

PARLIAMENT OF VICTORIA

Water Acts (Amendment) Act 1996

Act No.

TABLE OF PROVISIONS

<i>Clause</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	2
PART 2—AMENDMENT OF WATER ACT	3
3. Definitions	3
4. Serviced properties	3
5. Bulk entitlement orders	3
6. Amendment of section 101(3)	4
7. New sections 101A and 101B inserted	4
101A. Interests in land	4
101B. Amendment of Register	5
8. Floodplain management	6
9. Declaration of floodway	8
10. Water management schemes	8
11. Implementation of water management scheme	9
12. Interference with Authority's property	10
PART 3—AMENDMENT OF WATER INDUSTRY ACT	11
13. New section 21A inserted	11
21A. Power of Governor in Council to regulate pricing	11
14. Removal of power for licence to regulate fees and charges	13
15. Removal of power to prescribe certain fees	14
16. New section 58 substituted	14
58. Power to enter land	14
17. Serviced properties	15
18. Power to enter land	16
19. New sections 135A and 135B inserted	16
135A. Grant of licences for jetties, etc.	16
135B. MPW may lease waterway	19
20. Rates	21
21. Amendment of allocation statements	21
22. Treasurer may give guarantee	21

<i>Clause</i>	<i>Page</i>
PART 4—AMENDMENT OF MMBW ACT	22
23. Receipt of trade waste in an emergency	22
24. Rates	22
25. Rates recoverable from mortgagee in possession	22
26. Power of MWC to make and levy rates for floodplain management purposes	23
<hr/> <hr/>	
NOTES	24

PARLIAMENT OF VICTORIA

Initiated in Assembly 15 May 1996

A BILL

to amend the **Water Act 1989**, the **Water Industry Act 1994** and the **Melbourne and Metropolitan Board of Works Act 1958** and for other purposes.

Water Acts (Amendment) Act 1996

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is to make miscellaneous amendments to the **Water Act 1989**, the **Water Industry Act 1994** and the **Melbourne and Metropolitan Board of Works Act 1958**.

2. Commencement

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- (1) This Act (except section 15) comes into operation on the day on which it receives the Royal Assent.
 - (2) Subject to sub-section (3), section 15 comes into operation on a day to be proclaimed.
 - (3) If section 15 does not come into operation within the period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.
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PART 2—AMENDMENT OF WATER ACT

3. Definitions

In section 3(1) of the **Water Act 1989**—

(a) after the definition of "flood level" **insert**—

"floodway area" means an area of land that is declared by the Minister under section 205 to be a floodway area;'

(b) for the definition of "irrigation period" **substitute**—

"irrigation period" means any period fixed by by-law or (if the period does not exceed 12 months) fixed by the Authority by resolution published in a newspaper circulating generally in the area concerned, in respect of which an irrigation charge is made;'

4. Serviced properties

(1) In section 3(1) of the **Water Act 1989**, in the definition of "serviced property", paragraph (b) is **repealed**.

(2) In section 144(2)(a) of the **Water Act 1989**, before "served" **insert** "except in the case of land within the Authority's waterway management district;".

5. Bulk entitlement orders

(1) In section 34(2) of the **Water Act 1989**, after "the Order" (where secondly occurring) **insert** ", or a notice stating the place where copies of the order can be obtained,".

(2) In section 34 of the **Water Act 1989**, after sub-section (4) **insert**—

Water Acts (Amendment) Act 1996
Act No.

"(5) It is sufficient compliance with the requirements of sections 42(1)(c), 42(5)(b), 44(1), 47(4)(b), 47C(10)(b)(i) and (ii) and 64C(1)(b)(i) and (ii) for an Order to be published in the Government Gazette if a notice is published in the Government Gazette stating the place where copies of the Order can be obtained."

6. Amendment of section 101(3)

In section 101(3) of the **Water Act 1989**, after "section 98" **insert** "(whether or not the Authority from which the property is taken over is abolished by the Order)".

