

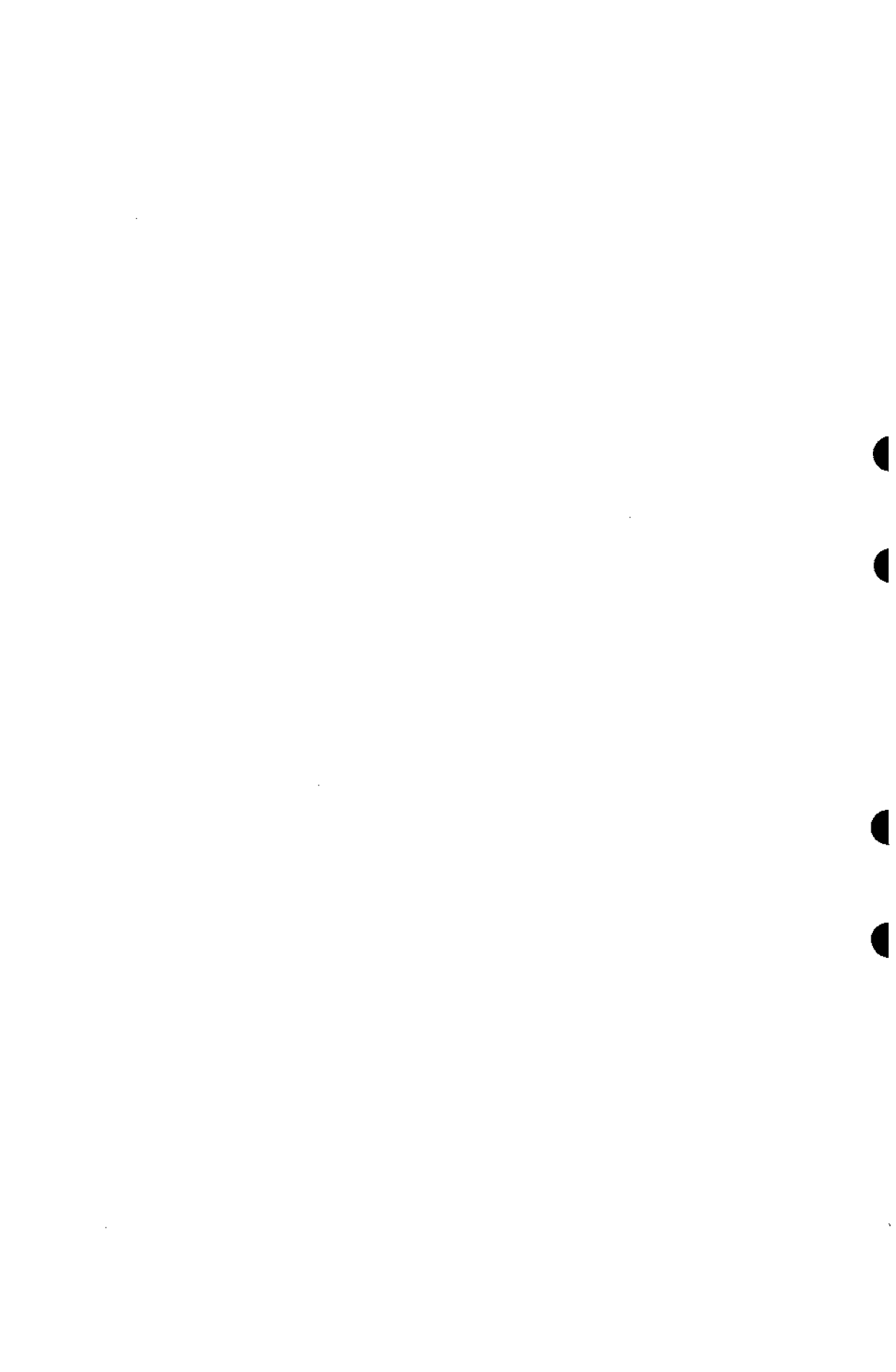
1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

Australian National Airlines Repeal Bill 1981

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for  
Transport the Hon. R.J. Hunt, M.P.)



## OUTLINE

The purpose of this Bill is to introduce legislation to transfer the operation of Trans Australia Airlines to a public company which is 100% beneficially owned by the Commonwealth and to repeal the Australian National Airlines Act 1945 leading to the abolition of the Australian National Airlines Commission (which operates as Trans Australia Airlines). The Act will come into operation on the day it receives Royal Assent and the transfer of assets and liabilities will be implemented on the commencing day, fixed by Proclamation. The transfer of TAA's operations to a public company under this legislation will remove the obligations on the airline in regard to consultation and compliance with Government bodies that are imposed under the Australian National Airlines Act.

