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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL (NO.2) 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans'
Affairs, the Honourable Ben Humphreys M.P.)

VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL (NO.2) 1991

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill proposes amendments for Veterans' Affairs measures announced as part of the 1991 Budget package.

The first of these measures deals with the earnings credit applicable to the ordinary income test. The maximum amount of a person's earnings credit account is currently fixed at \$1,000. The amendment proposes that, commencing on 1 July 1992, the earnings credit account maximum be indexed in line with movements in the Consumer Price Index.

The second measure proposes that the co-payment arrangements introduced last year in respect of pensioners under the Pharmaceutical Benefits Scheme be extended to pharmaceutical benefits provided under the Repatriation Pharmaceutical Benefits Scheme. The co-payment arrangement would commence on 1 January 1992. Amendments are to be made to the Repatriation Pharmaceutical Benefits Scheme to provide for co-payment arrangements which will be equivalent to those which apply to pensioners in respect of the Pharmaceutical Benefits Scheme under the *National Health Act 1953*.

Associated amendments to the National Health Act are included in this Bill to provide that patient contributions for the provision of pharmaceutical benefits under the Repatriation Pharmaceutical Benefits Scheme will be included with the relevant pharmaceutical benefits charges to count towards the thresholds for concession card or entitlement card prescriptions.

Amendments are also proposed to the *Veterans' Entitlements Act 1986* to provide that eligibility for pharmaceutical allowance would be extended to persons eligible for benefits under the Repatriation Pharmaceutical Benefits Scheme to compensate them for the patient contribution.

Other amendments proposed by this Bill are not related to the Budget package.

Amendments are included to provide that the system for the payment of advance pharmaceutical allowance which has operated since November 1990, in respect of pharmaceuticals provided under the Pharmaceutical Benefits Scheme, will continue in a modified form for a further two years. Advance pharmaceutical allowance will also be available to persons affected by the changes proposed by the extension of the co-payment arrangements to the Repatriation Pharmaceutical Benefits Scheme. Advance pharmaceutical allowance available to persons who are receiving benefits of a compensatory nature will not

be subject to the income test which applies to a service pensioner's eligibility for advance pharmaceutical allowance.

Changes to the indexation mechanism for pharmaceutical allowance payable under the Veterans' Entitlements Act and the *Social Security Act 1991* are also proposed to amend the indexation date from 20 September to 1 January. Another provision will change the indexation day for the general patient reduced charge and the concessional beneficiary charge from 1 October to 1 January. Additionally, the threshold for the concessional beneficiary safety net will, instead of being indexed directly, be calculated to equal the concessional beneficiary charge (as indexed from time to time) multiplied by 52. These changes will ensure that the threshold for the concessional beneficiary safety net and the total amount of pharmaceutical allowance received in any year will be the same.

Amendments are also proposed to Schedule 2 of the Veterans' Entitlements Act dealing with operational areas and the periods during which such areas are to be regarded as operational for the purposes of determining eligibility for benefits.

An operational area to cover the Gulf War was included in the Act last year with effect from 2 August 1990. As hostilities had not begun the area did not include Iraq and Kuwait. This area would be included with effect from 23 February 1991. An end date for the hostilities of 9 June 1991 would also be included for both these items.

Amendments are also proposed to the dates for the operational areas relating to Northern Malaya and Malaya/Singapore to change the dates for the periods during which the areas were actually "operational". A savings provisions would be included to ensure that no person who has lodged a claim on or before 7 November 1991 would be disadvantaged by these changes.

Financial Impact

The cost for indexation of the earnings credit account balance upper limit is nil in 1992/93, \$20,000 in 1993/94 and \$20,000 in 1994/95.

The extension of co-payment arrangements to the Repatriation Pharmaceutical Benefits Scheme (RPBS) and the corresponding payment of pharmaceutical allowance will result in a cost of \$1.1m in 1991-92, with subsequent savings of \$10.5m in 1992-93, \$11.4m in 1993-94 and \$12.2m in 1994-95.

The extension of the system for payment of advance

~~pharmaceutical allowance, including advance payments to~~

persons eligible for repatriation pharmaceutical

benefits, will be \$20,500 in 1991/92, \$19,000 in 1992/93

and \$8,500 in 1993/94.