7. New sections 101A and 101B inserted

After section 101 of the **Water Act 1989 insert—**

"101A. Interests in land

(1) Without prejudice to the generality of this Act and despite anything to the contrary in any other Act or law, if, immediately before the coming into operation of an Order under section 98 (whether made before or after the commencement of section 7 of the **Water Acts (Amendment) Act 1996**), an Authority, in relation to property affected by the Order, was the registered proprietor of, or entitled to be registered as the proprietor of, an interest in land under the **Transfer of Land Act 1958** or had claimed an interest in land under the **Transfer of Land Act 1958** by lodging a caveat under that Act, then on and after that coming into operation—

(a) the body taking over that property by virtue of the Order is to be taken to be the registered proprietor of that interest

in land or to be the caveator, as the case requires; and

- (b) that body has the same rights and remedies in respect of that interest as the Authority from which that property was taken over had.
- (2) The chief executive officer (by whatever name called) of a body taking over property by virtue of an Order under section 98 must, at the request of the Registrar of Titles or the Registrar-General, give to him or her a certificate signed by the chief executive officer certifying that property specified in the certificate is property that has been taken over by that body by virtue of an Order under section 98 with effect from the coming into operation of that Order.
- (3) This section has effect whether or not the Authority from which the property is taken over is abolished by the Order under section 98.

101B. Amendment of Register

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of an Order under section 98.
- (2) The Registrar-General, on being requested to do so and on delivery of any memorial required under Part I of the **Property Law Act 1958**, must make all entries on the records of enrolment of any Crown grant and on any memorial relating to land that are

necessary because of the operation of an Order under section 98.

- (3) Without limiting sub-section (2), a certificate given under section 101A(2) in respect of land not under the operation of the **Transfer of Land Act 1958** may be registered under Part I of the **Property Law Act 1958** by the delivery of a memorial of it to the Registrar-General."

8. *Floodplain management*

- (1) In section 201(1)(b) of the **Water Act 1989**, for sub-paragraph (ii) **substitute**—

"(ii) that the Minister, by Order, declares to have the functions, or any specified functions, of an Authority under this Division—".

- (2) In section 202 of the **Water Act 1989**, after "functions" **insert** "or such of those functions as are specified in the Order under section 201(1)(b)(ii), as the case requires".

- (3) In section 203(1) of the **Water Act 1989**, after "Authority" **insert** "that has the functions referred to in section 202(b) and (c)".

- (4) In section 205(2)(a) of the **Water Act 1989**, after "applies" **insert** "and that has the functions referred to in section 202(a), (b) and (c)".

- (5) In section 208(1) of the **Water Act 1989**, for "an Authority's consent" **substitute** "the Authority's consent (being an Authority to which this Division applies and that has the function referred to in section 202(d) or (e))".

- (6) In section 208(2) of the **Water Act 1989**, after "the Authority" (where first occurring) **insert** "(being an Authority to which this Division applies

and that has the function referred to in section 202(d) or (e)".

- (7) In section 209(1) of the **Water Act 1989**, after "Authority" (where first occurring) **insert** "to which this Division applies and that has the function referred to in section 202(d) or (e)".
- (8) In section 306 of the **Water Act 1989**—
- (a) before "The" **insert** "(1)";
 - (b) in paragraph (a) before "this" **insert** "subject to sub-section (2),".
- (9) In section 306 of the **Water Act 1989**, at the end of the section **insert**—
- "(2) If any power, discretion, function, authority or duty of the Minister as an Authority to which Division 4 of Part 10 applies is delegated under this section, the Minister may also delegate to the delegate the power of delegation conferred by this section in relation to the power, discretion, function, authority or duty so delegated.
 - (3) A delegate to whom a power of delegation is delegated under this section may, subject to the terms of the instrument of delegation, sub-delegate, by instrument, to any person or class of persons any power, discretion, function, authority or duty delegated to the delegate under this section, other than the power of sub-delegation.
 - (4) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply in relation to a sub-delegation in the same manner as they apply in relation to a delegation."

