

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*



*Volume 55/26*

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22 to 24 May 2012*

The *House in Review* provides regular updates of the activities of the New South Wales Legislative Council. Clicking on a hyperlink will take you to the relevant webpage. For further information refer to the NSW Parliament website [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au) or contact the Procedure Office on (02) 9230 2431. To be placed on the email distribution list of the *House in Review*, please contact us on [council@parliament.nsw.gov.au](mailto:council@parliament.nsw.gov.au).

### Overview

The sitting week saw debate commence on five Government bills. The House concluded debate on three of the bills, returning all of them to the Assembly without amendment notwithstanding that two of the bills were considered in committee of the whole. Debate also commenced on a private members' motion concerning marriage equality.

This edition of *House in Review* sees the inclusion of a new section on committee inquiry activities to complement the section on committee matters considered in the House.

### Ministerial statement – Death of Barbara Holborow OAM

On 23 May 2012, the Minister for Police and Emergency Services, the Hon Michael Gallacher informed the House of the passing earlier that day of Barbara Holborow, OAM, the former Children's Court magistrate.

The Leader of the Opposition made a similar statement.

### Government business

**Note:** Government business includes Government bills introduced or carried by ministers in the Council.

### Primary Industries Legislation Amendment (Biosecurity) Bill 2012

The bill originated in the Legislative Assembly.

*Summary:* The bill aims to improve the State's capability to respond to biosecurity emergencies and its compliance with the four national biosecurity agreements to which the State is a signatory.

Among other things the bill provides for: mechanisms to deal with emergency outbreaks of animal pests; the prohibition of interim court orders that might prevent or delay emergency measures; the use of quarantine areas to control the spread of noxious fish and marine vegetation; the extension of inspectors' powers with respect to seizure and impounding, collecting information, search and entry and requiring assistance; the urgent publication of emergency orders through a range of media; and the requirement to notify authorities of the presence of emergency animal diseases or pests.

*Proceedings:* The bill was received from the Legislative Assembly on 9 May and read a first time. Debate on the second reading of the bill commenced on 23 May 2012, with the Minister (Mr Gay) incorporating his speech into Hansard.

The Minister's second reading speech noted the significant threat that pests, weeds and animal and plant diseases pose to the economy, environment and community of New South Wales. Reviews of biosecurity-related legislation, the equine influenza outbreak in 2007 and the more recent outbreaks of the Hendra virus and myrtle rust had revealed a number of limitations and gaps in the current legislation. The bill seeks to address the legislative gaps and limitations in the immediate term and to ensure that biosecurity systems are better aligned nationally.

Members of the Government spoke in support of the bill, noting that it was an incremental but important step in an on-going process of maintaining biosecurity preparedness. The Opposition noted the importance of this type of legislation and indicated their overall support for the bill. The Opposition acknowledged the strength of some of the powers granted to authorities by the bill but considered them justified given the potentially serious damage that could arise from biosecurity encroachments. The Christian Democratic Party supported the bill noting the urgent need for a direct, coordinated response when biosecurity threats emerge. While the Greens expressed broad support for the legislation and the need for strengthening and expansion of inspectors' powers, this support came with a watching brief to ensure that the increased powers were applied equally and fairly. The Greens also foreshadowed they would seek to amend the bill so as to ensure certain native animal species were not unnecessarily targeted or harmed.

In reply, the Minister emphasized that the bill was about emergency situations and not general day-to-day management of biosecurity management, and that it was important that the emergency response process was not impeded by unnecessary duplication.

The second reading was agreed to.

In the committee stage the Greens moved two amendments. The first sought to insert a requirement for

the consent of the Minister administering the *Threatened Species Conservation Act 1995* before an animal that is a threatened species can be declared an emergency animal pest. The Opposition was successful in amending this amendment by omitting the clause requiring the Minister to consult with the Commonwealth when the animal is also a listed threatened species under Commonwealth legislation. However, the Greens amendment, as amended, was not supported by the Government, Christian Democratic Party or the Shooters and Fishers Party and was negatived (Division 16:19). The second Greens amendment, to insert a similar consent requirement with respect to the making of a destruction order of an animal that is a threatened species was not supported by any of the other parties and was negatived (Division 5:29).

