



# **Native Title (Tribunal) Regulations 1993**

**Statutory Rules No. 380, 1993**

made under the

*Native Title Act 1993*

## **Compilation No. 11**

<b>Compilation date:</b>	1 July 2018
<b>Includes amendments up to:</b>	F2018L00819
<b>Registered:</b>	6 August 2018

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Native Title (Tribunal) Regulations 1993* that shows the text of the law as amended and in force on 1 July 2018 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Contents

1	Name of regulations.....	1
3	Interpretation.....	1
4	Applications (Act, s 76).....	1
7	Application fees.....	1
8	When fees are not payable.....	1
8A	Decision whether to waive fee.....	2
9	Refund of fees.....	3
10	Notification of potential party in relation to an application.....	3
11	Summons by a member of the Tribunal.....	3
12	Lodging of addresses for service.....	3
13	Service of documents.....	3
14	Witnesses fees and allowances for expenses.....	4
16	Annual increases in fees.....	4
17	Calculation of increase.....	5
18	Prescribed contract limit.....	5
	<b>Schedule 1—Forms</b>	<b>6</b>
	<b>Schedule 2—Witnesses fees and allowances for expenses</b>	<b>10</b>
	<b>Endnotes</b>	<b>11</b>
	<b>Endnote 1—About the endnotes</b>	<b>11</b>
	<b>Endnote 2—Abbreviation key</b>	<b>12</b>
	<b>Endnote 3—Legislation history</b>	<b>13</b>
	<b>Endnote 4—Amendment history</b>	<b>14</b>



## 1 Name of regulations

These regulations are the *Native Title (Tribunal) Regulations 1993*.

## 3 Interpretation

- (1) In these Regulations, unless the contrary intention appears:

*Act* means the *Native Title Act 1993*.

*lodge an address for service*, in relation to a person, means give to the Registrar notice in writing of an address to which documents for the person may be sent.

- (2) In these Regulations, a reference to a form by number is a reference to the form so numbered in Schedule 1.

## 4 Applications (Act, s 76)

- (1) For paragraph 76(a) of the Act, an application must be in the following form:
- (a) for an objection to inclusion in an expedited procedure application—Form 4;
  - (b) for a future act determination application—Form 5.
- (2) For paragraphs 76(c) and (d) of the Act, an application must contain the information and be accompanied by the documents as mentioned in the form for the application.

## 7 Application fees

For paragraph 76(d) of the Act, the prescribed fee is \$851.

## 8 When fees are not payable

The fee for an application is not payable if:

- (a) the person or body liable to pay the fee has been granted legal aid, under a legal aid scheme or service established under Commonwealth, State or Territory law, or approved by the Attorney-General, for the matter to which the fee relates; or
- (aa) the person or body liable to pay the fee is assisted, for the matter to which the fee relates, by:
  - (i) a representative body recognised by the Commonwealth Minister under section 203AD of the Act; or
  - (ii) a person or body to whom funding has been made available by the Secretary of the Department under section 203FE of the Act; or
- (b) the person liable to pay the fee is:
  - (i) the holder of one of the following cards issued by the Department of Social Security:

- (A) a health care card;
- (B) a health benefit card;
- (C) a pensioner concession card;
- (D) a Commonwealth seniors health card; or
- (ii) the holder of any other card issued by the Department of Social Security or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions; or
- (iii) an inmate of a prison or is otherwise lawfully detained in a public institution; or
- (iv) a child under the age of 18 years; or
- (v) in receipt of a youth allowance, or an austudy payment, within the meaning of the *Social Security Act 1991*; or
- (vi) in receipt of benefits under the Commonwealth student assistance scheme known as the ABSTUDY Scheme; or
- (c) the person liable to pay the fee makes an application under section 35 of the Act for a determination in relation to a future act (the ***new application***) in the following circumstances:
  - (i) the person is a Government party;
  - (ii) the person previously made an application under section 35 of the Act for a determination in relation to a future act (the ***first application***);
  - (iii) the prescribed fee for the first application was paid;
  - (iv) the first application and the new application relate to the same future act;
  - (v) the first application was withdrawn to allow the person to negotiate in good faith with the other negotiation parties; or
- (d) the Registrar, having had regard to the income, day-to-day living expenses, liabilities and assets of the person who is otherwise liable to pay the fee, waives the fee on the ground that payment of the fee would impose financial hardship on the person.

### **8A Decision whether to waive fee**

- (1) If the Registrar decides under paragraph 8(d) to waive, or not to waive, a fee for an application, the Registrar must tell a person whose liability to pay the fee would be affected if the fee were waived.
- (2) The Registrar must tell the person, in writing, within 28 days of the decision.
- (3) If the decision is not to waive the fee, the Registrar must also tell the person:
  - (a) the reasons for the decision; and
  - (b) that application may be made to the Administrative Appeals Tribunal for review of the decision.
- (4) Application may be made to the Administrative Appeals Tribunal for review of a decision under paragraph 8(d) not to waive a fee.