9. Declaration of floodway

- (1) In section 205(1) of the **Water Act 1989**, after "flooding" **insert** "or to be a floodway area".
- (2) In section 205(2)(b) of the **Water Act 1989**, before "on the basis" (where first occurring) **insert** "in the case of a declaration of an area to be an area of land liable to flooding,".
- (3) In section 205(2) of the **Water Act 1989**, at the end of paragraph (b) **insert**—
"; and
(c) in the case of a declaration of an area to be a floodway area, on the basis of the Authority's best estimate of the area constituting the high hazard area of the floodplain comprising active flow paths or storage areas or both.".
- (4) In section 208(1)(a) of the **Water Act 1989**, after "flooding" **insert** "or declared to be a floodway area".
- (5) In section 209(1)(a) of the **Water Act 1989**, after "flooding" **insert** "or a floodway area".
- (6) In section 209(1)(b) of the **Water Act 1989**, after "flooding" **insert** "or of the floodway area".
- (7) In section 212 of the **Water Act 1989**, after "flooding" **insert** "or to be floodway areas".

10. Water management schemes

- (1) In section 215(2)(d) of the **Water Act 1989**, for "Minister" **substitute** "committee".
- (2) In section 215(3) of the **Water Act 1989**, for "Minister" **substitute** "committee".
- (3) In section 215 of the **Water Act 1989**, after sub-section (3) **insert**—

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- "(3A) The committee may submit the scheme to the Minister for his or her acceptance.
- (3B) The Minister may—
- (a) accept the scheme as submitted by the committee; or
 - (b) reject the scheme; or
 - (c) modify the scheme and accept the scheme as so modified."
- (4) In section 215(4) of the **Water Act 1989**—
- (a) for "After any submissions received have been considered, the committee" **substitute** "The Minister";
 - (b) before paragraph (a) **insert**—
 - "(aa) that states whether the scheme has been accepted or rejected;";
 - (c) in paragraph (a), before "that" **insert** "if the scheme has been accepted,".
- (5) In section 215(5) of the **Water Act 1989**, for "to make, or not to make, modifications to a scheme" **substitute** "under sub-section (3B)".
- (6) The amendments of section 215 of the **Water Act 1989** made by this section do not apply with respect to a water management scheme in relation to which the notice required by section 215(2) of that Act was published before the commencement of this section.

11. Implementation of water management scheme

- (1) In section 216(1)(b) of the **Water Act 1989**, after "Authorities" **insert** "or, with its or their agreement, the council or councils".
- (2) In section 216(2) of the **Water Act 1989**, after "Authority" **insert** "or council".

- (3) In section 217 of the **Water Act 1989**, after "Authority" (where twice occurring) **insert** "or council".

12. *Interference with Authority's property*

- (1) In section 288(1) of the **Water Act 1989**, after "damage," **insert** "remove,".
- (2) In section 288(3) of the **Water Act 1989**—
- (a) after "damaged," **insert** "removed,";
 - (b) after "damage," **insert** "removal,".
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PART 3—AMENDMENT OF WATER INDUSTRY ACT

13. *New section 21A inserted*

In Division 3 of Part 2 of the **Water Industry Act 1994**, before section 22 insert—

"21A. *Power of Governor in Council to regulate pricing*

- (1) The Governor in Council, by Order published in the Government Gazette, may regulate, in any manner that the Governor in Council thinks fit—
 - (a) the imposition of fees or charges (including payments under section 27, 28 or 29), or any specified class of fees or charges, by a licensee;
 - (b) the imposition of fees or charges for the supply of water under an agreement between Melbourne Water Corporation and a licensee;
 - (c) the imposition of fees or charges for the collection, treatment or disposal of sewage under an agreement between Melbourne Water Corporation and a licensee;
 - (d) the making and levying of any rate by Melbourne Water Corporation under the MMBW Act.
- (2) Without limiting sub-section (1), the manner of regulation may include—
 - (a) fixing the fee, charge or price or the rate of increase or decrease in the fee, charge or price;