The bill was reported to the House without amendment, read a third time and returned to the Assembly.

### **Biofuels Amendment Bill 2012**

The bill originated in the Legislative Assembly.

*Summary:* The bill amends the *Biofuels Act 2007* to remove the requirement, which was to have begun on 1 July 2012, for primary wholesalers selling regular unleaded petrol to ensure that it is E10. The Act defines E10 as a petrol-ethanol blend that contains between 9% and 10% ethanol by volume.

*Proceedings:* The bill was received from the Legislative Assembly on 6 March 2012 and read a first time. Debate on the second reading of the bill commenced on 23 May 2012, with the Parliamentary Secretary (Mr Ajaka) incorporating his speech into Hansard.

The Parliamentary Secretary's second reading speech stated that by removing the requirement for regular unleaded petrol to be E10, the bill will ensure that up to one million New South Wales consumers are not forced to unnecessarily pay more for fuel.

It was noted that the 6 per cent ethanol mandate (the amount of ethanol sales that primary petrol wholesalers need to meet out of the total volume of their NSW sales) will remain in place to further develop the ethanol industry and create jobs in regional NSW. The speech further noted that the Government asked the Independent Pricing and Regulatory Tribunal (IPART) to conduct an investigation and report into the available production capacity and supply required to meet the 6 per cent ethanol mandate.

A number of Government Members spoke in support of the bill, drawing attention to various sections of the community that would be particularly disadvantaged if regular unleaded petrol was no longer available. The Shooters and Fishers supported the bill noting that it had long voiced opposition to a total ban on unleaded petrol given the burden it placed on consumers. The Opposition opposed the bill on the grounds that it was unnecessary as the current legislation provided the Minister with the power to defer the timing of the requirement for full conversion to E10. The Opposition also argued that the removal of the requirement altogether weakened the commitment to the eventual phase-out of regular unleaded petrol. The Opposition

said that there was some doubt over the likelihood of the 6 per cent ethanol mandate ever being achieved while regular unleaded petrol was still being sold. The Christian Democratic Party expressed concerns over the potential effects of the bill on the ethanol industry and on the commitment to the 6 per cent mandate. The CDP stated that it would have preferred to have been informed by the contents of the IPART report prior to determining its support or otherwise for the bill. The Greens, while not opposing the bill, also argued that the House should be privy to the IPART report.

The House subsequently agreed, on the motion of Dr Kaye (the Greens), that debate be adjourned until tabling in the House of the IPART report on ethanol supply and demand in NSW. The report was subsequently tabled in the House later in the evening, following which the debate resumed.

The Greens argued that the IPART report showed that the pursuit of the 6 per cent mandate policy would result in an increase in costs for some consumers and in the creation of a monopoly supplier. The Greens stated that the environmental benefits of ethanol would be outweighed by the additional financial costs borne by those individuals forced to purchase premium unleaded petrol.

The second and third readings of the bill were agreed to and the bill was returned to the Assembly without amendment.

### **Tattoo Parlours Bill 2012**

The bill originated in the Legislative Assembly.

*Summary:* The bill provides for the mandatory licensing and regulation of body art tattooing businesses and body art tattooists with the aim of breaking the control that outlaw motorcycle gangs have over the tattoo industry. The bill provides for the Commissioner of Police to conduct investigations into licence applicants and licensees of tattoo parlours to ensure that only fit and proper persons are able to hold such licences.

*Proceedings:* The bill was received from the Legislative Assembly on 22 May 2012 and read a first time. Debate on the second reading of the bill commenced the following day, with the Minister (Mr Gallacher) incorporating his second reading speech into Hansard.

The Minister's speech indicated that the bill was part of a continued response from the Government to end gang crime in New South Wales, and referred to the fatal brawl between members of the Comancheros and Hells Angels at the Sydney Domestic Airport Terminal in March 2009 which has been linked to the opening of a tattoo parlour on disputed turf. The speech argued that removing bikies from the tattoo industry will reduce the reasons for rival gangs to fight turf wars as these businesses will no longer be symbols of a gang's territory.

Members of both the Government and the Christian Democratic Party supported the bill, while the Opposition did not oppose the bill on the grounds that it was important to give police the resources and laws necessary to fight organised crime.