The changes proposed to the indexation arrangements for

the pharmaceutical allowance, the concessional

beneficiary charge and the general patient reduced charge

are likely to have net savings of more than \$1m.

The financial implications of the changes to the

operational areas are negligible.

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PART 1 - PRELIMINARY

Clause 1 : Short title

This clause would provide that the amending Act is to be known as the *Veterans' Affairs Legislation Amendment Act (No. 2) 1991*.

Clause 2: Commencement

This clause would provide for the commencement of the various clauses in the Bill. The date on which each clause would come into operation is shown in the Bill at the end of each provision.

PART 2 - AMENDMENT OF THE NATIONAL HEALTH ACT 1953

Clause 3: Principal Act

This clause would provide that, in this Part, the "Principal Act" means the *National Health Act 1953*.

Clause 4: Interpretation

This clause provides for the insertion of a definition in section 84 of the Principal Act as follows:

"repatriation pharmaceutical benefit" means a pharmaceutical benefit within the meaning of section 91 of the *Veterans' Entitlements Act 1986*.

Clause 4 would commence on 1 January 1992.

Clause 5: Eligibility for safety net concession card and pharmaceutical benefits entitlement card

Section 84C of the Principal Act is amended by inserting in subsections (1AA), (1) and (1C) provisions to include the amounts charged for supplies of repatriation pharmaceutical benefits to be included in the total amount to qualify for the issue of a concession card or an entitlement card, as the case may be.

Subsection (1C) is also amended to reflect the change in the method of calculating the threshold amount for the concessional beneficiary safety net.

Paragraph (3)(a) is amended by inserting a provision that repatriation pharmaceutical benefits given to the agent

of a patient will be taken to have been supplied to the
patient.

A new subsection (4A) is included to provide for the conditions subject to which a repatriation pharmaceutical benefit supplied to a person will count towards the threshold amount for a concession or an entitlement card.

Clause 5 would commence on 1 January 1992.

Clause 6: Pharmaceutical benefits prescription record
forms

Section 84D of the Principal Act is amended to enable the recording of supplies of repatriation pharmaceutical benefits on the prescription record form by the approved supplier or a person authorised by the approved supplier.

This clause also provides for the inclusion of a provision that where the supply of a repatriation pharmaceutical benefit is duly made the approved supplier shall record the supply on the prescription record form.

Clause 6 would commence on 1 January 1992.

Clause 7: Limited charges for pharmaceutical benefits

Section 87 of the Principal Act is amended by providing that the amount payable by the patient for a repatriation pharmaceutical benefit is to be taken into account in arriving at the threshold to qualify for a concession card.

Clause 7 would commence on 1 January 1992.

Clause 8: Interpretation

This clause amends the definition of concessional beneficiary safety net to provide that the threshold to be met for the issue of a pharmaceutical benefits entitlement card is to be calculated by multiplying the indexed concessional beneficiary charge by 52.

Clause 8 would commence on 1 January 1992.

Clause 9: Indexation

Paragraph (a) of clause 9 provides that the general patient reduced charge and the concessional beneficiary charge will be indexed from 1 January each year. The CPI reference quarter will be changed from March to September.

Clause 9(a) would commence on 2 January 1992.

Paragraph (b) of clause 9 would omit item 6 from the indexation table in section 99G of the Principal Act.

Item 6 relates to the indexation of the "concessional beneficiary safety net" which as a consequence of the redefinition proposed by clause 8 would no longer require a specific indexation mechanism.

Clause 9(b) would commence on 1 January 1992.

PART 3 - AMENDMENT OF THE VETERANS' ENTITLEMENTS ACT 1986

Clause 10: Principal Act

This clause would provide that, in this Part, the "Principal Act" means the *Veterans' Entitlements Act 1986*.

Clause 11: Earnings credit account balance

Section 49B of the Principal Act provides the method for calculating a person's earnings credit account balance. Point 49B-A2 currently restricts the maximum balance of the account for an individual to \$1,000. Clauses 12 and 13 would provide that from 1 July 1992 this amount will be indexed in line with CPI increases.