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(b) fixing a maximum fee, charge or price or maximum rate of increase or minimum rate of decrease in the maximum fee, charge or price;

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(c) fixing an average fee, charge or price for specified goods or services or an average rate of increase or decrease in the average fee, charge or price;

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(d) specifying policies or principles to be applied in determining fees, charges or prices;

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(e) specifying an amount determined by reference to a general price index, the cost of supplying the service, a rate of return on assets employed or any other specified factor;

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(f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the supply of the goods or services;

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(g) fixing a maximum revenue or maximum rate of increase or minimum rate of decrease in the maximum revenue in relation to specified goods or services;

(h) specifying fees and charges that must not be imposed or that must cease to be imposed after a specified date.

(3) An Order under sub-section (1)—

(a) has effect despite the conditions of any licence or any other provision to the contrary made by or under this or any other Act;

(b) has effect as from the date specified in the Order as if the fees, charges, prices

and other matters to which the Order applies had been determined by the Office of the Regulator-General under the **Office of the Regulator-General Act 1994** except that sections 37 and 38 of that Act do not apply in respect of the Order;

(c) ceases to have effect, in respect of a fee, charge, price or other matter—

(i) on the date specified in the Order;
or

(ii) on the making by the Office of the Regulator-General, on or after a date specified in the Order for this purpose, of a determination relating to that fee, charge, price or other matter in accordance with this Act and the **Office of the Regulator-General Act 1994**;

(d) may contain directions regarding the exercise by the Office of the Regulator-General of its powers under the **Office of the Regulator-General Act 1994** in relation to the regulated industry.

(4) An Order cannot be made under sub-section (1) in relation to a fee, charge, price or other matter if the Office of the Regulator-General has made a determination under the **Office of the Regulator-General Act 1994** relating to that fee, charge, price or other matter."

14. Removal of power for licence to regulate fees and charges

(1) In section 22 of the **Water Industry Act 1994**, sub-sections (3), (4) and (5) are **repealed**.

- (2) The repeal of section 22(3), (4) and (5) of the **Water Industry Act 1994** does not affect the conditions of a licence issued before the commencement of this section.

15. Removal of power to prescribe certain fees

- (1) In section 50(c) of the **Water Industry Act 1994**, omit the words and expressions commencing " , including " and ending "testing of the works".
- (2) Section 52(1)(c) of the **Water Industry Act 1994** is repealed.

16. New section 58 substituted

For section 58 of the **Water Industry Act 1994** substitute—

"58. Power to enter land

- (1) An employee of a licensee or an authorised person may, subject to sub-section (3), enter any land for the purpose of reading a meter installed to measure the quantity of water supplied to the land.
- (2) An employee of a licensee or an authorised person may, subject to sub-sections (3), (4) and (5) and after the licensee has given 7 days' notice in writing to the occupier, enter any land for the purpose of—
- (a) carrying out on that land or on any land adjoining that land any works that the licensee is empowered to carry out; or
 - (b) inspecting any works, or making any test, to find out whether this Act or the regulations are being complied with.
- (3) If the land is used primarily for residential purposes entry under sub-section (1) or (2) may only be made between 7.30 a.m. and

6.00 p.m. unless the occupier consents to the entry being made at some other time.

- (4) An employee of a licensee or an authorised person need not give the notice required by sub-section (2) to enter any land for the purpose referred to in sub-section (2)(a)—
 - (a) if the occupier consents to the entry being made sooner; or
 - (b) there is an emergency.
- (5) An employee of a licensee or an authorised person need not give the notice required by sub-section (2) to enter any land (other than a building or structure occupied as a residence) for a purpose referred to in sub-section (2)(b) if the licensee has reasonable grounds for believing that this Act or the regulations are not being complied with by the occupier."