The Greens supported the regulation of tattoo parlours and the initiation of a licensing system. However, they strongly opposed sections of the bill which they argued would be ineffective in reducing crime, while representing a serious attack on civil liberties.

The second reading was agreed to.

In the committee stage, the Greens moved ten amendments. Among other things the Greens sought to remove from the bill the powers of the Commissioner of Police to issue interim closure orders on unlicensed or illegal tattoo parlours. They also sought to remove provisions relating to fingerprinting and palm printing of applicants for a licence; to give the Administrative Decisions Tribunal the capacity to review the adverse security determination made by the Commissioner of Police; and to remove provisions relating to police entering licensed tattoo parlours with dogs to detect drugs. All of the amendments were negatived.

The bill was reported to the House without amendment, read a third time and returned to the Assembly.

### **Judicial Officers Amendment Bill 2012**

The bill originated in the Legislative Assembly.

*Summary:* The bill amends the *Judicial Officers Act 1986* to require the Judicial Commission to provide the Attorney General with certain information about complaints made to the Commission about judicial officers, including when a complaint is referred to the Conduct Division.

*Proceedings:* The bill was received from the Legislative Assembly on 23 May 2012 and read a first time. The second reading was set down for a later hour of the sitting, with debate on the second reading of the bill commencing later in the day.

The second reading speech of the Minister (Mr Gay) was incorporated into Hansard. The speech indicated the bill will address the inability of the Attorney General to obtain information about complaints before the Commission even when the existence of a complaint about a judicial officer is already in the public domain, while preserving the independence of the judiciary and the Commission.

Members of the Government supported the bill citing the difficulties faced by the House in 2011 when asked to decide whether a judicial officer, Magistrate Maloney, should be removed from office. During these deliberations there was debate whether the Magistrate had misled the House regarding the number of complaints before the Conduct Division. Members of the House were only able to clarify this position by obtaining information from the Judicial Commission through the Attorney General.

The Opposition opposed the bill arguing that it is wrong in principle as, under the doctrine of the separation of powers, the Judicial Commission must remain completely independent from the executive arm of government. The determination of complaints against judicial officers must be done entirely independently of the Executive or the Legislature, unless the Commission decides that conduct could form the basis of a removal and the matter moves to the Legislature for determination. The Opposition also

argued that it is inappropriate for the Attorney General or a Minister to become in effect the media officer for the Judicial Commission.

The Greens expressed reservations about the bill in its current form as they viewed it as eroding the independence of the Judicial Commission. However, they did accept the rationale for allowing the Attorney General to request information from the Judicial Commission where a report has been made to the Governor regarding the removal of a judicial officer from office.

The Greens foreshadowed that they would seek to amend the bill to narrow the powers of the Attorney General in seeking information from the Judicial Commission.

The second reading was adjourned.

### **Industrial Relations Amendment (Dispute Orders) Bill 2012**

The bill originated in the Legislative Council.

*Summary:* The bill amends the *Industrial Relations Act 1996* by providing for an eleven-fold increase in the maximum fine amounts for industrial organisations contravening dispute orders issued by the Industrial Relations Commission (IRC) relating to industrial action. The bill also provides for the making of costs orders for proceedings relating to breaches of dispute orders, and inserts a new appeal right relating to the penalties imposed by the IRC.

*Proceedings:* Debate on the second reading of the bill resumed from 6 March 2012 (see Vol 55/20 of *House in Review* for earlier debate). The Opposition were strongly opposed to the bill, describing it as part of the Government's continuing attack on the rights of workers, particularly the fundamental right to withdraw labour. The Greens were also strongly opposed to the bill, arguing that the clear intent of the bill was to financially bankrupt unions and cow them into submission.

Members of the Government supported the bill, noting that the current penalties for contravening dispute orders had not increased since their inception in 1996. The Government argued that the current level of penalties did not reflect the level of disruption to the community caused by illegal industrial action.

Debate was interrupted.

### **Public Sector Employment and Management Amendment (Procurement of Goods and Services) Bill 2012**

The bill originated in the Legislative Council.

*Summary:* The bill amends the *Public Sector Employment and Management Act 2002* by establishing a new scheme for the procurement of goods and services by and for government agencies. The bill also abolishes the State Contracts Control Board and establishes the NSW Procurement Board to oversee procurement across all government agencies.