- (5) Failure to do what this regulation requires does not affect the validity of a decision.

## **9 Refund of fees**

A person who has paid a fee prescribed in regulation 7 is entitled to a refund of that fee:

- (a) if the fee was not payable; or
- (b) if:
  - (i) the application to which the fee relates has not been accepted under section 77 of the Act; and
  - (ii) after that application is made, a body is determined as a recognised State/Territory body under section 207A of the Act; and
  - (iii) the applicant has requested the Registrar to treat the application as withdrawn so that an application may be lodged with the recognised State/Territory body; and
  - (iv) the application is treated as withdrawn by the Registrar; and
  - (v) the applicant produces evidence that an application has been lodged with the recognised State/Territory body; or
- (c) if a determination is made under section 162 of the Act and the Tribunal certifies that the proceedings to which the fee relates terminated in a manner favourable to the applicant.

## **10 Notification of potential party in relation to an application**

A notice under subsection 141(3) of the Act may be in accordance with Form 6.

## **11 Summons by a member of the Tribunal**

The summons of a person to appear before the Tribunal must be in accordance with Form 7.

## **12 Lodging of addresses for service**

- (1) A person may:
  - (a) lodge an address for service; and
  - (b) at any time after lodging an address for service—lodge a new address for service.
- (2) If a person lodges an address for service under paragraph (1)(b), that address becomes that person's address for service.

## **13 Service of documents**

- (1) For the purposes of sections 171 and 174 of the Act, the way of service set out in this regulation is prescribed.
- (2) A document may be served on a person:

## Regulation 14

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- (a) by personal service in accordance with subregulation (3), (4), (5) or (6), as the case requires; or
  - (b) by post in accordance with subregulation (7).
- (3) A document may be served on an individual by handing a copy of the document to the individual, or by putting the document down in his or her presence, and telling him or her of its general nature.
- (4) If the person to be served has lodged an address for service, a document may be served on the person by handing a copy of the document to any person at that address who:
  - (a) apparently lives or works there; and
  - (b) is apparently at least 16 years of age.
- (5) A document may be served on an individual who has not lodged an address for service at his or her residential or business address last known to the person serving the document by handing a copy of the document to a person who:
  - (a) apparently lives or works there; and
  - (b) is apparently at least 16 years of age.
- (6) A document may be served on a corporation that has not lodged an address for service at its registered office by handing a copy of the document to a person who:
  - (a) apparently lives or works there; and
  - (b) is apparently at least 16 years of age.
- (7) A document may be served on a person by post as a letter addressed to the person at the address that is the person's address for service or, if the person has not lodged an address for service:
  - (a) in the case of an individual—at his or her residential or business address last known to the person serving the document; or
  - (b) in the case of a corporation—at its registered office.
- (8) If a document is served by post in accordance with subregulation (7), the document is taken to be served on the day on which it is posted.

### **14 Witnesses fees and allowances for expenses**

For the purposes of subsection 182(1) of the Act, the fees, and allowances for expenses, set out in Schedule 2 are prescribed.

### **16 Annual increases in fees**

Despite any other provision of these Regulations, a fee prescribed by regulation 7 is increased, in accordance with regulation 17, on each 1 July, starting on 1 July 2019.

## 17 Calculation of increase

- (1) In this regulation:

*fee* means a fee prescribed by regulation 7.

*CPI number* means the All Groups Consumer Price Index number (being the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

*relevant period* means a financial year starting on or after 1 July 2018.

- (2) If, in a relevant period, the latest CPI number is greater than the earlier CPI number, a fee is taken to increase, on 1 July immediately following the end of the period, in accordance with the formula:

$$\frac{\text{fee} \times \text{latest CPI number}}{\text{earlier CPI number}}$$

where:

*earlier CPI number* is the CPI number for the last March quarter before the beginning of the relevant period; and

*fee* is the fee in force at the end of the relevant period; and

*latest CPI number* is the CPI number for the last March quarter before the end of the relevant period.

- (3) If, apart from this subregulation, the amount of a fee increased under subregulation (2) would be an amount of dollars and cents, the amount is to be rounded to the nearest whole dollar and, if the amount to be rounded is 50 cents, rounded down.
- (4) Subject to subregulation (5), if at any time, whether before or after the commencement of this regulation, the Australian Statistician publishes for a particular March quarter a CPI number in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this regulation.
- (5) If, at any time, whether before or after the commencement of this regulation, the Australian Statistician changes the reference base for the Consumer Price Index, then, for the purposes of the application of this regulation after the change is made, regard shall be had only to numbers published in terms of the new reference base.

