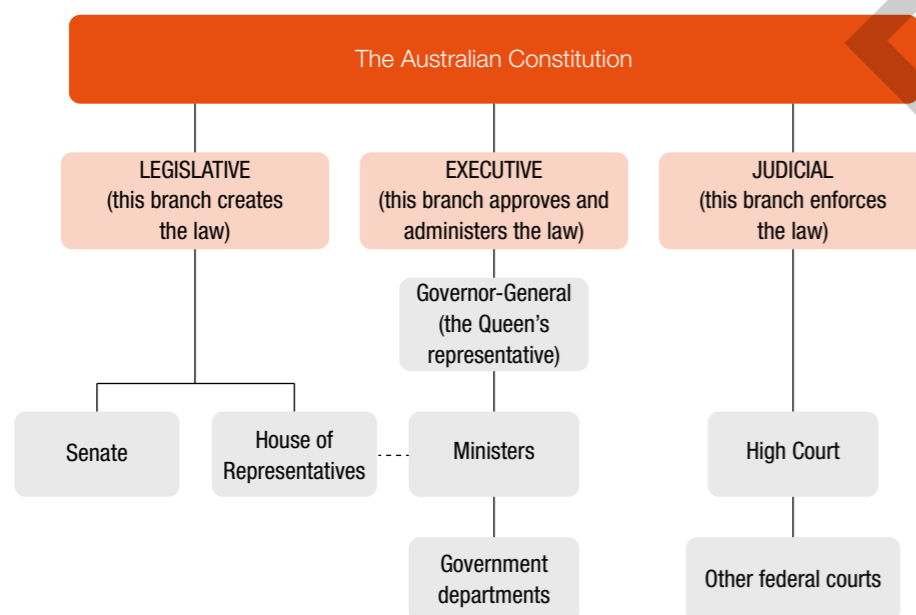
The prime minister chooses the ministers who are commissioned by the Governor-General to be part of the executive and implement that law. For example, the prime minister will select an MP to be the Minister for Education. This minister will be responsible for all matters relating to the education system and will be in charge of the Department of Education.

## Judiciary

The role of the judiciary system is to make rulings or judgments about the law. It is made up of the High Court and other federal courts. These courts interpret and apply the laws passed by parliament to specific cases and disputes.

In Australia there are four main federal courts where laws can be enforced. They are the:

- High Court of Australia (the highest court in Australia)
- Federal Court of Australia (hears cases on a variety of things including bankruptcy, tax and trade)
- Federal Circuit Court of Australia (hears less complex cases than the Federal Court but on similar issues)
- Family Court of Australia (hears cases on family disputes).



**Source 1** The separation of power at a federal level is set out in the constitution.

## Check your learning 17.1

### Remember and understand

- 1 When did the Australian Constitution first come into effect?
- 2 What is meant by the separation of powers?
- 3 Who does the Governor-General represent?
- 4 How many senators are there in the Senate?
- 5 How many MPs are in the House of Representatives?

### Apply and analyse

- 6 Why do you think it is important to have a constitution?
- 7 Why do you think a prime minister would appoint ministers?

### Evaluate and create

- 8 Visit the Parliamentary Education Office website, go to 'Closer Look' and 'Australia's Parliament House' (peo.gov.au). Create a poster with an annotated map of Parliament House. Be sure to clearly identify the Senate as well as the House of Representatives. Your poster should include information about the roles of each house as well as any other relevant information.

## 17.2 Division of powers. State v's federal government

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### Check your learning 17.2

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#### Apply and analyse

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# 17.3 Changing the constitution

Times have changed considerably since the constitution was first written in 1901. For this reason, it is an important feature of the constitution is that it can be changed. To change the Australian Constitution, a proposal must first be approved by parliament. It is then voted on by the Australian people in what is known as a **referendum**.