*Proceedings:* The bill was introduced on 23 May 2012, read a first time and printed. In his second reading speech, the



Minister (Mr Pearce) stated that the current procurement system is old and overly complex which discourages businesses from seeking government procurement opportunities. This bill, in overhauling the system, will achieve better value for money and budgetary outcomes from government procurement and will adopt a government-wide strategic approach.

Debate was adjourned for five calendar days.

### Health Legislation Amendment Bill 2012

The bill originated in the Legislative Assembly.

*Summary:* The bill makes various minor amendments to ensure the continued smooth administration and operation of the *Health Practitioner Regulation (Adoption of National Law) Act 2009*, the *Health Records and Information Privacy Act 2002* and the *Poisons and Therapeutic Goods Act 1966*.

*Proceedings:* The bill was received from the Legislative Assembly on 23 May 2012 and read a first time. The second reading was set down for the next sitting day.

### Private members' business

**Note:** Private members' business is business moved by members of the House other than Government ministers. There are two types of private members' business: private members' bills and private members' motions.

#### Motions

### Marriage Equality (Ms Faehrmann, The Greens)

*Summary:* The motion calls on the House to state its support for marriage equality and on the Parliament of the Commonwealth of Australia to amend the Commonwealth *Marriage Act 1961* to provide for marriage equality. Currently, there are three bills before the Federal Parliament concerning marriage equality.

*Proceedings:* Debate on the motion commenced according to precedence. In opening debate on the motion Ms Faehrmann acknowledged the more than 2,000 emails that members had received from individuals urging support for the motion. Ms Faehrmann stated that New South Wales can be proud of its history of removing discriminatory laws and it should do what it can to help remove marriage discrimination which was having a real impact on the community and causing pain for many couples and their families. Ms Faehrmann signalled her thanks to the various political party leaders for allowing members to vote according to their conscience on the motion.

The debate was marked by the heartfelt contribution of members from all sides of the House. Contrary views were expressed regarding whether the majority of the community either supported or opposed marriage equality, and on whether marriage equality did or did not pose a threat to the institution of marriage. A number of members indicated that their position regarding support or opposition to the motion was primarily determined by their personal experience and knowledge of others; or by strong personal or faith-based beliefs.

During the debate two members moved amendments to the motion. Revd Nile moved that the motion be amended by omitting the call to amend the *Marriage Act* and to instead note the 16 March 2012 ruling of the European Court of Human Rights that denial of same-sex marriage is not an instance of discrimination. Mr Khan moved that the motion also: note the content of Article 18 of the United Nations Universal Declaration of Human Rights; call on participants in the debate on marriage equality to treat those with differing views with respect dignity and tolerance; and call for any amendment to the *Marriage Act* to ensure that religious institutions are not forced to solemnise marriages they do not wish to recognise in this way.

Debate was adjourned.

### Regional development and small business jobs (Mr Veitch, Australian Labor Party)

*Summary:* The motion called on the House to condemn the Government for closing offices and cutting 47 regional development and small business jobs in Tweed, Broken Hill, Goulburn and Coffs Harbour; and to note that this breaches the Government's election commitments for a 'decade of decentralisation' and 40,000 jobs in regional New South Wales

*Proceedings:* Debate on the motion resumed on 24 May 2012 from 10 May 2012 (see the previous edition of *House in Review* and Vol 55/24 for earlier debate).

Members of the Opposition and the Greens reiterated their support for the motion by expressing their opposition to the job cuts in regional areas.

The motion was negatived (Division 18:19).

#### Motions taken as formal business

The following items of private members' business were agreed to as formal business without amendment or debate:

- (1) Tail docking (Ms Fazio)
- (2) Pet Industry Association of Australia dog traceability and re-homing policy (Ms Fazio)
- (3) Independent Planning Panels (Ms Fazio)
- (4) Australian Women Donors' Network (Ms Ficarra)
- (5) Palliative care (Mr Donnelly)
- (6) Playgroup NSW (Ms Voltz on behalf of Ms Fazio)
- (7) Mr Iain Murray Rose AM (Ms Voltz)
- (8) Macular Degeneration Week (Ms Voltz on behalf of Ms Fazio)
- (9) Mrs Joyce Wheatley (Ms Voltz on behalf of Ms Fazio)
- (10) Cystic fibrosis (Dr Kaye)
- (11) International Nurses Day (Ms Voltz on behalf of Ms Fazio)
- (12) Proposed Mt Hutton liquor outlet (Dr Kaye)
- (13) National Volunteer Week (Mr Moselmane)

- (14) The Act of Toleration (Mr Khan)
- (15) Coleambally State Emergency Services Unit (Mr Moselmane)
- (16) Australian Council of Trade Unions Youth Congress (Mr Moselmane).