17. Serviced properties

In section 64 of the **Water Industry Act 1994**, after sub-section (4) **insert—**

- "(5) Despite anything to the contrary in this or any other Act—
- (a) a property to which a notice under section 69 of the MMBW Act applies must be taken to have been declared under this section to be a serviced property for the purposes of the supply of water supply services; and
 - (b) a sewerred property for the purposes of Part III of the MMBW Act must be taken to have been declared under this section to be a serviced property for the purposes of the supply of sewerage services."

18. Power to enter land

In section 82(2) of the **Water Industry Act 1994**, after "section 58" insert "for the purpose referred to in section 58(2)(a)".

19. New sections 135A and 135B inserted

After section 135 of the **Water Industry Act 1994** insert—

"135A. Grant of licences for jetties, etc.

(1) Despite anything to the contrary in the **Land Act 1958** or any other Act and without limiting its other powers under this Division, Melbourne Parks and Waterways may grant to an applicant a licence—

(a) in respect of any land (including any Crown land and land forming part of a waterway but excluding any land temporarily or permanently reserved under section 4(1) of the **Crown Land (Reserves) Act 1978**)—

(i) vested in or under the management and control of Melbourne Parks and Waterways; and

(ii) situated within the waterway management district of Melbourne Parks and Waterways under Division 2 of Part 10 of the **Water Act 1989**—

for the purposes of a jetty or mooring or, with the approval of the relevant Minister, for any other purpose; or

(b) in respect of a vessel using a waterway to which paragraph (a) applies that has been let for hire or chartered for the

purposes of recreation, leisure or tourism.

- (2) The approval of the relevant Minister may be given for the purposes of sub-section (1)(a) either generally or in relation to a specified case or class of case.
- (3) For the purposes of sub-section (1)(a) the relevant Minister is—
 - (a) in relation to any Crown land or land forming part of a waterway, the Minister administering the **Crown Land (Reserves) Act 1978**;
 - (b) in relation to any other land, the Minister.
- (4) An application for a licence must be made in writing.
- (5) A licence shall—
 - (a) specify the purpose for which it is granted; and
 - (b) be for a term not exceeding 10 years but may be renewed by Melbourne Parks and Waterways; and
 - (c) be subject to such covenants, conditions, reservations and restrictions as are specified in it; and
 - (d) be subject to the payment of a licence fee of such amount as is fixed by Melbourne Parks and Waterways.
- (6) A licensee must not transfer or assign their interest in the licence without the prior consent in writing of Melbourne Parks and Waterways.

(7) If Melbourne Parks and Waterways is satisfied, after giving a licensee a reasonable opportunity to be heard, that the licensee has—

5 (a) failed during the term of the licence to use the land or vessel for the purpose for which the licence was granted; or

10 (b) used the land or vessel for any purpose other than the purpose for which the licence was granted; or

(c) failed to comply with any of the terms or conditions of the licence—

15 it may, by notice published in the Government Gazette, declare that the licence is cancelled.

(8) On the declaration under sub-section (7) that a licence is cancelled—

20 (a) any interest, right or privilege created by the licence ceases to exist; and

(b) all money paid under the licence is forfeited.

25 (9) On or before the expiry or cancellation of a licence, the licensee may remove any structure or improvement erected by the licensee on licensed land making good to the satisfaction of Melbourne Parks and Waterways any injury which may be done to the land.

30 (10) Any structure or improvement not removed from land before the expiry or cancellation of a licence or within any further period allowed by Melbourne Parks and Waterways is the property of Melbourne Parks and Waterways

and may be sold, removed or demolished as it may direct.

- (11) The costs and expenses incidental to the removal or demolition of any structure or improvement in accordance with sub-section (10) and of making good any injury to land is a debt due to Melbourne Parks and Waterways by the former licensee.