Clauses 11(a) would insert a "note" at the end of point 49B-A2 to alert the reader to the fact that the amount is indexed.

Point 49B-A4 currently provides that the earnings credit account balance of a joint account is not to exceed \$2,000.

Clauses 11(b) and (c) would amend point 49B-A4 to remove the reference to \$2,000 and make it twice the amount specified in point 49B-A2 for an individual account. This will ensure that following indexation the balance for the joint account will always remain as twice the balance for an individual account.

Clause 11 would commence on the day of Royal Assent.

Clause 12: Indexed and adjusted amounts

Section 59A of the Principal Act sets out the amounts under Part III of the Act which are indexed or adjusted and the provisions in which the amounts are to be found.

Clause 12 would insert a new item into the table to provide for the indexation of the upper limit for the earnings credit account balance.

Clause 12 would commence on the day of Royal Assent.

Clause 13: CPI Indexation Table

Section 59B of the Principal Act sets out the amounts under Part III of the Act which are to be indexed in accordance with CPI increases. The factors to be used to determine the increases are also specified.

Clause 13 would insert a new item in the table to provide for the indexation of the upper limit for the earnings credit account balance specified in point 49B-A2. This would provide for the limit to be indexed annually commencing on 1 July 1992. The increase would be based on the March reference quarter and rounded to the nearest \$50.

Clause 13 would commence on the day of Royal Assent.

Clause 14: Substitution of new section:

118JA. Eligibility for pharmaceutical allowance

Section 118JA of the Principal Act currently provides the eligibility criteria for pharmaceutical allowance.

Clause 14 would repeal the existing section and replace it with a new section 118JA which would extend the eligibility for pharmaceutical allowance to persons eligible for benefits under the Repatriation Pharmaceutical Benefits Scheme established by the

Commission under section 91 of the Principal Act. The payment of the allowance to this new category of persons would be to compensate them for the patient contribution which will be introduced from 1 January 1992 for pharmaceutical benefits supplied under the Repatriation Pharmaceutical Benefits Scheme.

The clause would ensure that a person whose eligibility for benefits under the Repatriation Pharmaceutical Benefits Scheme arises under the *Seamen's War Pensions and Allowances Act 1940* would also receive the allowance.

Clause 14 would commence on 26 December 1991.

Clause 15: Substitution of new section:

118JC. Payability of pharmaceutical allowance

Section 118JC of the Principal Act currently provides that pharmaceutical allowance is payable to a person on each pension-payday that the person is eligible for the allowance.

Clause 15 would replace the existing section with a new section 118JC which would provide two restrictions to this general rule for the payment of pharmaceutical allowance.

New subsection 118JC(2) would prohibit the payment of pharmaceutical allowance to a person where the person is receiving the allowance under the Social Security Act. This would ensure that dual payments of the allowance are not made.

New subsection 118JC(3) would apply to a person who becomes eligible for pharmaceutical allowance on 26 December 1991 because of the extension of eligibility to persons eligible for benefits under the Repatriation Pharmaceutical Benefits Scheme and the Department does not have the information necessary to be able to pay the allowance to that person (e.g. bank account details).

In this situation the allowance would not be payable to the person until the payday following receipt of those details by the Department. This rule would not apply during the period 26 December 1991 to 30 June 1992. If the person provides the Department with the information necessary to make the payment at any time during that period the allowance will be payable from 26 December 1991.

An amendment will be made to the Repatriation Pharmaceutical Benefits Scheme to allow persons whose allowance is not able to be paid from 26 December 1991 and who have incurred costs in the purchase of repatriation pharmaceutical benefits during a period for

which the pharmaceutical allowance was not paid to seek reimbursement of those costs from the Commission.

Clause 15 would commence on 26 December 1991.

Clause 16: Substitution of new Part:

Part VIIA - Pharmaceutical allowance and advance
pharmaceutical allowance

Part VIIA of the Principal Act currently provides for the payment of pharmaceutical allowance and advance pharmaceutical supplement under the Principal Act. Under the existing provisions the system for the payment of advance pharmaceutical supplement will operate only until 31 December 1991.