### Order for papers

**Note:** The Council has a common law power to order the Government to produce State papers.

*Order made*

#### Booz and Company (Aust) Pty Ltd report

*Summary:* The motion called for all documents relating to the Booz and Company (Aust) Pty Ltd report, commissioned by the Government and which cost \$6.3 million, regarding the RailCorp reform program.

*Proceedings:* Standing orders were suspended to bring on the item of business (Division 21:16). In speaking to the motion, Opposition members argued that the order for papers was necessary as the report was the basis of the Government's proposed reforms to RailCorp, and its release is essential to the principle of government openness and transparency. The Greens also supported the motion on similar grounds.

Members of the Government opposed the motion, arguing there was not public benefit from releasing the report and that it is important for these important reforms to progress without distraction. The Christian Democratic Party indicated that release of the report would be premature.

The motion was agreed to, with papers due by 7 June 2012.

### Petitions received

- (1) Unsupervised hunting – 104 signatures (presented Mr Shoebridge)
- (2) Byron Bay night time bus services – 25 signatures (irregular, presented Ms Faehrmann)

### (3) Report tabled

- (4) **Auditor General:** Performance Audit report entitled: 'Settling humanitarian entrants in New South Wales—Services to permanent residents who come to New South Wales through the humanitarian migration stream: Community Relations Commission for a multicultural NSW, Department of Premier and Cabinet', dated May 2012.

### Committee activities

**Note:** Committee activities includes committee references, reports tabled, debate on committee reports, government responses received and any other significant committee activity in the House. Committee activity as part of a current inquiry are summarised in the following section entitled 'Inquiry activities'.

*Committee report tabled*

**Legislation Review Committee:** 'Legislation Review Digest No.17/55', dated 22 May 2012.

### Committee reports debated

**General Purpose Standing Committee No 1:** The House concluded the take-note debate on Report No. 37 entitled 'Budget Estimates 2011-2012', dated 16 February 2012. Speakers included the Revd Nile (Chair), Mr Veitch, Dr Kaye and Mrs Pavey (Deputy Chair). All members praised the Deputy Chair's chairing of the committee in Revd Nile's absence. Dr Kaye discussed whether local councils were obligated to use the State Debt Recovery Office as a debt collection agency, and the sale of the Sydney desalination plant. Mrs Pavey thanked Committee members and the secretariat for their support during her first inquiry in the chair. All speakers noted the value of the budget estimates process and commended the conduct of GPSC 1 during the inquiry.

**General Purpose Standing Committee No 5:** The House concluded the take-note debate on Report No 34 entitled 'Budget Estimates 2011-2012' dated 16 February 2012. Speakers included Dr Phelps, Mr Mason-Cox, Dr Kaye and Mr Brown (Chair) in reply. Dr Phelps commented on differences between estimates processes in NSW and in the Senate, including the appearance of Ministers from the other place, the amount and allocation of time for questioning Ministers, and the nature of questions asked. Mr Mason-Cox, who participated in the Committee's supplementary hearing into the environment portfolio, discussed the questioning about the Kooragang Island Orica chemical leak and referred to the recommendations of the Legislative Council's select committee. Dr Kaye commented on the Fair Trading and Energy portfolios, and in particular gentrader contracts and factors influencing electricity price rises. Mr Brown referred to the spirit of cooperation from the government that enabled more questions from non-government members, and thanked committee members for their conduct during the hearings.

**Select Committee on the Kooragang Island Orica Chemical Leak:** The House concluded the take-note debate on the report of the select committee, dated 23 February 2012. Speakers included Mr Mason-Cox and Mr Brown (Chair) in reply. Mr Mason-Cox spoke of the impact of the delays by Orica in notifying the Office of Environment and Heritage of the leak. Mr Brown reflected on the seriousness of the inquiry and technical nature of much of the evidence received during the inquiry, and praised the secretariat for its support of such a difficult inquiry.

