



Climate Council of Australia

Submission to:	Inquiry into the Nature Positive (Environment Information Australia) Bill 2024 [Provisions] and related bills
Addressed to:	Senate Standing Committees on Environment and Communications
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About the Climate Council

Climate Council is Australia's own independent, evidence-based organisation on climate science, impacts and solutions.

We connect decision-makers, the public and the media to catalyse action at scale, elevate climate stories in the news and shape the conversation on climate consequences and action, at home and abroad.

We advocate for climate policies and solutions that can rapidly drive down emissions, based on the most up-to-date climate science and information.

We do this in partnership with our incredible community: thousands of generous, passionate supporters and donors, who have backed us every step of the way since they crowd-funded our beginning as a non-profit organisation in 2013.

To find out more about the Climate Council's work, visit www.climatecouncil.org.au.

1. Introduction

Right now, Australia's environment is under grave threat from climate change; facing some of the greatest risks in human history. Accelerating climate change is also turbocharging other threats like habitat destruction and proliferation of invasive species. Collectively, this is pushing many natural places around the country to the brink of ecological collapse.

Through worsening floods and fires, heatwaves, ocean acidification and droughts, climate change is like an all-purpose bulldozer tearing through the ecosystems that humans and all other species depend on for their health, wellbeing and safety. An extreme event - like the Black Summer bushfires, extreme floods in Queensland and New South Wales, or lethal heatwaves across Western and Central Australia - is devastating. Together, the impacts are compounding. If climate change is left unchecked, we will lose many of the species and ecosystems that sustain us, as well as the special places and cultural heritage we all love.

Australia's main national environment law – the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999* – is supposed to protect the animals, plants, landscapes and ecosystems that are our shared natural endowment. It is failing in this essential task, in no small part because the law does not explicitly address climate change. Like a house caught up in a wild storm without a roof, our key environmental law does not provide any direct protection from the greenhouse gas emissions that are driving dangerous climate change. The law is also failing to protect the environment in other ways: forests are being cleared, habitats lost, invasive species are running rampant.

It's time to fix this. Australia needs a strong national environment law which properly deals with climate change and genuinely protects nature, to help prevent runaway global warming and shield our precious biodiversity from its impacts.

This reform is urgent. The Climate Council is very concerned that the Albanese Government has split its promised Nature Positive reforms into stages, and is currently only progressing the *Nature Positive (Environment Protection Australia) Bill 2024* and related bills through the Parliament. The new environmental protection agency and Environment Information Australia are important new pieces of regulatory architecture that can deliver better protections for nature. But on their own they will not close the significant gaps in the EPBC Act that are leaving our environment dangerously exposed.

With no clear timeline identified for legislating the final – and most important – stage of the Nature Positive reforms, and huge question marks remaining over the substance of this, the Parliament has an opportunity to deliver real change now by directly amending the existing EPBC Act. This would accelerate essential protections for nature alongside the creation of the EPA and EIA, and lock these improvements in during the current term of Parliament.

The *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024* provides a clear pathway to do this. The bill already proposes a range of updates to the EPBC Act to reflect the establishment of the new EPA and EIA bodies.

This bill could be a vehicle for fixing the glaring gap for climate in Australia's national environment law now, through further amendments which would embed consideration of the harm that greenhouse gas emissions do to nature in the law's project assessment framework. Importantly, this legislation could also be amended to ensure that the benefits to nature of projects which will help to cut climate pollution and mitigate the impacts of climate change are properly recognised for the first time.

We need a national environment law that can say an efficient 'yes' to responsibly-delivered clean energy and industry projects which will help tackle climate change, and a clear 'no' to polluting projects which will cause more climate pollution and environmental destruction. Climate Council strongly recommends the Parliament take this opportunity to fix the EPBC Act **now**; we do not need to wait.

This submission provides a set of proposed amendments for the Committee's consideration, to deliver a national environment law which can protect nature from one of the biggest threats it faces now: climate change.

Summary of recommendations

Recommendation 1

Climate Council recommends the Senate protect nature from climate change now by further amending the EPBC Act via the *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024*.

Proposed amendments to achieve this objective are provided for Senators' consideration.

1. Nature can't wait: we need a stronger national environment law now

The urgency of protecting nature from climate change has been extremely well canvassed in a wide range of reports, inquiries and analyses in recent years.

This Committee has recently explored closely-related issues through the following inquiries:

- [Inquiry into Australia's extinction crisis](#) (2024)
- Inquiry into the [Climate Change Amendment \(Duty of Care and Intergenerational Climate Equity\) Bill 2023](#) (2024)
- [Inquiry into the Environment Protection and Biodiversity Conservation Amendment \(Climate Trigger\) Bill 2022](#) (2024)
- [Inquiry into climate-related marine invasive species](#) (2023).