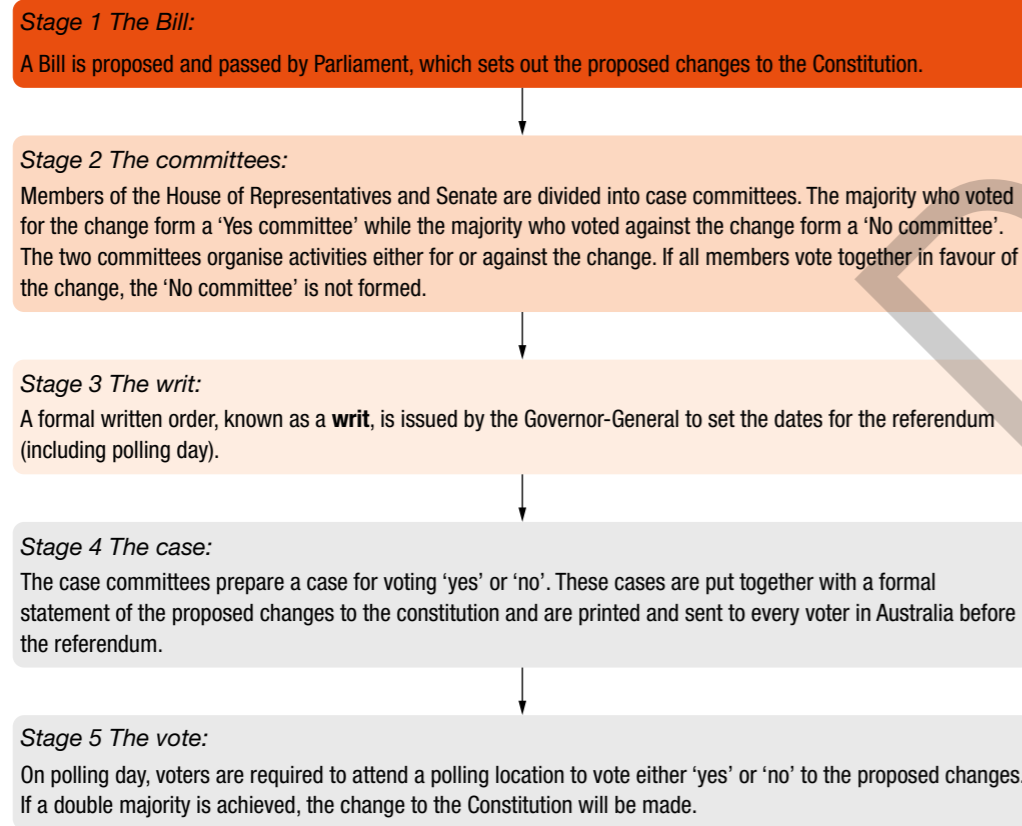
## Referendums

While Australia's democratic system leaves much of the decision making to politicians elected by the people, changes to the Australian Constitution are so important that they must also be approved directly by the citizens.

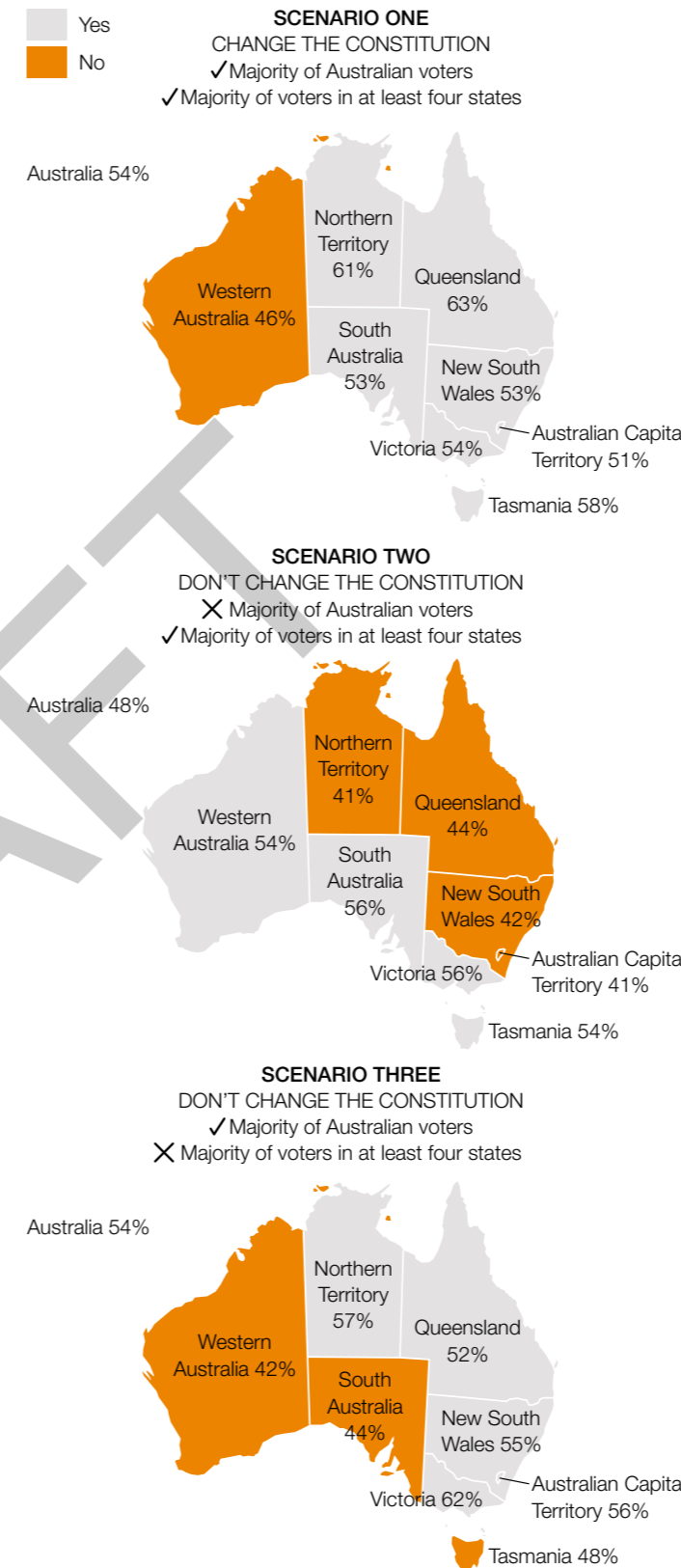
All Australian citizens on the electoral roll vote 'yes' or 'no' to the proposed change. For the change to be accepted, it has to be approved by a majority of voters in a majority of states, and by a majority of voters across the nation. This is known as a double majority. Voters living in the territories are only counted in the national majority. Since 1901, 19 referendums have proposed 44 changes to the constitution; only eight changes have been agreed to.

