

## Pre-employment screening

### Working With Children Checks and Police Checks

Claire Berlyn, Prue Holzer, Daryl Higgins

Each day, children across Australia come into contact with a variety of organisations such as schools, childcare centers, medical centres, and sports and recreation clubs. The development and implementation of policy and legislation that provides for the pre-employment screening of adults who work or volunteer in child-related organisations is an important strategy for creating and maintaining child-safe organisations.

#### Overview

There is no single national framework setting out the requirements for obtaining Working With Children Checks or Police Checks. Each state and territory has their own procedures and it is necessary to fulfill the requirements in the jurisdiction(s) in which you are working.

Most states and territories have introduced legislation providing for child-related employment pre-screening, or are working towards such legislation. The legislation identifies broad categories of child-related work where employers, employees and volunteers must fulfill screening requirements. There are important differences across jurisdictions regarding the type of screening programs that are in place, what records are checked, and who is required to undergo screening.

#### Police check and child safety screening programs

There are two types of screening programs operating in Australia. Some states have employer-driven systems (NSW and SA<sup>1</sup>) that make it mandatory for employers in relevant fields to carry out background checks on prospective employees or volunteers. These systems provide “point-in-time” background checks and individuals must undergo screening each time they enter into a child-related position.

1. SA's screening relates only to Police Checks, rather than a Working with Children Check.

The other type of screening program in operation offers certification to engage in child-related work to individuals (Qld, Vic., WA and the NT). These certifications are valid for a period of time (e.g., 3 years in WA) and provide for ongoing monitoring of an individual's suitability for child-related work. This means that if a relevant criminal offence is committed during the validity of the check, or if the individual is subject to relevant work-related disciplinary procedures, the administering authority may inform employers of the offence, and alter or withdraw an individual's entitlement to work with children. Individuals can also carry their certification between positions and do not have to undergo repeated screening while their Working With Children Check is valid. Table 1 outlines the relevant legislation in each state and territory and explains the type of system in place in each.

#### Professional registration and child safety policy development

In addition to child-related employment legislation (where it exists), all states and territories have legislation that requires people who wish to register in certain occupations (e.g., teachers, doctors or childcare workers) to be screened for criminal offences. This means that even in jurisdictions where child-related employment legislation does not exist there are still requirements for adults working in certain occupations to undergo screening (e.g., the *Victorian Institute of Teaching Act 2001* [Vic.]; the *Medical Practitioners Registration Act 2001* [Qld]; the *Child Care Act 2001* [Tas.]). Due to the screening already being part of the registration requirements, certain persons are exempt from Working With Children Check requirements (e.g., in Victoria, persons registered under the *Victorian Institute of Teaching Act 2001* are exempt from the Working With Children Check).

Organisations may also have developed their own policies that require employees and volunteers to undergo criminal record checks. These policies may

exist as a substitute for relevant legislation (i.e., in a jurisdiction where there is no legislation) or in addition to a relevant Act. State and territory police provide criminal history checks to individuals and organisations wishing to obtain Police Checks for employment, voluntary work and occupation-related licensing or registration purposes.

## The difference between a Police Check and a Working With Children Check

Police Checks identify and release relevant criminal history information relating to convictions, findings of guilt or pending court proceedings. However, due to spent conviction/non-disclosure legislation and information release policies, there are limitations on the information a Police Check can provide (e.g., the Spent Convictions Scheme stipulates that prior convictions are not to be disclosed where 10 years have passed from the date of the conviction).

As the object of a Working With Children Check is to make an assessment of the level of risk an individual poses to children’s safety, Working With Children Checks are more extensive, but also more targeted than Police Checks. For example, Working With Children Checks draw together information from various sources,

but may include a primary focus on certain types of offences (e.g., sexual offences, offences related to the harm or mistreatment of a child). In general, Working With Children Checks give consideration to:

- convictions—whether or not they are considered spent or were committed by a juvenile;
- apprehended violence orders and other orders, prohibitions or reporting obligations;
- charges (i.e., where a conviction has not been recorded because, for example, a proceeding has not been heard or finalised by a court, or where charges have been dismissed or withdrawn);
- any relevant allegations or police investigations involving the individual; and
- relevant employment proceedings and disciplinary information from professional organisations (e.g., organisations associated with teachers, childcare service providers, foster carers, and health practitioners).