To briefly summarise the key issues which have already been explored in depth through these inquiries and other key publications:

- Climate change is one of the key pressures driving the “poor and deteriorating” state of Australia’s environment, as highlighted by the State of the Environment Report (DCCCEW, 2021).
- Climate change damages the environment directly and amplifies other environmental threats by increasing the frequency and severity of extreme weather events, floods, fires, droughts and ocean heating and acidification. These impacts are already being experienced by species and landscapes that our environment law was designed to protect - like one-of-a-kind plants and animals, and iconic places like the Great Barrier Reef (Climate Council, 2023).
- Climate change will continue to exacerbate the impact of land-use change, pollution, habitat fragmentation and degradation, and invasive species, and contribute to ongoing decline (Independent Review of the EPBC Act, 2020).
- Despite climate change being one of the most significant and environmental threats, the EPBC Act does not consider climate impacts or require decision-makers to assess greenhouse gas emissions when considering projects. Importantly:
 - Greenhouse gas emissions from individual projects are not currently directly regulated anywhere in federal law; and

- Our environment and climate laws are disconnected, as there is no reference to key climate frameworks like the *Climate Change Act 2022* or the Safeguard Mechanism in the EPBC Act, or vice versa. (Peel, 2023)
- Other jurisdictions – both internationally and within Australia – are increasingly recognising the importance of addressing greenhouse gas emissions, and the climate change these cause, within environmental protection laws and frameworks. Relevant examples initiated in 2024 alone include:
 - The Biden Administration’s strengthening of the USA’s federal environmental review process under the National Environmental Policy Act. This reform accelerates the assessment of clean energy infrastructure and ensures the effects of climate change are considered in environmental reviews by requiring active disclosure of greenhouse gas emissions and consideration of mitigation measures (US Government, 2024)
 - The NSW Environment Protection Authority’s issuing of new [guidelines](#) requiring climate change assessments and the development of greenhouse gas mitigation plans as part of project assessments in that state (NSW Environment Protection Authority, 2024)
 - The release of new [guidelines](#) under the Queensland *Environmental Protection Act 1994* requiring disclosure and consideration of greenhouse gas emissions as part of applications for new or amended environmental approvals (Department of Environment, Science and Innovation, 2024).

In short, there is a wealth of expert and scientific evidence highlighting the severe and direct threat climate change poses to Australia’s natural environment. Other governments are taking action to incorporate climate into their environment protection frameworks as an important mechanism for recognising and responding to this threat. The problem is clear, as is the action needed to address it: we must put climate at the heart of Australia’s national environment law so that the new Environment Protection Australia agency established by the bills under inquiry has the powers necessary to deal with this threat and prevent escalating climate harm to nature.

Given the scale and urgency of the threat climate change poses to our natural environment, it is very concerning that substantive reforms to the EPBC Act beyond those included in the *Nature Positive (Environment Protection Australia) Bill 2024* and related bills have now been pushed back to an unspecified future time. It is also concerning that there is no commitment from the Albanese Government on how climate risks to nature may be addressed within these reforms if they proceed.

There is an opportunity to deal with this risk now by amending the EPBC Act to put climate at the heart of it, through further amendments to the package of bills currently before the Parliament. Climate Council recommends the Parliament seize the

opportunity to deliver this important reform now, because Australia's precious natural species, habitats and places simply don't have time to waste.

Recommendation 1

Climate Council recommends the Senate protect nature from climate change now by further amending the EPBC Act via the *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024*.

2. Straightforward amendments can integrate climate into the existing EPBC framework

Proposals to incorporate climate into the EPBC Act often call for the establishment of a new Matter of National Environmental Significance for climate, known as a 'climate trigger'. This would add a safe climate to the [current list of nine matters](#) our national environment law explicitly seeks to protect (DCCEEW, 2013), so that any project which would have a significant impact on the climate is brought within the EPBC regime for assessment.

There are strong merits to this reform model – in particular, establishing a new Matter of National Environmental Significance would clearly recognise the importance of protecting a safe climate for all human, animal and plant life.

The Albanese Government has rejected calls for a climate trigger with the argument that it is not the role of the EPBC Act to regulate emissions or achieve national climate objectives. The government argues this is best achieved through other parts of Australia's climate policy framework, such as the *Climate Change Act 2022* or the Safeguard Mechanism.

The role of Australia's national environment law is to protect nature from the major threats that it faces. Climate change is widely recognised to be one of these significant and escalating threats. Therefore, *protecting nature from climate change* is unquestionably within the remit of a modern, fit-for-purpose national environment law. At a minimum, this requires strengthening protections for the existing nine Matters of National Environmental Significance. This can be achieved by embedding consideration of climate change impacts within the existing structure of the EPBC Act. This would not require the establishment of a standalone climate trigger or the expansion of the remit of the EPBC Act beyond its core purpose of protecting nature.

Put simply, this approach would involve adding climate change impacts to the list of factors proponents must consider when determining whether an action requires approval under the EPBC Act, and that decision-makers must take into account when assessing whether approval should be given. Importantly, this requirement would be attached to each of the existing Matters of National Environmental Significance, strengthening the protections currently provided to them.