There are five main stages when holding a referendum in Australia (see Source 1).

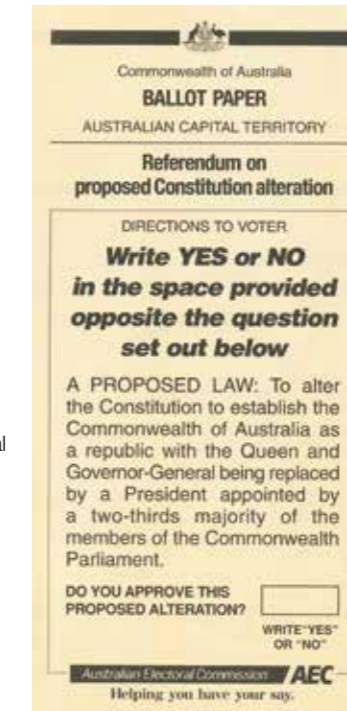
One significant example of a change to the constitution that has affected many Australians is the 1967 referendum. As a result of this referendum, Aboriginal and Torres Strait Islander peoples were included in the census, which gave the Australian Government the power to make laws for Aboriginal and Torres Strait Islander peoples.



Source 1 The five stages involved in holding a referendum



Source 2 The Australian Constitution can only be changed with the support of the majority of voters and a majority of votes in at least four states.



Source 2 The most recent referendum took place in 1999. The public voted against becoming a republic.

## Check your learning 17.32

### Remember and understand

- 1 What is a referendum?
- 2 Why do people vote on a referendum when they have already elected politicians to represent them?
- 3 What is a double majority?

### Apply and analyse

- 4 Look at Source 2.
  - a What is the ballot asking people to vote on?
  - b Australia is a constitutional monarchy, which means that we elect a prime minister as a representative for a monarch (Queen Elizabeth II). Other countries, such as the United States, nominate a president to lead the country. Do you think Australia should become a republic? Why or why not?

### Evaluate and create

- 5 Create a poster arguing whether Australia should remain a constitutional monarchy or have a referendum to become a republic. Use the Internet to research facts that will support your poster and include images that you believe represent Australia as a constitutional monarchy or republic.

## 17A rich task

## A classroom constitution

Many countries and organisations around the world have developed a constitution, which acts as a set of rules for everyone to follow. A constitution is important as it clearly defines the rights and responsibilities of all members. This helps to promote a fair nation or organisation, as everyone is required to follow the constitutional rules that are developed by the members.