Across the five jurisdictions that currently carry out Working With Children Checks (NSW, NT, Qld, Vic. and WA) there are differences in what information is considered and what sources of information are drawn upon. Table 2 provides a comparison of the information considered in Working With Children Checks across these jurisdictions.

**Table 1. Relevant legislation and state and territory screening programs**

Jurisdiction	Act	Type of program
ACT	No relevant Act	No formal Act or screening program, however, individual employers may require police checks at their discretion.
NSW	<i>Commission for Children and Young People Act 1998</i> (NSW)	The NSW Working With Children Check is an employer driven “point-in-time” system entailing background checks of employees and the exclusion of prohibited persons from child-related occupations.
NT	<i>Care and Protection of Children Act 2007</i> (NT)	Individuals are required to apply for a Working With Children Check, known as a “Clearance Notice” in the Northern Territory. A Clearance Notice is valid for two years, and applies to employers and volunteers in child-related employment settings.
Qld	<i>Commission for Children and Young People and Child Guardian Act 2000</i> (Qld)	Individuals are required to apply for a Working With Children Check, known as a “Blue Card” in Queensland. Valid for two years, Blue Cards entitle individuals to engage in child-related occupations/volunteering.
SA	<i>Children’s Protection Act 1993</i> (SA)	The South Australian system is an employer driven “point-in-time” system requiring employers and responsible authorities to obtain criminal history checks for those engaging in child-related occupations/volunteering.
Tas.	No relevant Act	No formal Act or screening program, however, individual employers may require police checks at their discretion.
Vic.	<i>Working With Children Act 2005</i> (Vic.)	Individuals are required to apply for a Working With Children Check. Valid for five years, the Check entitles individuals to engage in child-related occupations/volunteering.
WA	<i>Working with Children (Criminal Record Checking) Act 2004</i> (WA)	Individuals are required to apply for a Working With Children Check. Valid for three years, the Check entitles individuals to engage in child-related occupations/volunteering.

**Table 2. Information considered in Working With Children Checks**

Jurisdiction	Information considered
NSW	<p>The Working With Children Check is comprised of:</p> <ul style="list-style-type: none"> <li>■ a National Police Check for charges and convictions (including spent convictions) for: any sexual offence (including but not limited to, sexual assault, acts of indecency, child pornography, child prostitution and carnal knowledge); any assault, ill treatment, neglect of, or psychological harm to a child; any registrable offence; offences of attempting, or of conspiracy or incitement, to commit any of the above offences;</li> <li>■ consideration of whether any of the above offences were committed in New South Wales and were punishable by penal servitude or imprisonment for 12 months or more; or whether any of the above offences were committed elsewhere and would have been an offence punishable by penal servitude or imprisonment for 12 months or more if the offence had been committed in New South Wales;</li> <li>■ consideration of relevant matters, including all matters irrespective of whether they are considered spent or were committed as a juvenile (relevant matters include charges that may not have been heard or finalised by a court; are proven but have not led to a conviction; or have been dismissed, withdrawn or discharged by a court);</li> <li>■ consideration of relevant Apprehended Violence Orders; and</li> <li>■ consideration of relevant employment proceedings, reportable conduct, any sexual offences or sexual misconduct, committed against, with or in the presence of a child, including a child pornography offence; any child-related personal violence offence; any assault, ill treatment or neglect of a child; any behaviour that causes psychological harm to a child; or an act of violence committed by an employee in the course of employment and in the presence of a child.</li> </ul>
NT	<p>The Northern Territory has only recently enacted the <i>Care and Protection of Children Act 2007</i> (NT). Administrative guidelines outlining the types of information that will be screened as part of the Clearance Check have yet to be finalised.</p>
Qld	<p>The Blue Card screening system is comprised of:</p> <ul style="list-style-type: none"> <li>■ a National Police Check;</li> <li>■ consideration of any charge or conviction for an offence, whether or not a conviction is recorded;</li> <li>■ consideration of whether a person is a respondent to or subject to an application for a child protection prohibition or disqualification order; or whether a person is subject to reporting obligations under the <i>Child Protection (Offender Reporting) Act 2004</i>;</li> <li>■ disciplinary information from professional organisations associated with teachers, childcare service providers, foster carers, nurses, midwives and certain health practitioners; and</li> <li>■ information from police investigations into allegations of serious child-related offences will be taken into account even if no charges were laid because the child was unwilling or unable to proceed.</li> </ul>
Vic.	<p>The Working With Children Check is comprised of:</p> <ul style="list-style-type: none"> <li>■ a National Police Check—offences with most significance include serious sexual offences; serious violent offences; serious drug related offences, offences against the <i>Working With Children Act 2005</i> (Vic) itself;</li> <li>■ a review of relevant findings from prescribed professional disciplinary bodies (at present only the Victorian Institute of Teaching);</li> <li>■ information sought from other bodies such as courts, Corrections Victoria and employers, including, where a court: made a formal finding of guilt in relation to an offence; convicted the applicant of an offence; accepted a plea of guilt from the applicant; or acquitted the applicant of an offence because of mental impairment; and</li> <li>■ information about any spent convictions, juvenile convictions and findings of guilt, pending charges; and the circumstances surrounding any charges or convictions.</li> </ul>
WA	<p>The Working With Children Check considers:</p> <ul style="list-style-type: none"> <li>■ relevant national criminal record information to see if the applicant has charges or convictions that indicate that he or she may be of harm to a child (relevant criminal records include information about: convictions for any offence whether committed as an adult or a juvenile; any “spent” convictions; any pending charge for a Class 1 or Class 2* offence; and any charge that has been finalised by a court for a Class 1 or Class 2* offence, but which did not result in a conviction); and</li> <li>■ information may also be obtained from authorised bodies in Western Australia and similar authorities in other states and territories such as: the Police; the Director of Public Prosecutions; the Department of Corrective Services; the Department of the Attorney General; and courts.</li> </ul> <p>* Class 1 and 2 offences include various sexual offences against a child as well as offences such as murder, manslaughter, grievous bodily harm, indecent assault, making/viewing child pornography and involvement in child prostitution and other offences.</p>