**Standing Committee on Social Issues:** The Committee continued the take-note debate on Report No 45 entitled 'Transition support for students with additional or complex needs and their families', dated 6 March 2012. The Committee Chair, Mr Blair began his contribution to the debate by acknowledging the support given to him in his first inquiry as Chair. He emphasised the importance of positive transitions for students with additional or complex needs, and the difficulties faced by many families in choosing the best education setting for their children. On the motion of Mr Blair, the debate was adjourned until the next sitting day.

## Inquiry activities

**Note:** Inquiry activities summarises the activities of committees as part of an active inquiry. It includes hearings, site visits and other meetings. This section also notes which committees are receiving submissions and upcoming committee inquiry activity.

### Select Committee on the NSW workers compensation scheme

Over 200 submissions have been received by the Committee to date.

The first of three days of hearings was held on Monday 21 May, with the Committee hearing from a representative of WorkCover NSW and actuaries from PricewaterhouseCoopers and Ernst & Young, as well as representatives from across the business, legal and insurance sectors. Issues discussed included the financial sustainability of the workers compensation scheme and the impact of proposed changes to the scheme on injured workers, their employers, insurers and on the overall financial position of the scheme. The Inquiry has generated considerable public interest, with a large audience in attendance at the hearing.

Two further hearing days are scheduled for Friday 25 May and Monday 28 May, with the Committee set to hear from a diverse range of witnesses including representatives from the health and disability sectors, academia, unions and from injured workers. The Committee is due to report to Parliament by 13 June 2012.

### Standing Committee on State Development

The Committee will consider the draft final report of its **inquiry into central western NSW** on Monday 28 May. The report is due to be tabled by Thursday 31 May 2012.

### Standing Committee on Social Issues

The Committee visited Goulburn Local Court on Wednesday 16 May 2012 to observe proceedings as part of its **inquiry into domestic violence trends and issues in NSW**. The Committee is currently considering a draft options paper that will form the basis for its roundtable with key stakeholders on Monday 18 June 2012.

### General Purpose Standing Committee No 2

The Committee will consider the draft final report of its **inquiry into the Education Amendment (Ethics Classes Repeal) Bill 2011** on Friday 25 May. The report is due to be tabled on Thursday 4 June 2012.

### General Purpose Standing Committee No 5

The Committee is currently accepting submissions to its **inquiry into the management of public land in New South Wales**, with a closing date for submissions of Friday 3 August 2012. The Committee will hold its first hearing in Parliament House on Friday 7 September 2012.

## Adjournment debate

### Tuesday 22 May 2012

Communism in Australia (Dr Phelps); Local government infrastructure funding (Ms Cotsis); Ballard and Multiplex case media reports (Mr Shoebridge); Heart Rhythm Awareness Week (Mrs Pavvey); V8 Supercars (Mr Roozendaal); Christianity in Australia (Revd Mr Nile); The 'Forgotten People' speech 70th Anniversary (Mr Macdonald).

### Wednesday 23 May 2012

Vietnam veterans (Mr Secord); Coal and coal seam gas exploration (Mr Buckingham); Narrabri coal seam gas exploration (Mr MacDonald); Workers compensation scheme (Mr Primrose); Tribute to Don Ritchie OAM (Mr Green); Broken Hill Agfair (Mr Blair); Broken Hill Agfair (Ms Fazio).

### Thursday 24 May 2012

Shark protection (Ms Faehmann); Carbon tax (Mr Clarke); Sexual offence intervention treatments (Ms Fazio); Public Education Day (Dr Kaye); Multicultural arts productions (Mr Moselmane); Tribute to Barbara Holborow (Ms Ficarra); Tribute to Mr Varant Meguerditchian (Mr Secord).

## Feedback on *House in Review*

We welcome any comments you might have on this publication.

We are particularly keen to know which parts of the *House in Review* you find most useful and whether you have any suggestions for improvement. Please email your comments to [stephen.frappell@parliament.nsw.gov.au](mailto:stephen.frappell@parliament.nsw.gov.au).

All responses will be kept strictly confidential.



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