All assets, liabilities, agreements and arrangements of the Commission will be transferred under the provisions of the Bill to an appropriate public company nominated by the Minister for Transport. The Commonwealth will be the beneficial owner of all issued capital in the new company. The transfer of rights, property and assets will be exempted from stamp duty or other taxes and the Registrar of the appropriate State may register transfers of property.

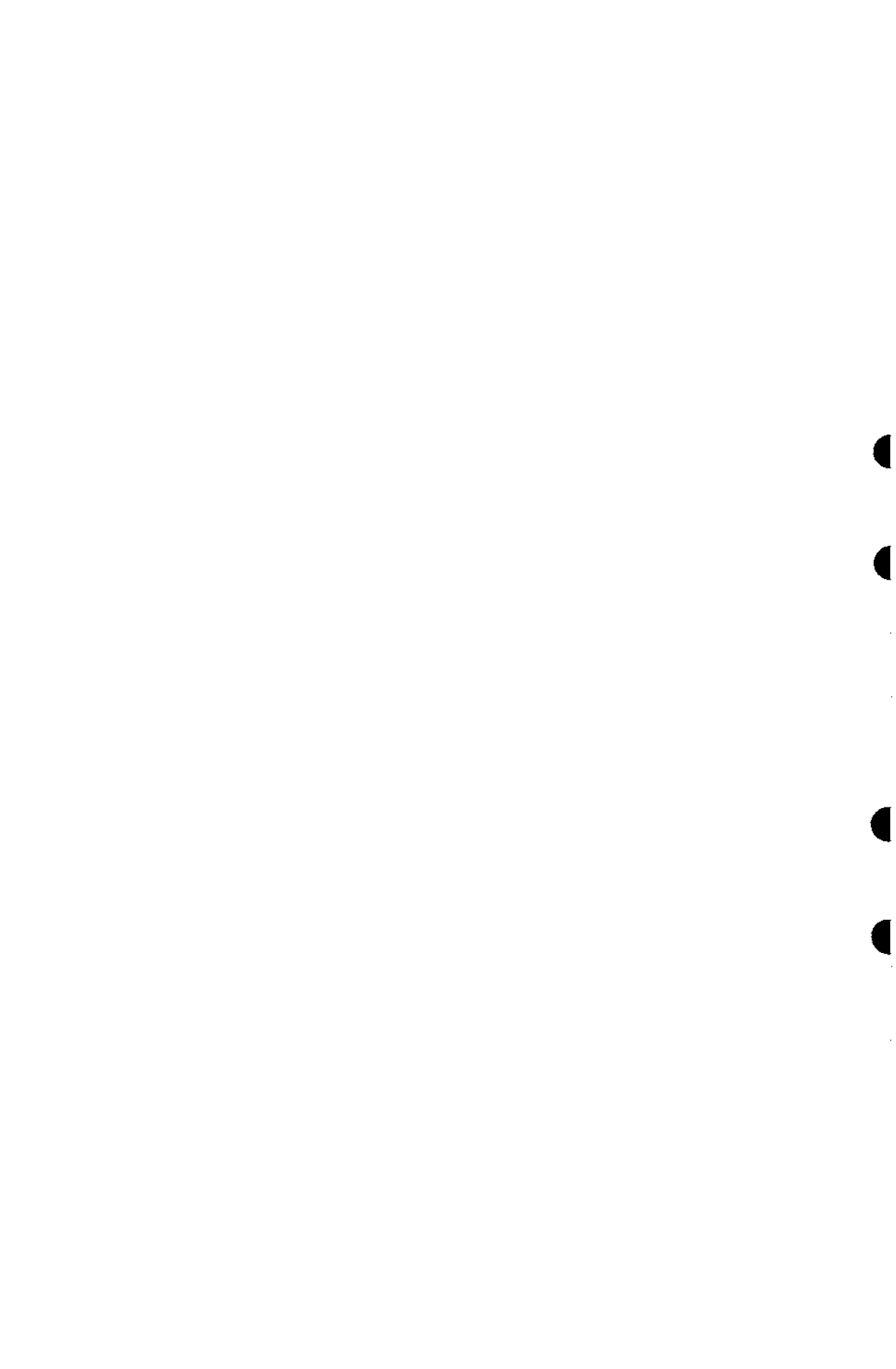
The Bill will facilitate the transfer to the new company of any taxation benefits and obligations of the Commission, including the right to income tax deductions for any unrecouped losses, and in relation to Commission property vested in the company; any depreciation allowances, investment allowances and trading stock values as if the Commission had continued in operation.