Note: SA only has a system for criminal history checks; ACT has no formal screening program (see Table 1).

**Table 3. Child-related settings subject to screening regulations**

Jurisdiction	Types of child-related settings subject to regulation
<b>ACT</b>	Services contracted to government are required to employ “fit and proper” people. This is interpreted as a requirement to obtain a National Police Check.
<b>NSW</b>	Employers, and self-employed people, are required to obtain Working With Children Checks for employees working in the following areas: child protection services; pre-schools, kindergartens and child care centres including residential child care centres, schools and other educational institutions (but not universities), detention centres, refuges used by children, wards of public or private hospitals in which children are patients; clubs, associations, movements, societies, institutions or other bodies (including bodies of a cultural, recreational or sporting nature) having a significant child membership; any religious organisation; entertainment venues where the clientele are primarily children, babysitting or child minding arranged by a commercial agency; fostering or other child care; regular provision of taxi services for the transport of children with a disability; private tuition of children; direct provision of child health services, counselling or other support services for children; employment on school buses; employment at overnight camps for children. Note that the Act does not stipulate an age at which Working With Children Checks become mandatory for employees in child-related employment, thus it is presumed that all employees in such settings, including people under 18 years of age, are required to obtain a Working With Children Check. Working With Children Checks are not currently available for volunteers.
<b>NT</b>	Employees and volunteers aged 15 years and over working in the following areas are required to obtain Working With Children Checks: child protection services; children’s services; education facilities for children; juvenile detention centres; refuges or other residential facilities used by children; wards of hospitals or any other facilities for health services in which children are ordinarily patients; clubs, associations or movements (including those that are of a cultural, recreational or sporting nature) with significant child membership or involvement; religious organisations; babysitting or childminding services; fostering of children; transportation services for children; private tuition services for children; road crossing services for school children; and gym or play facilities, photographic services, talent or beauty competitions and entertainment or party services provided for or arranged for children.
<b>Qld</b>	Employees and volunteers working in the following settings are required to obtain a Blue Card: residential facilities; school boarding facilities; schools; child care; churches, clubs and associations involving children; health counselling and support services that come into contact with children; private teaching, coaching or tutoring; education programs conducted outside of school; child accommodation services including home stays; religious representatives; sport and active recreation activities directed towards or mainly involving children; emergency services cadet program; school crossing supervisors; and the care of children under the <i>Child Protection Act 1999</i> (Qld). Note that volunteers who are under 18 years of age do not require a Blue Card, however, employees under 18 years of age do require a Blue Card.
<b>SA</b>	Employers and responsible authorities are required to obtain criminal history checks for employees, volunteers, agents, contractors or subcontractors who have regular contact with children or work in close proximity to children on a regular basis; people supervising or managing persons in positions requiring or involving regular contact or proximity to children; persons with access to records relating to children; or persons engaged in any other function prescribed by regulation. The Act does not stipulate an age at which criminal history checks are to be obtained. Practice guidelines recommend that all persons (including young people under 18 years of age) be checked.
<b>Tas.</b>	A screening program exists for persons engaged in the childcare industry. It is a requirement of the Department of Education that safety screening is undertaken for the following: child care staff; home-based child carers (including carers registered through a family day care scheme); volunteers and students (including those under 18 years of age), who are seeking employment or placement at licensed/registered child care services; regular visitors to licensed/registered child care services; licence applicants; and members of the management body.
