



Australian Capital Territory

# **Witness Protection Act 1996**

**A1996-65**

**Republication No 3**

**Effective: 17 June 2004 – 15 November 2006**

Republication date: 17 June 2004

Last amendment made by A2003-58

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Witness Protection Act 1996* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 17 June 2004. It also includes any amendment, repeal or expiry affecting the republished law to 17 June 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Witness Protection Act 1996

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Australian Capital Territory

# Witness Protection Act 1996

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An Act to make provision to protect the safety and welfare of witnesses

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Witness Protection Act 1996*.

### 3 Definitions for Act

In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***approved authority*** means—

- (a) the commissioner of police; or
- (b) a commissioner (however designated) of the police force of a State or another Territory; or
- (c) the chief executive officer of the Australian Crime Commission; or
- (d) an authority or body of the Commonwealth, a State or another Territory that—
  - (i) is authorised to conduct inquiries or investigations in relation to conduct that constitutes, or is alleged to constitute, criminal conduct, misconduct or corruption; and
  - (ii) is declared under section 3A (Declaration of approved authority) to be an approved authority for this Act.

***chief police officer*** means the police officer who is responsible for the day-to-day administration and control of police services in the Territory.

***Commonwealth Act*** means the *Witness Protection Act 1994* (Cwlth).

**complementary witness protection law** means a law of the Commonwealth, a State or another Territory that—

- (a) makes provision for the protection of witnesses; and
- (b) is declared under section 3B (Declaration of complementary witness protection law) to be a complementary witness protection law.

**court** means the Supreme Court.

**designated position** means a position of a police officer that has been declared in writing by the chief police officer to be a designated position for this Act.

**participant** means a witness who is included in a witness protection program.

**register** means the register under the *Births, Deaths and Marriages Registration Act 1997*.

**witness** means—

- (a) a person who has given, or agreed to give, evidence on behalf of the Crown in the right of the Territory in—
  - (i) proceedings for an offence; or
  - (ii) hearings or proceedings before an authority that is declared under section 3C (Declaration of authority for s 3, def of **witness**) to be an authority to which this paragraph applies; or
- (b) a person who has given, or agreed to give, evidence otherwise than as mentioned in paragraph (a) in relation to the commission or possible commission of an offence against a law of the Territory, the Commonwealth, a State or another Territory; or
- (c) a person who has made a statement to the chief police officer, another police officer or an approved authority in relation to an

offence against a law of the Territory, the Commonwealth, a State or another Territory; or

- (d) a person who, for any other reason, may require protection or other assistance under this Act; or
- (e) a person who, because of his or her relationship to, or association with, a person referred to in paragraph (a), (b), (c) or (d) may require protection or other assistance under the witness protection program.

*witness protection order* means an order of the Supreme Court under part 3.

*witness protection program* means the national witness protection program established under the Commonwealth Act.

### **3A Declaration of approved authority**

- (1) The Minister may, in writing, declare that an authority or body of the Commonwealth, a State or another Territory is an approved authority for this Act.
- (2) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **3B Declaration of complementary witness protection law**

- (1) The Minister may, in writing, declare that a law of the Commonwealth, a State or another Territory is a complementary witness protection law for this Act.
- (2) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **3C Declaration of authority for s 3, def of *witness***

- (1) The Minister may, in writing, declare an authority to be an authority to which section 3, definition of *witness*, paragraph (a) applies.



(2) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## Part 2 Witness protection program

### 4 Witness protection program

- (1) The chief police officer may make arrangements with the commissioner of police for the provision of services under the witness protection program for the taking of the action that the chief police officer considers necessary and reasonable to protect the safety and welfare of a witness.
- (2) The action that may be taken under subsection (1) includes—
  - (a) making arrangements necessary—
    - (i) to allow the witness to establish a new identity; or
    - (ii) otherwise to protect the witness; or
  - (b) relocating the witness; or
  - (c) providing accommodation for the witness; or
  - (d) providing transport for the property of the witness; or
  - (e) providing reasonable financial assistance to the witness; or
  - (f) permitting persons involved in the administration of the witness protection program to use assumed names in carrying out their duties and to have documentation supporting those assumed names; or
  - (g) doing any other thing permitted under the witness protection program to ensure the safety of the witness; or
  - (h) doing things as a result of functions given to the chief police officer under a complementary witness protection law.