While many organisations have constitutions, they are most important for not-for-profit organisations. A not-for-profit organisation is run as a charity and does not generate a profit. By developing a constitution, a not-for-profit organisation can ensure that it acts within the specific principles and beliefs set by the organisation's constitution.

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Source 1 Work together with your class members to develop a classroom constitution

## skilldrill: Reasoning and interpretation

## Creating a constitution

An organisation refers to any group of people who work together with a common goal. This can include businesses, religious groups, schools or even classes. An organisation's constitution is written by the members of the organisation and is developed to reflect the beliefs and principles of the majority. In this way, it helps the organisation to function to benefit its members.

- Step 1** Write a preamble. A preamble is usually a brief paragraph that states the overall purpose of the constitution.
- Step 2** Write the name of the organisation.
- Step 3** Write the purpose of the organisation.
- Step 4** State who will be considered a member of the organisation.
- Step 5** Provide the rules and responsibilities that relate to the people leading the organisation.
- Step 6** Provide the rules and responsibilities for all members of the organisation.
- Step 7** Outline what action can be taken if members do not follow the rules.
- Step 8** Explain how amendments can be made to the constitution.
- Step 9** Explain how and when a referendum can be called.

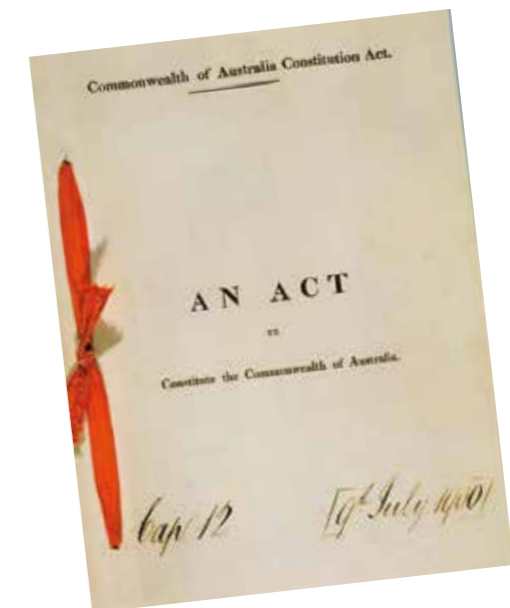
## Apply the skill

- 1** Develop a classroom constitution: Developing a classroom constitution will require you to work with your class members and teacher. The constitution you come up with must reflect the rights and responsibilities of all students to create the best possible learning environment for all. Remember that, by law, the teacher has certain rights and responsibilities that are not negotiable. Use the steps of the skill drill to develop your ideas for your classroom constitution. Share your ideas with the rest of the class and then vote on what should be included in the constitution.

- 2** How do you feel about the classroom constitution? Were there any things you feel should or should not have been included?
- 3** What kind of situation do you think would benefit from a classroom referendum?

## Extend your understanding

- 1** Visit the Parliament of Australia website and go to 'About Parliament', 'Senate', 'Role of the Senate' and then 'The Australian Constitution' ([www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Constitution](http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution)) to see the Australian Constitution in full.
- 2** What differences can you see between your classroom constitution and the Australian Constitution?
- 3** What similarities can you see between your classroom constitution and the Australian Constitution?



Source 2 The Australian Constitution sets out the rules of our political system.





## 17.5 Participating in the legal system

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### Check your learning 14.3

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#### Apply and analyse

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## 17B rich task

## The code of Hammurabi

Laws have existed for thousands of years. Without laws or rules people would do whatever they liked, leading to chaos. As ancient tribes grew into complex societies, the need to determine the rights and responsibilities of people became greater. One of the oldest known group of laws comes from Babylon between 1792 BCE and 1754 BCE. Legend has it that the laws were given to King Hammurabi by Shamash, the god of justice.

The code of Hammurabi had many laws that covered everyday life in that society. One of the most famous laws translates loosely to:

If a man destroys the eye of another man, they shall destroy his eye. If one breaks a man's bone, they shall break his bone.

The ancient Babylonian laws, as enacted by King Hammurabi, were used to govern his fast-growing empire of citizens. There were as many as 300 laws, which covered a wide range of issues, including murder, assault, divorce, debt, adoption, trade and agricultural practices.

Not only did the code stipulate the rules that all citizens must follow, it also dictated what actions must be taken by the judges, accuser and accused.



Source 1 Ancient Babylonia was one of the first great civilisations. Its capital Babylon was located in modern-day Iraq.