<b>Vic.</b>	Employees and volunteers in the following settings are required to obtain a Working With Children Check: child protection services; child care services; children’s services; educational institutions (except teachers who are covered under the <i>Victorian Institute of Teaching Act 2001</i> ); community services; remand centres; youth residential centres; youth supervision units or youth justice centres; refuges or other residential facilities used by children; paediatric wards of public and private hospitals; clubs, associations or movements (including of a cultural, recreational or sporting nature) that provide services or conduct activities for, or directed at children or whose membership is mainly comprised of children; religious organisations; baby sitting or child minding services arranged by a commercial agency; foster care services; transportation services specifically for children; coaching or tuition services of any kind for children; counselling or other support services for children; overnight camps for children; school crossing services; entertainment or party services, gym or play facilities, and photography services provided on a commercial basis specifically for children; and talent or beauty competitions held for children on a commercial basis. Note that people under 18 years of age do not require Working With Children Checks.
<b>WA</b>	Employees and volunteers in the following settings are required to obtain a Working With Children Check: child care services; community kindergartens; educational institutions for children; coaching or private tuition services; arrangements for the accommodation or care of children, whether in a residential facility or private residence; placement arrangements made under the <i>Children and Community Services Act 2004</i> (WA); child protection services; detention centres; community child health services; counselling or other support services; religious organisations; a club, association or movement (including of a sporting nature and whether incorporated or not) with a significant membership or involvement of children; wards of public or private hospitals in which children are ordinarily patients; babysitting or child minding services; overnight camps, transport services specifically for children; school crossing services; children’s entertainment or party services. Note that volunteers who are under 18 years of age do not require a Working With Children Check, however, employees under 18 years of age do require a Working With Children Check.

## Who must undergo pre-employment child safety screening?

In all jurisdictions that have child-related employment pre-screening legislation, it is mandatory for certain individuals engaged in occupations such as education and childcare, child protection, child and family welfare, health, entertainment and recreation, and religious instruction to meet screening requirements. There are differences across the states and territories in who is required to undergo screening, and how different occupations are identified. Table 3 provides an outline of the settings in which pre-employment screening is required in each jurisdiction.

If you are unsure whether you need to obtain a Working With Children Check, it is advisable that you check with the relevant body in your state or territory. State and territory contact details are provided in the following section, as is a summary of requirements for each jurisdiction.

## Requirements in Australian states and territories

### Australian Capital Territory

The Australian Capital Territory government is currently developing legislation for working with vulnerable people that will extend to screening requirements for child-related employment. It is expected that this legislation will be tabled in late 2009.

Currently, there are no legal statutes that require people working with children to undergo a Police Check. However, services contracted to government have a contractual obligation to employ “fit and proper” people. This has been interpreted as a requirement to obtain a Police Check. Individual organisations may have developed policies that require their employees to undergo screening.

Residents of the Australian Capital Territory should contact the ACT Police Department for further information about obtaining a National Police Check, including forms and fees (visit: [www.afp.gov.au/act.html](http://www.afp.gov.au/act.html)).

### New South Wales

The *Commission for Children and Young People Act 1998* (NSW) provides minimum standards for those who work with children in broadly identified occupations or activities to undergo a background check, which includes screening for relevant criminal offences and relevant employment proceedings.