**5 Assessing witness for inclusion in witness protection program**

The assessment and inclusion of a witness in the witness protection program shall be in accordance with the provisions of the Commonwealth Act for the assessment and inclusion of a witness (within the meaning of that Act) in that program as if each reference in the Commonwealth Act, sections 7 and 8 to the commissioner were a reference to the chief police officer.

## Part 3 Protecting witnesses from identification

### 6 Identifying documents

Without limiting section 4, the chief police officer may apply for any documents necessary—

- (a) to allow a witness to establish a new identity; or
- (b) otherwise to protect the witness.

### 7 Application for court order

- (1) The chief police officer may apply to the court for an order authorising a specified person or a person of a specified class or description of persons—
  - (a) to make a new entry in the register in relation to a witness; or
  - (b) to issue in the witness's new identity a document of a kind previously issued to the witness.
- (2) The chief police officer shall provide the evidence that the court may require to satisfy itself as to the matters specified in section 8.

### 8 Power of Supreme Court to make order

The court may make a witness protection order if satisfied that—

- (a) the person named in the application as a witness—
  - (i) was a witness to or has knowledge of an indictable offence and is or has been a witness in criminal proceedings relating to the indictable offence; or
  - (ii) is a person who, because of his or her relationship to, or association with, a person to whom subparagraph (i)

applies may require protection or other assistance under this Act; and

- (b) the life or safety of the person may be endangered as a result of the person being a witness; and
- (c) a memorandum of understanding in accordance with the Commonwealth Act, section 9 has been entered into between the witness and chief police officer; and
- (d) the person is likely to comply with the memorandum of understanding.

## **9 Court proceedings under this pt 3 to be closed to public**

The hearing of an application under this part is not open to the public.

## **10 Effect of witness protection order**

On the making of a witness protection order of the kind referred to in section 7 (1) (a)—

- (a) a person authorised to do so by the order may make any entries in the register that are necessary to give effect to the order; and
- (b) the registrar-general is required to give to the person access to the register and to give the assistance that the person may require; and
- (c) the chief police officer shall maintain records showing details of the original birth entry or the original marriage entry of each person in relation to whom an entry is made under paragraph (a).

## **11 Effect of entries made in the register**

- (1) Subject to subsection (2), an entry made in the register under this Act has effect as if it were an entry made under the *Births, Deaths and Marriages Registration Act 1997*.

- (2) An entry made in the register under this Act may only be cancelled by the registrar-general if the court, after being satisfied that the witness is no longer included in the witness protection program, has made an order on the application of the chief police officer directing that the entry be cancelled.

## **12 Offences in relation to documents**

While an entry made under this Act in the register continues in force, a person in relation to whom the entry is made shall not use or obtain any document issued by the registrar-general that is based on the previous entry.

Maximum penalty: 50 penalty units.

## **13 Information not to be disclosed**

- (1) A person shall not, either directly or indirectly, make a record of, disclose, or communicate to another person any information relating to the making of an entry under this Act in the register, unless it is necessary to do so—
- (a) for this Act; or
  - (b) for the purposes of an investigation by the ombudsman; or
  - (c) to comply with an order of the court.

Maximum penalty: imprisonment for 10 years.

- (2) Despite subsection (1), the chief police officer may disclose the former identity of a participant or former participant for the purpose of obtaining documents relating to the new identity of the participant or former participant.

## **14 Nondisclosure of former identity of participant**

- (1) If—
- (a) a participant who has been provided with a new identity under the witness protection program would, apart from this section,

be required by or under a Territory law to disclose his or her former identity for a particular purpose; and

- (b) the chief police officer has given the participant permission, in writing, not to disclose his or her former identity for that purpose;

the participant is not required to disclose his or her former identity to any person for that purpose.

