

Departmental Disclosure Statement

Family Violence Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

Coverage of this Departmental Disclosure Statement

Attention: This disclosure statement includes amendments from the Government's Supplementary Order Papers and is limited in its coverage

The Bill, following its amendment by Supplementary Order Paper (SOP), predominantly makes technical revisions to the Domestic Violence Act 1995 to improve clarity and navigability of that Act. These changes do not change the legal effect or policy intent of the provisions. The disclosure statement does not include discussion of the existing legislative provisions that are simply modernised and reaffirmed by the Bill. The small number of policy changes in the Supplementary Order paper have been incorporated in this disclosure statement.

General Policy Statement

The General Policy Statement (GPS) as introduced described how the Bill intended to achieve the objectives and was based on operational work led by the previous Government. That GPS is now outdated and it would be misleading to include in this disclosure statement. While the Bill's GPS continues to reflect much of the Bill as introduced, the Bill's high-level policy objectives in the GPS will be amended by the SOP. For this reason, the GPS section of this disclosure statement reflects the amended policy objectives and means of achieving these objectives under the SOP.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

Updated 31 August 2018 to incorporate the Supplementary Order Papers amendments proposed by the Government

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Part One: General Policy Statement

Background

The Family Violence Legislation Bill (the Bill) puts in place a modern and enabling legislative framework to prevent, identify and address family violence. The Bill is a major step in supporting the system to reduce New Zealand's unacceptable rate of family violence. Family violence undermines the lifetime wellbeing of victims and their children, particularly those most marginalised and disadvantaged in society.

The Bill forms part of a wider work programme led by the Minister of Justice, Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues) and Minister for Social Development. The objectives of this Bill, supported by the wider work programme, are to:

- provide mechanisms to keep victims safe
- be responsive to the complexity and diversity of people's lived experience of violence
- drive the prevention of, and early intervention in, family violence
- partner with whānau and communities, including Māori
- address the behaviour of perpetrators of family violence and reduce further violence, and
- develop an integrated system that continuously improves, including by creating a shared understanding and vision for the system.

The Bill makes amendments under three broad categories:

- creating a more integrated family violence system
- improving civil orders to better support victims (including protection orders and Police safety orders), and
- recognising the dynamic of family violence in criminal justice system.

These amendments collectively make substantive changes to the following Acts:

- Domestic Violence Act 1995 (DVA), which the Bill repeals and replaces with the Family Violence Act 2019, noting that this General Policy Statement refers throughout to 'the Act'
- Bail Act 2000
- Care of Children Act 2004 (CoCA)
- Crimes Act 1961
- Criminal Procedure Act 2011
- Evidence Act 2006, and
- Sentencing Act 2002.

Key changes

Creating a more integrated family violence system

Shared understanding of family violence

Providing more guidance about the nature of family violence and expectations about the response will enhance the consistency of decision-making. To achieve this purpose, the Bill amends the Act by:

- including principles to guide decision-making, such as:
 - acknowledging family violence is often a pattern of behaviour
 - early intervention being effective in addressing family violence
 - reference to children being at particular risk to family violence, and
 - highlighting that people with disabilities and other people (e.g. due to age or health condition) are at particular risk of family violence.
- referring to coercive or controlling behaviour in the definition of family violence and the principles
- including ill-treatment of pets in the definition of family violence
- explicitly recognising dowry abuse as a form of family violence, and
- making it clear carer and recipient of care relationships can be a form of family relationship.

Information sharing to assess and manage risk of family violence

The Bill will also support more collaborative frontline risk assessment and service delivery by:

- providing a clear purpose that information sharing is a means to aid in collaboration to address family violence
- enabling family violence agencies and social services practitioners to request, use and disclose personal information for purposes related to assessing and managing the risk relating to family violence
- driving collaborative behaviour by placing a duty on family violence agencies and social services practitioners to consider sharing information in certain circumstances, including if they believe that this may help to ensure a victim is protected, and
- provides an immunity for anyone who shares relevant personal information under the information sharing provisions in family violence legislation, unless the information is shared in bad faith.

Consistent approaches to service delivery

The Bill enables codes of practice to be issued by the Minister of Justice to guide coordinated and consistent service delivery. This will assist the sector to work collectively to the same set of rules and provide further clarity about what the Act intends. Codes of practice may include provisions on:

- the assessment and management of risk related to family violence
- workforce competencies
- information requests, and the use and disclosure of information

- the outcomes of assessment, programmes or prescribed services.