The NSW Commission for Children and Young People oversees the Working With Children Check program. The program entails the exclusion of prohibited persons from child-related employment; the conduct of background checks for persons in child-related employment; and the adoption of child-safe and child-friendly practices within organisations.

Employers are responsible for requesting Working With Children Checks for employees and reporting on relevant employment proceedings, which are taken into account when subsequent applications are made for an individual. Self employed people are required to obtain a Certificate for Self Employed People in Child Related Employment. The application can be authorised by the police. Checks can be obtained from various Approved Screening Agencies in NSW and employers are required to register with the relevant agency for their field.

Employers must obtain Working With Children Checks for preferred applicants for child-related employment. An approved screening agency will conduct the check and provide an estimate of risk based on the information gathered as part of the check. There are two outcomes of the Working With Children Check risk estimate: “unsuitable to work with children” and “suitable to work with children”. It is an offence for an employer to knowingly employ a person considered to be “unsuitable to work with children” (a prohibited person). It is also an offence for a prohibited person to obtain employment in child-related settings. However, it is up to an employer to decide whether or not to employ a person deemed “suitable to work with children” but who may have a criminal record for matters unrelated to children. Employers are encouraged to take into account the Working With Children Check findings, interviews, referee checks and any other screening procedures that may have been used.

The commission website provides comprehensive information and guidelines for employers, and self-employed people, in relation to the Working With Children Check program (visit: [www.kids.nsw.gov.au/kids/working.cfm](http://www.kids.nsw.gov.au/kids/working.cfm)).

Working With Children Checks are not currently available for volunteers. People not eligible for the Working With Children Check can apply for a National Police Check through NSW Police (visit: [www.police.nsw.gov.au/](http://www.police.nsw.gov.au/)).

### Northern Territory

The *Care and Protection of Children Act 2007* (NT) came into force in 2008. The Act legislates for screening of employees and volunteers in child-related employment and broadly identifies occupations and activities for which a Clearance Notice is required. The screening program is being phased in over 12 months in order to

allow people already employed in child-related settings to obtain Clearance Notices.

Individual organisations may also have their own policies that require people working with children and young people to undergo a Police Check. The Northern Territory Police Department provides information on obtaining Police Checks (visit: [www.pfes.nt.gov.au/documents/File/police/frontcounter/crimhist/PF095-CriminalHistoryCheck-Application.pdf](http://www.pfes.nt.gov.au/documents/File/police/frontcounter/crimhist/PF095-CriminalHistoryCheck-Application.pdf)).

## Queensland

The Commission for Children and Young People and Child Guardian Act 2000 (Qld) provides minimum standards for those who work or volunteer with children in broadly identified occupations or activities to undergo screening for criminal offences. The Queensland Commission for Children and Young People and Child Guardian is responsible for administering the Working With Children Check program, which is known as the Blue Card System. The Blue Card System entails a National Police Check, a review of disciplinary information held by certain professional organisations, and consideration of relevant police investigations. The Blue Card System also provides for ongoing monitoring and notification of changes in Blue Card holders' criminal histories. Blue Cards entitle individuals to work or volunteer in child-related occupations or operate child-related businesses. Blue Cards are valid for two years and can be carried between positions by individuals (visit: [www.ccypcg.qld.gov.au/employment/index.html](http://www.ccypcg.qld.gov.au/employment/index.html)).

Since January 2007, employers and businesses that require employees to have a Blue Card must also have a written risk management strategy in place (*Commission for Children and Young People and Child Guardian Act 2000* (Qld) s99G).

The Commission provides information about what an organisation's risk management strategy should contain, as well as training about organisational risk management (visit: [www.ccypcg.qld.gov.au/employment/bluecard/risk.html](http://www.ccypcg.qld.gov.au/employment/bluecard/risk.html) for further details).

## South Australia

The responsibility of government and non-government organisations who come into regular contact with children to obtain Police Record Checks for employees, volunteers, agents, contractors and sub-contractors is embedded in the *Children's Protection Act 1993* (SA). The Act also requires that organisations have a policy framework relating to child-safety.

Further information is available at the South Australian Department for Families and Communities (visit: [www.dfc.sa.gov.au/pub/Default.aspx?tabid=238](http://www.dfc.sa.gov.au/pub/Default.aspx?tabid=238)).