*Note* If a form is approved under s 29 (Approved forms) for a permission, the form must be used.

- (2) If a participant has been given permission under subsection (1) not to disclose his or her former identity for a particular purpose, it is lawful for the participant, in any proceedings or for any purpose, under or in relation to the relevant Territory law to claim that his or her new identity is his or her only identity.
- (3) It is the duty of each person who is or has been associated with the administration of the witness protection program and who has obtained access to information or a document relevant to the witness protection program not to disclose that information or publish that document except as authorised by the chief police officer.
- (4) If, under a complementary witness protection law of the Commonwealth, a State or another Territory, it is lawful for a participant not to disclose his or her former identity for a purpose approved by the chief police officer, the participant is not required to disclose his or her former identity to another person for that purpose.
- (5) In this section:  
*participant* includes a person who—
  - (a) was provided with a new identity under the witness protection program; and
  - (b) is no longer a participant but retains that identity.

**15 Requirement if participant becomes witness in criminal proceedings**

- (1) If—
- (a) a participant is provided with a new identity under the witness protection program; and
  - (b) the person, whether or not he or she remains a participant, retains that identity; and
  - (c) the person is to be a witness in a criminal proceeding under that identity; and
  - (d) the person has a criminal record under his or her former identity;

the person shall notify the chief police officer that the person is to be a witness in the proceeding.

- (2) After being notified under subsection (1), the chief police officer may take any action he or she considers appropriate in the circumstances, including disclosing to the court, the prosecutor and the accused person or the accused person's lawyer the criminal record of the participant or former participant.

**16 Identity of participant not to be disclosed in legal proceedings**

- (1) If, in any proceedings in a court, a tribunal or a royal commission or board of inquiry, the identity of a participant is in issue or may be disclosed, the court, tribunal, commission or inquiry shall, unless it considers that the interests of justice require otherwise—
- (a) hold that part of the proceedings that relates to the identity of the participant in private; and
  - (b) make the order relating to the suppression of publication of evidence given before the court, tribunal, commission or inquiry that, in its opinion, will ensure that the identity of the participant is not disclosed.



- (2) If in any proceedings in a court, a tribunal or a royal commission or board of inquiry, a participant who has been provided with a new identity under the witness protection program is giving evidence, the court, tribunal, commission or inquiry may hold that part of the proceedings in the absence of the public.

### **17 Documentation restrictions**

The chief police officer shall not obtain documentation for a participant that represents that the participant—

- (a) has a qualification that he or she does not have; or
- (b) is entitled to a benefit that he or she is not entitled to.

### **18 Special commercial arrangements by chief police officer**

The chief police officer may make commercial arrangements with a person under which a participant is able to obtain a benefit under a contract or arrangement without revealing his or her former identity.

### **19 Dealing with rights and obligations of participant**

- (1) If a participant has any outstanding rights or obligations or is subject to any restrictions, the chief police officer is to take the steps that are reasonably practicable to ensure that—
- (a) those rights or obligations are dealt with according to law; or
  - (b) the person complies with those restrictions.
- (2) The steps that may be taken under subsection (1) include—
- (a) providing protection for the participant while the participant is attending court; or
  - (b) notifying a party or possible party to legal proceedings that the chief police officer will, on behalf of the participant, accept process issued by a court, a tribunal or a royal commission or board of inquiry and nominating a police officer for the purpose.

**20 Avoidance of obligations by participant**

- (1) If the chief police officer is satisfied that a participant who has been provided with a new identity under the witness protection program is using the new identity—
  - (a) to avoid obligations that were incurred before the new identity was established; or
  - (b) to avoid complying with restrictions that were imposed on the person before the new identity was established;the chief police officer shall give written notice to the participant stating that he or she is so satisfied.
- (2) A notice under subsection (1) shall also state that, unless the participant satisfies the chief police officer that the obligations will be dealt with according to law or the restrictions will be complied with, the chief police officer will take the action that he or she considers reasonably necessary to ensure that they are dealt with according to law or complied with.
- (3) The action that may be taken under subsection (2) includes informing a person who is seeking to enforce rights against the participant of the details of any property (whether real or personal) owned by the participant under his or her former identity.