Improving civil orders to better support victims

Accessibility of protection orders

The Bill includes a range of provisions to reduce the legal barriers people face when applying for protection orders. The provisions in the Bill also reflect that processes need to be more responsive to the different types of assistance people need. The Bill:

- clarifies the court's ability to impose special conditions on protection orders to address the use of family violence against older people and people with disabilities.
- improves access to safety programmes for children and young people who are protected by protection orders
- allows non-government organisations (NGOs) to be approved by the Secretary for Justice to apply for protection orders on behalf of people who cannot apply for themselves due to incapacity, fear, or another sufficient cause, and
- makes it easier for a young person to apply for a protection order without a representative, if the court considers it appropriate

Better linking protection orders with the wider system

The Bill includes provisions to improve the system response to a protection order being issued. The Bill:

- empowers the Family Court to direct respondents to attend a wider range of services to better meet their needs
- enables a coordinated service response when a protection order is made by:
 - providing Police with more information about the relevant risk factors to inform assessing and managing the risk of future violence
 - clarifying that Police may share information about the order and risk factors with other agencies, as appropriate, subject to the Privacy Act and the information sharing provisions in the Bill described below, and
 - enabling programme providers to share, with other agencies, information that is relevant to assessing and managing risk, subject to the information sharing provisions.

Making protection orders more responsive to the dynamics of family violence

The Bill improves certain protection order processes to make them more responsive to the dynamics of family violence, including provisions that:

- outline the circumstances in which the protected person may consent to contact and the effects of that consent
- include a list of criteria the court must consider when deciding whether to discharge a protection order (including a temporary order), and
- expands the court's powers when responding to notifications of safety concerns or a respondent's failure to engage with a programme.

Clarifying the intent and use of property orders

The Bill will improve all forms of property orders (occupation, tenancy, furniture and ancillary furniture orders) to help reduce homelessness and disruption for victims of family violence. The Bill clarifies that:

- an occupation order or tenancy order may be issued if it is necessary for the reasonable accommodation and stability needs of the applicant and any children
- a property order can only be made if a protection order has been, or is being, made
- a failure to leave a property in contravention of a property order is to be treated as breach of the protection order, and
- preventing the applicant from retrieving furniture that is subject to a furniture order is a breach of the protection order.

Putting children safety at the centre of judicial decision making

The Bill includes provisions to uphold child and victim safety in parenting arrangements. The provisions:

- support better informed decision-making by:
 - amending the Criminal Procedure Act 2011 to enable regulations to be made allowing information about criminal proceedings to be shared with a court considering CoCA matters
 - extending the matters judges must take into account when assessing a child's safety to include the existence or breach of a protection order, and
- empower judges considering applications under CoCA to make temporary protection orders where the CoCA order will not provide enough protection, and
- empower judges to impose protective conditions for hand-over arrangements whenever family violence has occurred, including psychological violence.

The Bill also makes amendments to protection order processes in relation to children's safety, including:

- empowering the court to add any of the applicant's children who are not currently living with the applicant to a protection order, and
- making provision for the applicant's subsequent children (eg. children born after the protection order is made) to be automatically covered by the protection order.

Upholding victim safety through Police safety orders

The Bill contains provisions to enhance the ability of Police safety orders (PSOs) to protect victims and stop perpetrators' use of violence. These provisions:

- extend the maximum duration of PSOs to ten days to enable victims more time to put in place safety arrangements

- enable Police to direct individuals subject to PSOs (bound persons) to attend a risk and needs assessment, and require the bound person to comply with that direction
- treat a failure to comply with the direction to attend a risk and needs assessment as a breach of the order
- empower Police to issue a PSO if a person is arrested, but no charges are subsequently filed, and
- confirm that complaints of breaches of PSOs are to be proved to the civil standard, instead of the criminal standard (but are to be heard in the criminal jurisdiction of the Court).

Recognising the dynamic of family violence in the criminal justice system.

Prioritising the safety and experience of victims through the criminal justice process

The safety of victims, including children, is prioritised in decisions which affect them by the Bill including:

- making the safety of victims, and those in a family relationship with a victim, the primary consideration in bail decisions for family violence cases,
- empowering the court to:
 - impose any condition it considers reasonably necessary to protect victims, and those in a family relationship with or residing with a victim, in family violence bail decisions, and
 - place no-contact conditions on defendants remanded in custody to prevent a defendant from contacting a victim or any other specified person.
- enhancing practice in courts to provide additional support to victims by amending the Evidence Act 2006 to enable video records of on-scene interviews with the complainant be played as all or part of their evidence in chief.

Family violence specific offences

The Bill introduces modern criminal offences to reflect the dynamic of family violence offending and the serious nature of strangulation or suffocation. The Bill differentiates the following forms of family violence offending from more general offences:

- Strangulation and suffocation will be recognised as a serious new offence due to the risk factors linked with this form of offence
- Coerced marriage or civil union will be a specific offence that sends a clear signal that any forced marriage or civil union in New Zealand or overseas will not be tolerated in New Zealand, and
- Assault on a person in a family relationship will be a new offence to recognise the dynamic of family violence and that assault can occur in a wide range of family relationships not highlighted by current offences of common assault and male assaults female.