The Bill provides in certain circumstances for compensation to be paid by the Commonwealth to any person whose property is acquired.

The Bill also provides that each Commission staff member shall become an employee of the company on the same terms and conditions upon which the person was employed immediately before the commencing day.

The Commission will continue in existence for a time after the transfer of assets and liabilities to the company to fulfil obligations relating to the Commission's shareholdings, holdings in any unit trust and overseas contracts, assets and liabilities. This will allow the Commission to hold so much of the property and assets that have not been transferred in the first instance to the company as well as meeting certain debts, liabilities or obligations. The Commission will provide an Annual Report to the Minister and pay any dividends to the Commonwealth out of profits for financial years (or part thereof) before the commencing day which the Minister specifies. The costs and staffing requirements of continuing the Commission's existence are to be met by the company. The Commission's existence to fulfil these obligations shall cease upon notification in the Gazette by the Minister.

At the request of the company, the Treasurer, on behalf of the Commonwealth, may provide loan guarantees for the company in respect to borrowing arrangements for which the Commission is liable before the commencing day and which liability transfers to the company. The Treasurer shall table details of such guarantees in the Parliament within 15 sitting days after the guarantee is given.



NOTES ON CLAUSES

- Clause 1: Provides the citation for the Act.
- Clause 2: Provides that sections 1, 2, 4, 5 and 13 of the Act will come into operation on the day it receives Royal Assent. The remaining provisions will come into operation on a day to be fixed by Proclamation (the "commencing day"), being a day on which all of the issued share capital of the new Company is beneficially owned by the Commonwealth.
- Clause 3: Repeals the Acts specified in the Schedule.
- Clause 4: Provides definitions for the purposes of the Act. The Act is extended, in this clause, to all external Territories.
- Clause 5: Provides for the Minister to nominate in the Gazette a public company (the "Company"), incorporated in the Australian Capital Territory and in which the Commonwealth is the beneficial owner of all issued share capital, as being the body to which all the assets and liabilities of the Australian National Airlines Commission shall be transferred.
- Clause 6: Provides that, on the commencing day, all rights, property and assets as well as all debts, liabilities and obligations of the Commission will be transferred to the Company. However, sub-clauses 6(2) and 6(3) provides that the following are not transferred by the clause
- liabilities or obligations to staff arising out of or related to employment by, or service, with the Commission, other than those referred to in sub-clauses 6(4) and 6(5)
  - obligations under the Airlines Act
  - any Commission liability to pay dividends to the Commonwealth under sub-section 30A(1) of the Airlines Act.

Sub-clause 6(4) ensures that debts, liabilities or obligations which may arise for Commission staff under the Compensation (Commonwealth Government Employees) Act 1971 are transferred to the Company.

Sub-clause 6(5) ensures that, should the Company be an approved authority for superannuation purposes on the commencing day but subsequently lose that status, then it will continue to be liable for any amounts which arise due to its term as an approved authority for the purposes of the Superannuation Act 1976. This liability is made subject to any agreement made before the commencing day between the Commonwealth and the Company.

Sub-clause 6(6) ensures that debts, liabilities or obligations arising at any time under the Superannuation Act 1922 and the Superannuation Act 1976 with respect to former Commission staff are met by the Company. This liability is also subject to any agreements between the Company and the Commonwealth made before the commencing day.

Amounts payable is sub-clauses 6(5) and 6(6) are initially paid by the Commonwealth which is then reimbursed by the Company, hence the reference to the Commonwealth.

Sub-clause 6(7) extends the coverage of the transfer, as far as the powers of the Parliament permit, to overseas property, assets, debts, liabilities and obligations of the Commission.

Sub-clauses 6(8) to 6(10) give the Minister the power to determine on or after the commencing day, the value of the property and assets transferred to the Company, which is then required to allot shares to that value to the Commonwealth. These shares are deemed to be fully paid up for the purposes of A.C.T. company law and to have been allocated for valuable consideration, being a consideration other than cash.

Clause 7: Provides that State and Territory Registrars may register the transfer of land titles undertaken in implementing Clause 6.

Clause 8: Provides that any contracts, agreements or arrangements entered by the Commission and in force on the commencing day will continue in force as if the company were substituted for the Commission as a party to them.