Clause 16 would repeal the existing Part VIIA and insert a new Part VIIA which would provide for a simplified system for the payment of advance pharmaceutical allowance to operate until 31 December 1993. As consequential amendments would be required to the provisions relating to the payment of the pharmaceutical allowance, the opportunity has been taken to present the provisions in a restructured format.

DIVISION 1 - PHARMACEUTICAL ALLOWANCE

Subdivision A - Eligibility for and payability of pharmaceutical allowance

New section 118A - Eligibility for pharmaceutical allowance

New section 118A sets out the eligibility criteria for pharmaceutical allowance. A person would be eligible for pharmaceutical allowance if the person is:

- . a service pensioner; or
- . a war widow/er; or
- . eligible for benefits under the Repatriation Pharmaceutical Benefits Scheme; or
- . in receipt of a pension whose rate is specified under subsection 30(2) (including a person who would have been in receipt of such a pension except for the operation of subsection 13(7)).

The section would ensure that a person whose eligibility for benefits under the Repatriation Pharmaceutical Benefits Scheme arises under the *Seamen's War Pensions and Allowances Act 1940* would also receive the allowance.

New section 118B - Pharmaceutical allowance not payable
in some circumstances

New section 118B provides that, even though a person is eligible for a pharmaceutical allowance on a payday, it will not be payable in some circumstances.

A pharmaceutical allowance will not be payable if the person is receiving a pharmaceutical allowance under the *Social Security Act 1991* or if the person has received an advance pharmaceutical allowance, under either Division 2 of this Part or under the *Social Security Act*, and the person's "advance payment period" has not ended.

A person's "advance payment period" starts on the day on which the advance pharmaceutical allowance is paid to him or her and ends after the number of paydays have passed that are equivalent to the number of fortnightly instalments of the allowance which were paid as an advance. For example, a person is paid an advance pharmaceutical allowance of \$36.40 on 9 January 1992. The person would have otherwise received a pharmaceutical allowance of \$5.20 on that day. The person's advance payment period will end 7 paydays after 9 January 1992 (ie \$36.40 divided by \$5.20). If no further advance pharmaceutical allowance was paid to the person during that period the person would receive the next payment of pharmaceutical allowance on 16 April 1992.

Subdivision B - Rate of pharmaceutical allowance

New section 118C - Rate of pharmaceutical allowance

New section 118C would specify the rate of pharmaceutical allowance payable to a person. Subsection (1) provides that the basic rate is twice the rate specified in subsection (2) (i.e. the basic rate is \$5.20 per fortnight). Subsection (2) provides that the only exception to the basic rate would be for a person who is a service pensioner who is a member of a couple and whose partner is eligible for pharmaceutical allowance under either the Veterans' Entitlements Act or the Social Security Act. In these cases the person would receive \$2.60 per fortnight. The person's partner would also be receiving a pharmaceutical allowance. Subsection (2) would not apply to illness separated couples or to respite care couples.

(Note 1 would signpost the definitions of terms used in this provision. Note 2 would explain that the amount in subsection (2) is indexed annually.)

New section 118D - Limitation on amount of pharmaceutical allowance

New section 118D would impose a maximum limit on the total amount that could be paid to a person who is eligible to receive both pharmaceutical allowance and

advance pharmaceutical allowance. The total amount paid under the Principal Act and under the Social Security Act would not exceed the person's pharmaceutical payments limit for that year. That limit would be the total amount of pharmaceutical allowance that the person would have received under both Acts if the person had not received any advance pharmaceutical allowance under either Act.

Subdivision C - Payment of pharmaceutical allowance

New section 118E - Payment of pharmaceutical allowance

New section 118E would provide for the payment of pharmaceutical allowance. As a general rule the allowance would be payable on each pension payday that the person is eligible for the allowance.

New subsection 118E(2) would provide an exception to this general rule and would apply to a person who becomes eligible for pharmaceutical allowance on 26 December 1991 only because of the extension of eligibility to persons entitled to benefits under the Repatriation Pharmaceutical Benefits Scheme. If the Department does not have the information necessary to be able to pay the allowance to that person (e.g. bank account details), the allowance would not be payable to the person until the payday following receipt of those details by the

Department. This rule would not apply during the period 26 December 1991 to 30 June 1992. If the person provides the Department with the information necessary to make the payment at any time during that period, the allowance will be payable from 26 December 1991.