Police Check application forms can be obtained from the South Australian Police (visit: [www.sapolice.sa.gov.au/sapol/home.jsp](http://www.sapolice.sa.gov.au/sapol/home.jsp)).

## Tasmania

At present there is no legislation in Tasmania that identifies broad categories of child-related work and mandates for employees or volunteers to undergo a Working With Children Check. However, the Department of Education administers a safety screening program for employers, individuals and students engaged in the childcare industry. Information and application forms are available on the Department's website (visit: [www.education.tas.gov.au/dept/employment/applying\\_for\\_a\\_job/employment\\_pre-requisites/childcarescreening](http://www.education.tas.gov.au/dept/employment/applying_for_a_job/employment_pre-requisites/childcarescreening)). Additionally, government and non-government organisations may have developed their own requirements and procedures for screening.

The Tasmanian Commissioner for Children is involved in ongoing discussions with policy makers and the police force in relation to the development of a working with children screening program. In 2005, the commissioner released a consultation paper discussing proposals for the introduction of a screening program and cabinet papers have recently been drafted to start the process of legislating for Working With Children Checks (visit: [www.childcomm.tas.gov.au/docs/consultationpaper.pdf](http://www.childcomm.tas.gov.au/docs/consultationpaper.pdf)).

Police Checks can be obtained from the Tasmanian Police Department (visit: [www.police.tas.gov.au/permits/criminal-history](http://www.police.tas.gov.au/permits/criminal-history)).

## Victoria

The *Working With Children Act 2005* (Vic.) sets out the legislative requirements for child safety screening in Victoria. Individuals who work or volunteer with children are required to undergo a screening process known as a Working With Children Check. Information, guidelines and application forms are available from the Department of Justice, Victoria (visit: [www.justice.vic.gov.au/workingwithchildren](http://www.justice.vic.gov.au/workingwithchildren)). Beginning in 2006, the legislation is being phased-in over five years for different areas of child-related work. It is important that you check the date at which Working With Children Checks will become compulsory in your field.

The Working With Children Check is different from a Police Check as it provides ongoing monitoring for criminal offences for the duration of the validity of the Check (five years) and can be carried across employment/volunteer positions.

Police Checks can also be obtained via Victoria Police (visit: [www.police.vic.gov.au/content.asp?Document\\_ID=274](http://www.police.vic.gov.au/content.asp?Document_ID=274)).

## Western Australia

The *Working With Children (Criminal Record Checking) Act 2004* (WA) legislates for child-safety screening and identifies broad categories of employment that require safety-screening. Information, guidelines and application forms are available from the Working With Children Check website. The program is administered by the Working With Children Screening Unit (WWCSU), Department for Child Protection (visit: [www.checkwwc.wa.gov.au/checkwwc](http://www.checkwwc.wa.gov.au/checkwwc)).

The Working With Children Check is a compulsory criminal check. Working With Children Checks are different from Police Checks as they offer ongoing monitoring and may be updated if a person's criminal record changes while the check is valid (3 years). The Checks can also be carried across employment/volunteer positions. Additionally, Working With Children Checks are only concerned with child-related offences. Therefore, employers may require that employees or volunteers obtain both a Working With Children Check and a National Police Check.

Information on obtaining a National Police Check (including the National Police Check for Volunteers Program) can be obtained from the WA Police (visit: [www.police.wa.gov.au/ABOUTUS/OurServices/ClearanceCertificates/tabid/1202/Default.aspx](http://www.police.wa.gov.au/ABOUTUS/OurServices/ClearanceCertificates/tabid/1202/Default.aspx)).

## Conclusion

Screening helps to prevent people with a known history of violent and abusive behaviour gaining access to children through organisations. However, screening alone is not sufficient (e.g., it is limited to identifying known perpetrators) and needs to be coupled with interviews, thorough reference checks, policy development for child-safe environments, and robust accountability frameworks for responding to allegations.

## Further reading

Irenyi, M., Bromfield, L., Beyer, L., & Higgins, D. (2006). *Child maltreatment in organisations: Risk factors and strategies for prevention* (Child Abuse Prevention Issues No. 25). Available at: [www.aifs.gov.au/nch/pubs/issues/issues25/issues25.html](http://www.aifs.gov.au/nch/pubs/issues/issues25/issues25.html)

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