Clause 9: Provides for the employment by the company, on the commencing day, of each staff member of the Commission, under the same terms and conditions of employment upon which the person was employed immediately before that day. This provision is not to be affected by the operation of any State or Territory law or determination, unless such laws render the terms and conditions more favourable, when those more favourable conditions will apply.

Sub-clause 9(4) provides that the terms and conditions of employment relating to superannuation shall be taken to be the same for the purposes of this clause if a new superannuation scheme is substituted for the scheme to which the staff member belonged and if the new scheme provides terms and conditions which make payments of the same kind and amount, under the same circumstances, events and conditions as previously.

Sub-clause 9(7) provides that employees who leave the Commonwealth Superannuation Scheme because the new Company is not an approved authority under the Scheme on the commencing day, are not paid severance superannuation entitlements. Instead, these are to be paid into the appropriate company scheme. The provisions elsewhere in the clause then ensure that such staff receive the same benefits and maintain accruals as they had before commencing day. Sub-clause 9(11) makes similar provisions regarding severance entitlements under the Long Service Leave (Commonwealth Employees) Act 1976.

Sub-clause 9(8) ensures that all the amounts transferred to the new Company under sub-clause 9(7) are suitably appropriated, under the Superannuation Act 1976, and so are available for payment.

Sub-clauses 9(5) and 9(6) provides for the preservation of rights any transferring TAA staff may have under the Officers' Rights Declaration Act or Division 2 or 3 of Part IV of the Public Service Act for as long as the Commonwealth has a controlling interest in the Company. These rights include right of return to the Australian Public Service and continued membership in the Commonwealth Superannuation Scheme.

Sub-clause 9(9) and 9(10) provide that the Company shall treat previous employment with the Commission as employment with the Company, for those employed under sub-clause 9(1).

- Clause 10: Provides that the Company shall be substituted for the Commission in any proceedings before a court or tribunal which are pending on the commencement day.
- Clause 11: Provides that stamp duty or other tax (Commonwealth, State or Territory), arising out of the transfers provided by this Bill, is not payable.
- Clause 12: Provides that after the commencing day the Commission shall continue in existence for the purpose of ensuring that the Commission's shareholdings, units held in a unit trust, overseas assets and liabilities as well as overseas contractual commitments are vested in the company. Necessary sections of the Australian National Airlines Act are kept in existence.

Sub-clause 12(2) provides that overseas assets and liabilities shall be held in trust by the Commission until they can be transferred to the Company.

Sub-clauses 12(6) and 12(7) provide for a modified form of section 40 of the Australian National Airlines Act to apply to the Commission, requiring it to submit Annual Reports covering its operations until the commencing day.

Provision is made in sub-clauses 12(8) to 12(10) for the Commission to pay such dividends to the Commonwealth, out of the profits of the Commission, as the Minister determines for financial years, or part thereof, preceding the commencing day. This obligation on the Commission would apply to determinations made either before or after the commencing day by the Minister.

Sub-clauses 12(11) to 12(15) provide for the Company to provide staff and funds to the Commission which the Commission requires to carry out its obligations under this clause. These include payments of entitlements to Commissioners as directed by the Minister, and give the Commission power to delegate its powers to the seconded staff for the purposes of undertaking Commission obligations.

Sub-clause 12(16) provides that the Minister may, if he is satisfied that the Commission has fulfilled its obligations under clause 12, notify in the Gazette that the Commission has ceased to exist.



Clause 13: Provides for the Treasurer, on behalf of the Commonwealth, at the request of the Company, to give loan guarantees for borrowing arrangements entered into by the Company in relation to liabilities of the Commission which existed before the commencing day.

Sub-clause 13(3) outlines the requirements for the protection of the financial interests of the Commonwealth.

Sub-clause 13(4) provides for the Treasurer to table details of such guarantees in the Parliament within 15 sitting days after the guarantee is given.

Sub-clauses 13(6) to 13(9) provide for the Treasurer to delegate any of his powers and functions.

Clause 14: Extends to the Company the income tax and the income tax benefits and obligations of the Commission, including for example, the transfer of entitlement to claim any tax losses and eligibility for deductions in respect of plant depreciation, investment allowance, valuation of trading stock, write-off of bad debts, etc. It would also enable the Company to continue any proceedings relating to objections and appeals against any assessment of the Commission's income.

Clause 15: Provides for compensation to be paid by the Government to any person from whom property is acquired, within the meaning of paragraph 51(xxxi) of the Constitution, under the operation of the Act after it has commenced.



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