Addressing the dynamic of family violence at sentencing

The Bill highlights the serious and repeat nature of family violence offending and its impact on victims by:

- including that a breach of a protection order be a specific aggravating factor for judges to take into account at sentencing, and
- introducing a requirement, upon conviction, for the court to direct an offence be recorded on a person's criminal record as a family violence offence, if satisfied this was the case.

Identifying and distinguishing family violence offences

In order to ensure that family violence offending is identified and recorded consistently within the justice system, the Bill:

- defines family violence and family relationship as the two key definitions of what construes family violence in relevant criminal legislation, cross-referencing to definitions in the Act, and
- introduces a process to enable consistent identification of family violence in criminal proceedings, and allows the court to use that information throughout the criminal court process (described further below).

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>Strengthening New Zealand's legislative response to family violence: a public discussion document</i>, Ministry of Justice, August 2015. Available at https://consultations.justice.govt.nz/policy/family-violence-law/user_uploads/fv-consultation-discussion-document-v2.pdf</p> <p><i>Strengthening New Zealand's legislative response to family violence: summary of submissions</i>, Ministry of Justice, March 2016. Available at: http://www.justice.govt.nz/assets/Documents/Publications/fv-consultation-summary-of-submissions-20160304.pdf</p> <p><i>Strangulation: the case for a new offence</i>, Law Commission Report 138, March 2016. Available at: http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R138.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Review of family violence legislation: Regulatory impact statement</i>, prepared by the Ministry of Justice. To be published once the Bill is introduced at: https://justice.govt.nz/assets/Documents/Publications/ris-review-fv-legislation.pdf and http://www.treasury.govt.nz/publications/informationreleases/ris.</p> <p><i>Extending the Duration Limit of Police Safety Orders</i>, prepared by the Ministry of Justice: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements/</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Regulatory Impact Analysis Team at the Treasury (RIAT) considered that the information and analysis summarised in the 'review of family violence legislation' regulatory impact statement (RIS) meets the QA criteria. The 'extending the duration limit of Police safety orders' also was considered to meet the QA criteria by the Ministry of Justice independent QA panel.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>The initial RIS (review of family violence) contains discussion of the costs and benefits of the proposals, as well as the possible impact on the income or wealth of particular groups of individuals (particularly relating to changes that may result in increased imprisonment, and from an intended increase in the use of property orders).</p> <p>The Cabinet papers noted below also contain relevant discussion: <i>Reform of Family Violence Legislation – Cabinet paper one: Context and supporting integrated responses</i>, Office of the Minister of Justice, August 2016. Publicly released version available at: http://justice.govt.nz/assets/Documents/Publications/fv-reform-paper-1-context-and-supporting-integrated-responses2.pdf</p> <p><i>Reform of Family Violence Legislation – Cabinet paper two: Family violence civil law</i>, Office of the Minister of Justice, August 2016. Publicly released version available at: http://justice.govt.nz/assets/Documents/Publications/fv-reform-paper-2-family-violence-civil-law2.pdf</p> <p><i>Reform of Family Violence Legislation – Cabinet paper three: Prosecuting family violence</i>, Office of the Minister of Justice, August 2016. Publicly released version available at: http://justice.govt.nz/assets/Documents/Publications/fv-reform-paper-3-prosecuting-family-violence4.pdf.</p> <p><i>Family Violence Legislation – A modern Act with a greater focus on victims</i>, Office of the Minister of Justice, June 2018. Publicly available at: https://www.justice.govt.nz/assets/Documents/Publications/fv-a-modern-act.pdf</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The RIS and the Cabinet papers referred to at 2.5 note that the benefits sought through the package of reforms are reliant on changes in behaviour by justice and social sector agencies, judges, lawyers, and perpetrators.</p> <p>The Bill forms part of a wider work programme led by the Minister of Justice, Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues) and Minister for Social Development to encourage and support improved, and more coordinated and consistent responses to family violence.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Ministry has considered New Zealand's commitments under a variety of international instruments to which New Zealand is a signatory during the development of the Bill. In particular:

- the change in the age of the child aligns with our commitment to the United Nations Convention on the Rights of the Child
- the offence of forced marriage and explicit inclusion of dowry-related abuse aligns with our commitment to the Convention on the Elimination of all forms of Discrimination Against Women

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Justice has considered the implications of the Bill for the Crown's obligations under the Treaty of Waitangi. It concludes that:

- Partnership – the Bill is an enabling framework and the wider work on family violence provides an opportunity to partner with Māori to address family violence.
- Participation – The Bill provides opportunities, such as through codes of practice, to work with Māori to work on system change. As above, the Bill is a general framework and the wider work on family violence is the main opportunity to ensure Māori participation.
- Protection – the Bill includes a principle that responses to family violence should be culturally appropriate and should reflect appropriately tikanga Māori. The criminal justice system has a role in the family violence regulatory system, which is gradually developing its application of tikanga.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by Crown Law, or a Bill of Rights Act 1990 section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon a Bill's introduction at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill creates or amends the following offence provisions in the Crimes Act 1961:</p> <ul style="list-style-type: none"> • Section 189A: strangulation or suffocation • Section 194A: assault on a person in a family relationship • Section 207A: coerced marriage or civil union • Section 208: abduction for the purposes of marriage or civil union or sexual connection - a technical amendment to clarify that this section covers civil union as well as marriage. <p>It amends section 49 of the Act (offence to breach a protection order) by providing that any breaches of a related property order are also breaches of the protection order.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice has led the development of the Bill. Offence provisions were checked and approved internally through the standard process by which all offences and penalties are vetted. This process includes consideration of consistency with existing criminal offences.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>The Bill inserts new sections 20-25 into the Act. These new sections have the effect of:</p> <ul style="list-style-type: none"> • enabling family violence agencies and social services practitioners to use, disclose, and request personal information for purposes related to family violence; and • requiring family violence agencies and social services practitioners, in certain circumstances, to consider disclosing personal information for those purposes. <p>Also, section 51S of the Act is replaced with a new section 205 to provide that information a service provider receives while providing a service may be disclosed, for example under the new information sharing provisions, but may not be admitted as evidence.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Ministry of Justice has had discussions with the Office of the Privacy Commissioner, which supports the provisions in the Bill relating to information sharing with the exception of new section 21. That section provides that helping to ensure that a victim is protected from family violence takes precedence over any applicable confidentiality of the information or any applicable limit under privacy principle 11 in section 6 of the Privacy Act 1993.</p> <p>The Office of the Privacy Commissioner has also been consulted as part of the rewrite of the Domestic Violence Act and is comfortable with the changes that have been made.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The review of family violence legislation included public consultation on a discussion document, with almost 500 submissions received from a wide range of organisations and individuals. The discussion document can be found at https://consultations.justice.govt.nz/policy/family-violence-law/user_uploads/fv-consultation-discussion-document-v2.pdf.</p> <p>Submissions responded to questions under five broad headings:</p> <ul style="list-style-type: none"> • Understanding family violence • Victim safety • Prosecuting family violence perpetrators • An additional pathway to safety and • Better services for victims, perpetrators and whānau. <p>A summary of the submissions can be found at http://www.justice.govt.nz/assets/Documents/Publications/fv-consultation-summary-of-submissions-20160304.pdf.</p> <p>We have also engaged with education representative bodies, the New Zealand Nurses Organisation and the New Zealand College of Midwives about the provisions relating to the sharing of information.</p> <p>The Bill has also now been through Select Committee, with the Departmental Report summarising and responding to submissions available on: https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_72556/tab/submissionsandadvice</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Bill reflects a review of the existing provisions of the Act and other related legislation, and contains a number of amendments intended to strengthen the effectiveness and workability of those provisions. We have consulted with the government agencies responsible for implementing the Bill, including New Zealand Police, the Department of Corrections, the Ministry of Social Development, the Ministry of Education and the Ministry of Health.</p> <p>The Ministry of Justice also worked with Crown Law Office, Department of Corrections, New Zealand Police and Oranga Tamariki on the modernisation of the Domestic Violence Act.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	YES
<p>Property orders, which are temporary, play an important role in addressing the temporary accommodation and stability needs of the people protected by the protection order including, in particular, children's access to education.</p> <p>Property orders exist under the current legislation, but the Bill contains provisions to clarify their intent, to ensure they are used to their full advantage to reduce homelessness and disruption for victims of family violence.</p> <p>Property orders are able to be varied or discharged by the court, and the Bill clarifies that they can only be made when a protection order has been, or is being, made.</p>	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>The new section 25 of the Act creates an immunity from civil, criminal or disciplinary proceedings for anyone who shares information for family violence purposes as set out in the new section 20 of the Act, unless information is disclosed in bad faith.</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill enables a Police safety order to be issued for up to 10 days. This power will enable designated Police Officers to direct offenders to vacate occupied land/building, not contact people protected by the Police safety order, and suspend parenting arrangements for the duration of the order. This balances the protection of victims with the rights of the person subject to the order.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
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The new section 254 of the Act provides that service delivery codes of practice may be issued by the Minister of Justice to guide delivery of services provided to victims or perpetrators of family violence.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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