## 18 Prescribed contract limit

For paragraph 128(4)(b) of the Act, a higher amount of \$1,000,000 is prescribed.

## Schedule 1—Forms

(subregulation 3(2))

### Form 4      **Objection to inclusion in an expedited procedure application**

(paragraph 4(1)(a))

*Native Title Act 1993*

#### OBJECTION TO INCLUSION IN AN EXPEDITED PROCEDURE APPLICATION

To:

The Native Title Registrar

National Native Title Tribunal

*[BEFORE COMPLETING THIS FORM, YOU SHOULD READ THE EXPLANATORY MATERIAL RELATING TO THE USE OF THE FORM THAT IS AVAILABLE FROM THE REGISTRAR]*

1. I,.....,<sup>1</sup> object to the inclusion in a notice under section 29 of the Act of a statement that an act attracts the expedited procedure. The following information, and the documents referred to in this application, are provided for the purposes of the objection.
2. *Address of the objector.*
3. *Address for service of objector, including a telephone number and facsimile number (if any).*
4. *Name and address of the representative of the objector (if any) including a telephone number and facsimile number (if any).*
5. *Whether the objector is the registered native title body corporate or a registered native title claimant.*
6. *The government that issued the notice and the date of the notice.*
7. *A statement why the objector believes that the proposed act is not an act attracting the expedited procedure that includes a statement of the likely impact of the act on community or social activities of the native title holders, areas or sites of particular significance and any land or waters concerned.*
8. *An outline of the type of evidence that the objector will produce to the National Native Title Tribunal.*
9. *Any other relevant information.*

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*1 Name of objector, including any Aboriginal or Torres Strait Islander name*

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**Form 5 Future act determination application**

(paragraph 4(1)(b))

*Native Title Act 1993***FUTURE ACT DETERMINATION APPLICATION**

To:

The Native Title Registrar

National Native Title Tribunal

[BEFORE COMPLETING THIS FORM, AN APPLICANT IS ADVISED TO READ THE EXPLANATORY MATERIAL RELATING TO THE USE OF THE FORM THAT IS AVAILABLE FROM THE REGISTRAR]

1. I,.....,<sup>1</sup> apply for a future act determination. The following information, and the documents referred to in this application, are provided for the purposes of the application.
2. *Address of the applicant.*
3. *Address for service of the applicant and facsimile number (if any).*
4. *Name and address of the representative of the applicant (if any) including a telephone number and facsimile number (if any).*
5. *Registered native title body corporate (if any).*
6. *Registered native title claimant (if any).*
7. *The government that issued the notice and the date of the notice.*
8. *A description of the area of land concerned.*
9. *A description of the act.*
10. *A statement that the parties have not been able to reach agreement about the act within 6 months of the notice being given.*
11. *A statement of the effect of the act on:*
  - (a) *the enjoyment by the native title parties of their registered native title rights and interests; and*
  - (b) *the way of life, culture and traditions of any of those parties; and*
  - (c) *the freedom of access by any of those parties to the land or waters concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land or waters in accordance with their traditions; and*
  - (d) *any area or site, on the land or waters concerned, of particular significance to the native title parties in accordance with their traditions.*
12. *An outline of the type of evidence that the applicant will produce to show the effect of the act on the area of land.*

13. *A statement of the nature and extent of:*
- (a) *existing non-native title rights and interests in relation to the land or waters concerned; and*
  - (b) *existing use of the land or waters concerned by persons other than the native title parties.*
14. *Any other relevant information.*
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*1 Name of applicant, including any Aboriginal or Torres Strait Islander name*

## **Form 6 Notice of intention to become a party to an application**

(regulation 10)

*Native Title Act 1993*

### **NOTICE OF INTENTION TO BECOME A PARTY TO AN APPLICATION**

To:  
The Native Title Registrar  
National Native Title Tribunal

I [or We] [name(s) and address(es) of person(s) giving notice] give notice that I [or we] want to be a party to the inquiry in relation to the following special matter:

[insert details of inquiry].

My [or Our] address for service is:

Signed:

Date:

## **Form 7 Summons to give evidence**

(regulation 11)

*Native Title Act 1993*

### **SUMMONS TO GIVE EVIDENCE**

To:

.....<sup>1</sup>  
.....<sup>2</sup>

**YOU ARE REQUIRED** to appear before the National Native Title Tribunal to give evidence at:

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*Time:* .....

*Date:* .....

*Place:* .....

in relation to .....<sup>3</sup>  
and on each subsequent day of the hearing of this matter until you are excused or released from further attendance.

[YOU ARE ALSO REQUIRED at that time to produce the following documents:

.....<sup>4</sup><sup>5</sup>]

.....<sup>6</sup>

.....<sup>7</sup>

Member<sup>5</sup>/Registrar<sup>5</sup>

*Date:* .....