## Part 4                      Miscellaneous

### 21                      Offence—disclosures about participants

A person shall not, except in accordance with this Act or a complementary witness protection law, disclose information—

- (a) about the identity or location of a person who is or has been—
  - (i) a participant; or
  - (ii) a person on a witness protection program conducted by the Commonwealth, a State or another Territory under a complementary witness protection law; or
- (b) that compromises the security of such a person.

Maximum penalty: imprisonment for 10 years.

### 22                      Offence—disclosures by participants

- (1) Subject to subsection (2), a participant or a former participant shall not, either directly or indirectly, disclose or communicate to another person—
  - (a) the fact that he or she or a member of his or her family has entered a memorandum of understanding under the Commonwealth Act, section 9; or
  - (b) details of the memorandum of understanding; or
  - (c) information relating to anything done by the chief police officer or another police officer under this Act; or
  - (d) information about any police officer gained by the person as a result of anything done under this Act.

Maximum penalty: imprisonment for 5 years.

- (2) This section does not apply to a disclosure or communication—

- (a) that has been authorised by the chief police officer; or
- (b) that is necessary for the purposes of an investigation by the ombudsman; or
- (c) that is necessary to comply with an order of the court.

**23 Certain persons not to be required to disclose information**

- (1) This section applies to a person who is or has been—
  - (a) the chief police officer; or
  - (b) any other police officer; or
  - (c) the registrar or the registrar-general; or
  - (d) a person employed in the administration of the *Registration of Births, Deaths and Marriages Act 1963* or the *Births, Deaths and Marriages Registration Act 1997*; or
  - (e) the ombudsman; or
  - (f) a member of the staff of the ombudsman; or
  - (g) an approved authority; or
  - (h) a member of the staff of an approved authority.
- (2) Unless the court makes an order that provides to the contrary, or the proceedings relate to an offence under this Act, a person to whom this section applies cannot be required in any proceedings in a court, a tribunal or a royal commission or board of inquiry to produce any document or to divulge or communicate any matter or thing relating to the exercise of his or her duties in accordance with this Act.

**24 Restriction on issue of Territory identity documents**

- (1) Territory identity documents shall not be issued for a person who is on a witness protection program being conducted by the Commonwealth, a State or another Territory unless—

- (a) an arrangement is in force between the Minister and the relevant Commonwealth, State or other Territory Minister relating to the issue of Territory identity documents for the purposes of that program; and
  - (b) a complementary witness protection law is in force in the Commonwealth, State or another Territory.
- (2) Without limiting the matters to which such an arrangement may relate, an arrangement may relate to—
- (a) the procedures to be adopted for requesting the issue of Territory identity documents for the purposes of the program; and
  - (b) guidelines for the issue of those documents and other documents.

## **25 Arrangements with approved authorities**

- (1) The chief police officer may make arrangements with an approved authority about any matter in connection with the administration of a complementary witness protection law.
- (2) Without limiting the coverage of the arrangements referred to in subsection (1), the arrangements—
- (a) may provide for the chief police officer or another police officer to exercise functions given by a complementary witness protection law; and
  - (b) shall include procedures under which the authority shares with the Territory the costs incurred under those arrangements; and
  - (c) may provide for the authority to make available to the chief police officer the statements, transcripts of evidence and other documents that will assist the chief police officer in deciding—
    - (i) whether to provide protection or assistance to a person under this Act; and

- (ii) what protection and assistance are appropriate for a person; and
- (d) may give functions under complementary witness protection laws to the chief police officer.

**26                      Authorisation of approved authorities**

- (1) The Minister may, in writing, authorise an approved authority to exercise functions given to the chief police officer under this Act for the purposes of any arrangement entered into by the chief police officer under section 25 or the corresponding provision of a complementary witness protection law.
- (2) An authorisation is a notifiable instrument.