## skilldrill: Reasoning and interpretation

## Interpreting a law in a court case

To interpret a law we must read and understand what it intends to achieve. We must then apply that to the facts of the case before us.

**Step 1** Read and understand the law thoroughly. What is the context of the law? From what perspective is the law written? What is it trying to achieve?

**Step 2** Carefully consider all of the factors of the court case. This will include factors like evidence, witnesses, and the circumstances of the accused person and the accusing person or group.

**Step 3** Consider how the law applies to the court case. Consider which other laws might apply to the case. Has there been another case of a similar nature or is this the first case of this kind?

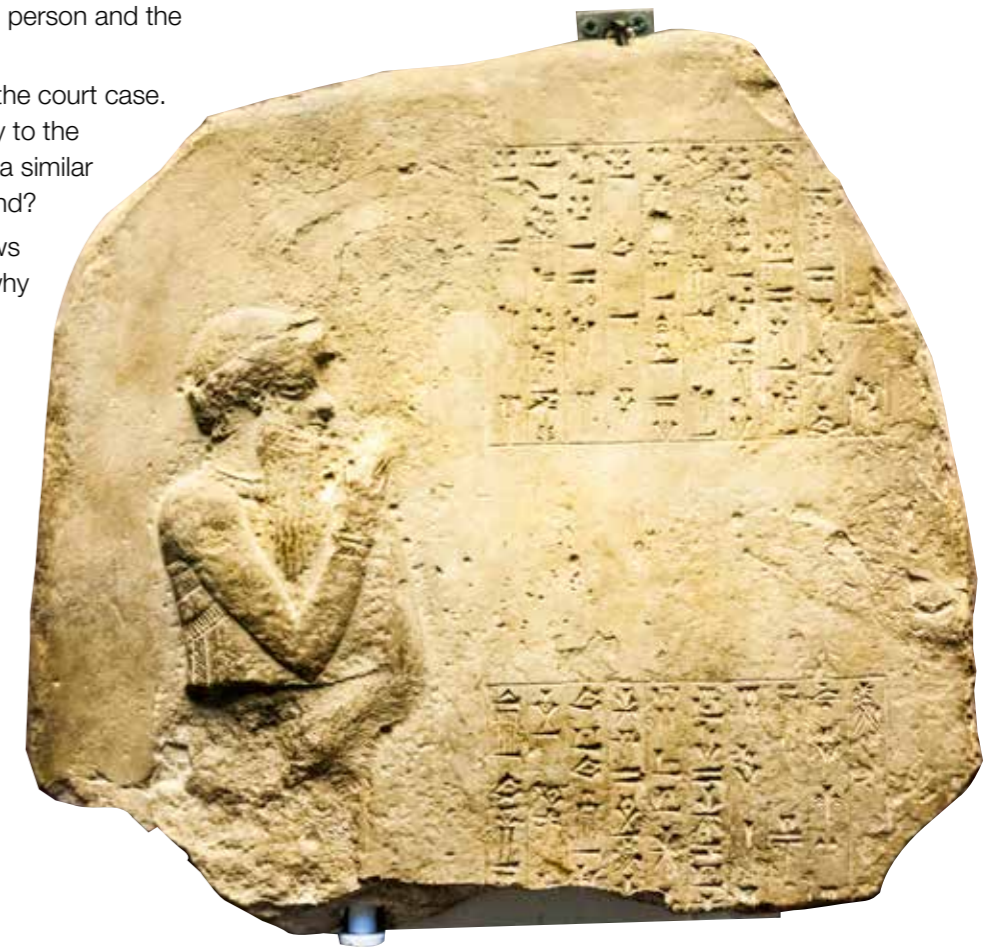
**Step 4** Identify and apply the relevant laws to the court case. Explain and justify why the relevant laws have been applied.

## Apply the skill

- 1 Consider the law described from the code of Hammurabi. What do you think it is trying to achieve?
- 2 Explain how you think the law would apply to a situation where a person physically attacked someone.
- 3 Do you think the law could apply to a situation whereby someone destroyed another person's property? Explain why or why not?
- 4 Do you think this law is just? Why or why not?

## Extend your understanding

- 1 Use the internet to research more laws from the code of Hammurabi. Make a list of the laws in your notebook and state your opinion on whether or not you think each law is a good way of dealing with such issues. Give reasons for your answer.



Source 2 The code of Hammurabi was carved into stones, which were then placed around the city of Babylon for the public to see.



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