[Note: For fees payable to witnesses, see section 182 of the *Native Title Act 1993* and regulation 14 and Schedule 2 of the National Native Title Tribunal Regulations.]

This summons has been issued at the request of .....<sup>8</sup>.

*For further information contact:*

*Firm/Agency:*

*Person dealing with the matter:*

*Telephone number:*

*Facsimile number:*

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- 1 *Insert name of person being summoned*
  - 2 *Insert address of person being summoned*
  - 3 *Insert description of matter for which person is being summoned*
  - 4 *Insert description of documents to be produced*
  - 5 *Omit if this does not apply*
  - 6 *Signature of person issuing summons*
  - 7 *Insert name of person issuing summons*
  - 8 *Insert name of person or body at whose request summons is issued*

## Schedule 2—Witnesses fees and allowances for expenses

(regulation 14)

1. A person summoned to appear as a witness before the Tribunal because of his or her professional, scientific or other special skill or knowledge must be paid:
  - (a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance in accordance with the summons; and
  - (b) if paragraph (a) does not apply to the person—\$320 for each day on which he or she so attends.
  
2. A person summoned to appear as a witness, except a witness referred to in clause 1, before the Tribunal must be paid:
  - (a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance in accordance with the summons; and
  - (b) if paragraph (a) does not apply to the person—\$80 for each day on which he or she so attends.
  
3. A person summoned to appear as a witness before the Tribunal must be paid an amount that is equal to the amount spent by the person for:
  - (a) the transportation of the person directly between his or her usual place of residence and the place that he or she attends in accordance with the summons; and
  - (b) if, in accordance with the summons, the person is required to be absent overnight from his or her usual place of residence—his or her meals and accommodation during the absence.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Number and year	Registration	Commencement date	Application, saving and transitional provisions
1993 No. 380	30 Dec 1993	1 Jan 1994	
1994 No. 6	4 Feb 1994	4 Feb 1994	—
1995 No. 399	19 Dec 1995	19 Dec 1995	—
1995 No. 420	22 Dec 1995	1 Jan 1996	—
1996 No. 186	30 Aug 1996	1 Sept 1996	—
1998 No. 3	11 Feb 1998	11 Feb 1998	—
1998 No. 221	7 July 1998	7 July 1998	—
1998 No. 281	1 Sept 1998	30 Sept 1998	—
1999 No. 309	15 Dec 1999	15 Dec 1999	—
2000 No. 18	15 Mar 2000	15 Mar 2000	—
2005 No. 166	22 July 2005 ( <i>see</i> F2005L01798)	23 July 2005	—
2006 No. 244	28 Sept 2006 ( <i>see</i> F2006L03052)	29 Sept 2006	—
2010 No. 170	30 June 2010 ( <i>see</i> F2010L01847)	1 July 2010	—

  

Title	Registration	Commencement date	Application, saving and transitional provisions
Court and Tribunal Legislation Amendment (Fees and Juror Remuneration) Regulations 2018	21 June 2018 (F2018L00819)	Sch 1 (items 114–117): 1 July 2018 (s 2(1) item 1)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
r. 1 .....	rs. 1998 No. 281
r. 2 .....	rep LA s 48D
r. 4 .....	rs. 1998 No. 281
rr. 5, 6 .....	rep. 1998 No. 281
r. 7 .....	am. 1995 No. 420; 1996 No. 186 rs. 1998 No. 281 am. 2010 No. 170; F2018L00819
r. 8 .....	rs. 1996 No. 186 am. 1998 Nos. 3 and 281; 2000 No. 18; 2006 No. 244
r. 8A .....	ad. 1999 No. 309
r. 9 .....	am. 1998 No. 281
r. 10 .....	am. 1998 No. 281
r. 15 .....	am. 1996 No. 186; 1998 No. 281 rep. 2005 No. 166
r. 15A .....	ad. 1999 No. 309 rep. 2005 No. 166
r. 16 .....	ad. 1996 No. 186 am. 2005 No. 166; F2018L00819
r. 17 .....	ad. 1996 No. 186 am. 1998 No. 3; 2005 No. 166; F2018L00819
r. 18 .....	ad. 1998 No. 221
<b>Schedule 1</b>	
Schedule 1 .....	am. 1994 No. 6; 1995 No. 399; 1998 No. 281
Form 1 .....	1993 No. 380 am. 1994 No. 6; 1995 No. 399 rep. 1998 No. 281
Form 2 .....	1993 No. 380 rep. 1998 No. 281
Form 3 .....	1993 No. 380 am. 1994 No. 6 rep. 1998 No. 281
Form 4 .....	1993 No. 380 am. 1998 Nos. 3 and 281
Form 5 .....	1993 No. 380 am. 1998 No. 281
Form 6 .....	1993 No. 380 rs. 1995 No. 399; 1998 No. 281

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Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Form 7 .....	1993 No. 380

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