*Note*            A notifiable instrument must be notified under the *Legislation Act 2001*.

**27                      Immunity from legal proceedings for exercise of functions under Act**

A person is not liable to any action, suit or proceedings (including criminal proceedings) in relation to an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a function given by this Act.

**28                      Proceedings for offence**

An offence against this Act, except section 21, is punishable on summary conviction.

**29                      Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*            For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **30 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired



### 3 Legislation history

**Witness Protection Act 1996 No 65**

notified 3 December 1996 (Gaz 1996 No S321)  
s 1, s 2 commenced 3 December 1996 (s 2 (1))  
remainder commenced 3 June 1997 (s 2 (3))

as amended by

**Legal Practitioners (Consequential Amendments) Act 1997 No 96  
sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Births, Deaths and Marriages Registration (Consequential  
Provisions) Act 1997 No 113 sch**

notified 24 December 1997 (Gaz 1997 No S420)  
s 1, s 2 commenced 24 December 1997 (s 2 (1))  
sch commenced 24 June 1998 (s 2 (2))

**Legislation (Consequential Amendments) Act 2001 No 44 pt 417**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 417 commenced 12 September 2001 (s 2 and see Gaz 2001  
No S65)

**Australian Crime Commission (ACT) Act 2003 A2003-58 sch 1 pt 1.5**

notified LR 17 December 2003  
s 1, s 2 commenced 17 December 2003 (LA s 75 (1))  
sch 1 pt 1.5 commenced 17 June 2004 (s 2 and LA s 79)

### 4 Amendment history

**Commencement**

s 2 om 2001 No 44 amdt 1.4339

## Endnotes

### 4 Amendment history

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#### Definitions for Act

- s 3 def **approved authority** am 2001 No 44 amdt 1.4340;  
A2003-58 amdt 1.6  
def **complimentary witness protection law** am 2001 No 44  
amdt 1.4341  
def **register** ins 1997 No 113 sch  
def **Register of Births** om 1997 No 113 sch  
def **Register of Marriages** om 1997 No 113 sch  
def **Registrar** om 1997 No 113 sch  
def **witness** am 2001 No 44 amdt 1.4342

#### Declaration of approved authority

- s 3A ins 2001 No 44 amdt 1.4343

#### Declaration of complementary witness protection law

- s 3B ins 2001 No 44 amdt 1.4343

#### Declaration of authority for s 3, def of witness

- s 3C ins 2001 No 44 amdt 1.4343

#### Application for court order

- s 7 am 1997 No 113 sch

#### Effect of witness protection order

- s 10 am 1997 No 113 sch

#### Effect of entries made in the register

- s 11 sub 1997 No 113 sch

#### Offences in relation to documents

- s 12 am 1997 No 113 sch

#### Information not to be disclosed

- s 13 am 1997 No 113 sch

#### Non-disclosure of former identity of participant

- s 14 am 2001 No 44 amdts 1.4344-1.4346; ss renum R2 LA (see  
2001 No 44 amdt 1.4347)

#### Requirement if participant becomes witness in criminal proceedings

- s 15 am 1997 No 96 sch 1

#### Certain persons not to be required to disclose information

- s 23 am 1997 No 113 sch

#### Authorisation of approved authorities

- s 26 am 2001 No 44 amdt 1.4348, amdt 1.4349

#### Approved forms

- s 29 sub 2001 No 44 amdt 1.4350

#### Regulation-making power

- s 30 ins 2001 No 44 amdt 1.4350

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 24 June 1998	24 June 1998– 11 Sept 2001	A1997-113	new Act and amendments by A1997-96 and A1997-113
R1 (RI) 24 June 1998	24 June 1998– 11 Sept 2001	A1997-113	reissue of printed version
R2 20 June 2002	12 Sept 2001– 16 June 2004	A2001-44	amendments by A2001-44

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