An amendment will be made to the Repatriation Pharmaceutical Benefits Scheme to ensure that a person whose allowance is not able to be paid from 26 December 1991, and who has incurred costs in the purchase of repatriation pharmaceutical benefits during a period for which the pharmaceutical allowance was not paid, is able to seek reimbursement of those costs from the Commission.

DIVISION 2 - ADVANCE PHARMACEUTICAL ALLOWANCE

Subdivision A - Eligibility for and payability of advance pharmaceutical allowance

New section 118F - Eligibility for advance pharmaceutical allowance

New section 118F would set out the eligibility criteria for advance pharmaceutical allowance. To be eligible, a person must be eligible for pharmaceutical allowance and if the person is also a service pensioner he or she must not have "ordinary income" (as defined by the Act) of more than \$20 per fortnight (a couple must not have

ordinary income of more than \$40 per fortnight between them).

New section 118G - Advance pharmaceutical allowance not payable in some circumstances

New section 118G would provide that if a person is eligible for an advance pharmaceutical allowance during a calendar year and the amount of the allowance is reduced under new section 118P because the person would otherwise receive an amount greater than his or her pharmaceutical payments limit as worked out under new section 118D, no further advance pharmaceutical allowance is payable to the person in that calendar year.

Subdivision B - Claim for advance pharmaceutical allowance

New section 118H - Need for a claim

New section 118J - Who can claim?

New section 118K - Form of claim

New section 118L - Lodgment of claim

New sections 118H, 118J, 118K and 118L would provide the rules for a claim for an advance pharmaceutical allowance along the lines as apply to most other payments under the Act. A person must make a claim, in writing, in accordance with an approved form and must be lodged with

the Department or as otherwise approved. The claim must be made by the person who wants to be granted the advance pharmaceutical allowance or by another person on the person's behalf.

New section 118M - Proper claim

New section 118M would provide an additional rule for a claim for advance pharmaceutical allowance. A claim will be a proper claim for advance pharmaceutical allowance if:

. a person is eligible for pharmaceutical allowance on the last pension payday in the previous calendar year and the person lodges the claim for advance pharmaceutical allowance before the first pension payday in the current year. This would be applicable, for example, to a person who receives service pension on the last payday in 1991 and then lodges a claim for advance pharmaceutical allowance before the first pension payday in 1992; or

. a person claims a service pension, a war widow/er pension or a pension whose rate is specified in subsection 30(2) and lodges a claim for advance pharmaceutical allowance either at the same time as he or she lodges the claim for pension or before the claim for pension is determined. This would be applicable, for example, to a person who turns 60 part way through a calendar year, lodges a claim for

age service pension and lodges a claim for an advance pharmaceutical allowance at the same time; or

. the claim is based on the person's eligibility for pharmaceutical benefits under the Repatriation Pharmaceutical Benefits Scheme and the claim is lodged before the person's eligibility for those benefits is determined; or

. a person is eligible for pharmaceutical allowance during a calendar year and at the time of making his or her claim, has spent an amount on pharmaceutical benefits equal to or greater than the total amount that has been paid to the person in that calendar year by way of pharmaceutical allowance and advance pharmaceutical allowance. This would be applicable, for example, where a person has been receiving pharmaceutical allowance in a calendar year but then becomes ill and needs to have access to a lump sum amount to be able to pay for his or her higher pharmaceutical requirements.

Subdivision C - Amount of advance pharmac utical
allowance

New section 118N - Amount of advance pharmaceutical
allowance

New section 118N would provide that, unless new section 118P applies, the amount of a person's advance pharmaceutical allowance is seven times the person's rate of pharmaceutical allowance under new section 118C.

New section 118P - Reduction in amount of advance
pharmaceutical allowance

New section 118P would provide that if a person is eligible for an advance pharmaceutical allowance but the amount worked out under new section 118N exceeds his or her pharmaceutical payments limit worked out under new section 118D, then the amount of the advance pharmaceutical allowance is to be reduced by the excess.

Clause 16 would commence on 1 January 1992.