135B. MPW may lease waterway

- (1) Despite anything to the contrary in the **Land Act 1958** or any other Act and without limiting its other powers under this Division, Melbourne Parks and Waterways may, with the approval of the Minister administering the **Crown Land (Reserves) Act 1978**, grant to an applicant a lease for any purpose of any land forming part of a waterway placed under its management and control by an Order made under section 133(1).
- (2) An application for a lease must be made in writing.
- (3) A lease must—
- (a) specify the purpose for which it is granted; and
 - (b) be for a term not exceeding 21 years but may be renewed by Melbourne Parks and Waterways; and
 - (c) be subject to such covenants, conditions, reservations, restrictions and exceptions as are specified in it; and
 - (d) require payment of rent of such amount as is fixed by Melbourne Parks and Waterways payable at such time or times as the lease specifies.

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- (4) A lease may provide for rent review not more frequently than once in each period of 12 months during the term of the lease.
- (5) A lease may contain—
- (a) options for the lessee to renew the lease for a further term or terms provided that the aggregate of the original term and the further term or terms does not exceed 21 years; and
- (b) provision for the lessee to remain in occupation of the land under the same terms and conditions as existed under the lease, at the discretion of the lessor, for a period not exceeding 3 months from the expiry of the lease.
- (6) Melbourne Parks and Waterways may grant to a lessee a replacement lease in substitution for their existing lease and, on the grant of a replacement lease, the lease for which it is substituted shall be cancelled.
- (7) A lessee must not transfer or assign their interest under the lease or sub-let or encumber the land without obtaining the written consent of Melbourne Parks and Waterways.
- (8) If Melbourne Parks and Waterways is satisfied, after giving a lessee a reasonable opportunity to be heard, that the lessee has failed to comply with any of the covenants or conditions of the lease, it may, by notice published in the Government Gazette, declare that the lease is forfeited.
- (9) On the declaration under sub-section (8) that a lease is forfeited—
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- (a) any interest, right or privilege created by the lease ceases to exist; and
 - (b) all money paid under the lease is forfeited."

20. Rates

In section 140(4) of the **Water Industry Act 1994**, for "28" substitute "14".

21. Amendment of allocation statements

In section 155 of the **Water Industry Act 1994**, after sub-section (6) insert—

"(6A) An amendment under sub-section (6) of an allocation statement for which the relevant date is 1 January 1995 may be made with effect from 1 January 1995 if the Treasurer and the Minister are satisfied that the amendment does not adversely affect any property, rights or liabilities of a person other than Melbourne Water Corporation, Melbourne Parks and Waterways or a company licensee."

22. Treasurer may give guarantee

In section 182(1) of the **Water Industry Act 1994**, after "due satisfaction" insert "of amounts that become payable by a company licensee within the meaning of Part 5 under section 170(1) or".

PART 4—AMENDMENT OF MMBW ACT

23. *Receipt of trade waste in an emergency*

In section 4 of the **Melbourne and Metropolitan Board of Works Act 1958**—

- (a) before "Despite" **insert** "(1)";
- (b) after "any other Act" (where first occurring) **insert** "but subject to sub-section (2)";
- (c) at the end of the section **insert**—

"(2) This section does not have the effect of removing any function or power of the Board to receive or dispose of trade waste in an emergency."

24. *Rates*

In section 98 of the **Melbourne and Metropolitan Board of Works Act 1958**, after sub-section (2) **insert**—

- "(2A) The occupier or owner of each tenement declared under section 64 of the **Water Industry Act 1994** to be a serviced property for the purposes of the supply of water supply services must, unless the retail licensee refuses to supply that occupier or owner with water, be liable to pay the rates and charges for the supply of water within that tenement even if no pipe and stop-cocks are laid to convey that supply or no water is used in that tenement."

25. *Rates recoverable from mortgagee in possession*

In section 106 of the **Melbourne and Metropolitan Board of Works Act 1958**, after "occupier of" **insert** ", or mortgagee in possession of,".

26. Power of MWC to make and levy rates for floodplain management purposes

In section 280(1) of the **Melbourne and Metropolitan Board of Works Act 1958**, after "Part" **insert** "and of the exercise by the Board of any functions and powers as a delegate of the Minister under Division 4 of Part 10 of the **Water Act 1989**".

Water Acts (Amendment) Act 1996
Act No.

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By Authority. Government Printer for the State of Victoria.