Clause 17: Repeal of Division 2 of Part VIIA

Clause 17 would repeal Division 2 of Part VIIA on 1 January 1994. This "sunset clause" would provide that the system for the payment of advance pharmaceutical allowance would operate only until the end of 1993.

Clause 17 would commence on 1 January 1994.

Clause 18: Indexation of pharmaceutical allowance

Section 198E of the Principal Act currently provides for the annual indexation of pharmaceutical allowance payable under Part VIIA of the Act. The allowance is currently subject to indexation on the first pension payday on or after 20 September each year.

The rate of the allowance is equivalent to the "concessional beneficiary charge" for pharmaceuticals under the *National Health Act 1953* which is currently indexed on 1 October. Clause 9 of this Bill proposes that the indexation for the charge be realigned to 1 January each year to link it to the "concessional beneficiary safety net limit".

Clause 18 would amend section 198E to provide that pharmaceutical allowance would be indexed from 1 January each year based on the September reference quarter.

A corresponding amendment to the *Social Security Act 1991* is proposed in the Schedule to this Bill.

A minor consequential amendment would also be required to amend the subsection specified in the definition of "relevant rate" as a result of the substitution of a new Part VIIA into the Principal Act.

Clause 18 would commence on 2 January 1992.

Clause 19: Schedule 2

Paragraphs (a) and (b) of Clause 19 would amend Schedule 2 by inserting revised commencing and closing dates for the areas described in Items 5 and 7 which more accurately reflect the periods during which the areas described were operational areas. These amendments follow on from similar amendments to Schedule 2 contained in the *Veterans' Affairs Legislation Amendment Act 1990*. Those amendments were designed to remedy problems encountered since the commencement of the *Veterans' Entitlements Act 1986*. As a result of those amendments, the closing dates in several of the items in Schedule 2 were extended to 11 January 1973.

Those amendments did not, however, result in the extension of benefits to veterans who did not serve in

the areas described outside the period in which they were actually operational. It was not until the Federal Court decisions in Doessel and Davis gave a different understanding to the meaning of "allotted" for duty that benefits could be obtained in respect of service which was not operational; an outcome that was never intended as a result of the changes to the Act in 1986.

The revised commencing dates for the operational areas in Items 5 and 7 of Schedule 2 are based on advice from the Department of Defence. The dates represent the period during which the areas described are considered to be "operational" and cover the relevant periods during which elements of the Forces were in the areas concerned.

Clauses 19(a) and (b) would commence immediately after the commencement of the *Veterans' Entitlements Act 1986*. Paragraph (c) of Clause 19 would provide for the insertion of a closing date of 9 June 1991 for operational service in the Gulf region as described in Item 10 of Schedule 2.

Clause 19(c) would commence on the day of Royal Assent. Paragraph (d) of Clause 19 would insert a new Item 11 in Schedule 2 to provide that the area comprising Iraq and Kuwait is an operational area for the period 23 February 1991 to and including 9 June 1991.

Clause 19(d) would commence on 23 February 1991.

Clause 20: Savings and transitional provisions

Clause 20 is a savings provision which would protect the rights of any veterans who might otherwise be adversely affected by the proposed amendments to Item 5 of Schedule 2. The savings provision would operate in respect of claims, applications or benefits granted on or before 7 November 1991 and claims or applications not finally determined before 8 November 1991, in which case the claim or application will be determined as though the amendments proposed by Clause 19 had not been made.

Clause 20 would commence on the day of Royal Assent.

Clause 21: Schedule

Clause 21 would provide for a Schedule to the Bill which would make minor and consequential amendments to a number of Acts. Consequential amendments as a result of the amendment made by clause 19, which would insert the operational area of Iraq and Kuwait in Item 11 of Schedule 2 of the *Veterans' Entitlements Act 1986*, would be required to the following Acts:

- . *Defence Service Homes Act 1918;*
- . *Income Tax Assessment Act 1936;*
- . *Public Service Act 1922; and*
- . *Veterans' Entitlements Act 1986.*

Amendments are also proposed to the *Social Security Act 1991* to amend the indexation provisions for pharmaceutical allowance contained in that Act. These amendments are consistent with the amendments proposed to the *Veterans' Entitlements Act 1986* by clause 18 of this Bill.

Clause 21 would commence on the day of Royal Assent.

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