A new definition of 'climate change impacts' would also be created to enable consideration of benefits and harms which go beyond the type of impacts envisaged by the current EPBC Act and associated case law. This would acknowledge that the harm to nature from projects with significant climate pollution may be of a different kind than, for example, upfront habitat destruction or pollution of a water resource, but is no less significant or essential to avoid in this time of climate crisis. Adopting a new definition of 'climate change impacts' would also allow the EPBC assessment process to consider and acknowledge the benefits of projects which can *reduce or mitigate* climate change impacts, in a way the current Act cannot. This is important for ensuring the benefits of clean energy and industry projects can be appropriately captured in assessment of these projects, to facilitate their efficient approval where this is in the interests of communities, nature and the climate.

To enable decision-makers to determine whether a proposed project would contribute to climate change impacts, additional requirements would be created for proponents to disclose the direct and downstream greenhouse gas emissions associated with a project. This builds on commitments the Albanese Government has already made to require disclosure of some emissions as part of project proposals. The decision-maker would also be required to consider this greenhouse gas emissions information in the context of the latest available scientific evidence about the effect of additional emissions on climate change impacts, as a new mandatory consideration within the project assessment process. Amending the EPBC Act now would advance two important, interlinked objectives:

Ensure that climate change impacts are properly captured in EPBC project assessments, with greenhouse gas emissions made a standard consideration when decision-makers are determining whether a project should be allowed to proceed.

These following proposed amendments seek to protect nature from climate change, as an acknowledged key threat to most aspects of our natural environment.

"Climate change is continuing and is increasing the impacts of other pressures on our environment. Immediate global action to reduce carbon emissions would result in reduced pressures and improved trajectories for most aspects of our environment."
– State of the Environment Report

Ensure that the benefits of projects which will mitigate climate impacts are properly captured in EPBC project assessments, and authorised decision-makers can take account of these when determining whether a project should be allowed to proceed.

The following proposed amendments seek to recognise that proposed projects can contribute to climate change impacts *or* help to prevent them – both should be recognised when considering how proposed projects affect Australia's natural environment.

"Our nation's long term future lies in renewable energy sources." – Anthony Albanese

Proposed amendments

Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024

Relevant schedule of bill:

Schedule 2—Amendment of the Environment Protection and Biodiversity Conservation
Act 1999

3 Objects of Act (p.1)

(1) The objects of this Act are:

- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
- (c) to promote the conservation of biodiversity; and
- (ca) to provide for the protection and conservation of heritage; and

(New)

(d) to reduce the urgent threat of climate change to the environment by contributing to the global and domestic goals of:

- (i) holding the increase in the global average temperature to well below 2°C above pre-industrial levels; and**
- (ii) pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels; and**
- (iii) reducing domestic emissions in line with Australia's *Climate Change Act 2022*.**

Re-number: (e)-(h) of objects clause.

5 Application of Act (p.4)

Limited extraterritorial application

(2) This Act applies to acts, omissions, matters and things in the Australian jurisdiction, and does not apply to acts, omissions, matters and things outside the Australian jurisdiction except so far as the contrary intention appears.

(New)

(2a) All direct and downstream greenhouse gas emissions produced by activities undertaken in the Australian jurisdiction are relevant matters for the application of this Act.

Part 3—Requirements for environmental approvals (p.13)

Division 1—Requirements relating to matters of national environmental significance

Subdivision A—World Heritage

12 Requirement for approval of activities with a significant impact on a declared World Heritage property

(1) A person must not take an action that:

(a) has or will have a significant impact on the world heritage values of a declared World Heritage property; or

(b) is likely to have a significant impact on the world heritage values of a declared World Heritage property;

(New)

(c) is likely to increase the risk, frequency or severity of climate change impacts on the world heritage values of a declared World Heritage property.

Subdivision B—Wetlands of international importance (p.27)

16 Requirement for approval of activities with a significant impact on a declared Ramsar wetland

(1) A person must not take an action that:

(a) has or will have a significant impact on the ecological character of a declared Ramsar wetland; or

(b) is likely to have a significant impact on the ecological character of a declared Ramsar wetland; or

(New)

(c) is likely to increase the risk, frequency or severity of climate change impacts on the ecological character of a declared Ramsar wetland.

Subdivision C—Listed threatened species and communities (p.31)

18 Actions with significant impact on listed threatened species or endangered community prohibited without approval

Species that are extinct in the wild

(1) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the extinct in the wild category; or

(b) is likely to have a significant impact on a listed threatened species included in the extinct in the wild category; or

(New)

(c) is likely to increase the risk, frequency or severity of climate change impacts on a listed threatened species included in the extinct in the wild category.

Critically endangered species

(2) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the critically endangered category; or

(b) is likely to have a significant impact on a listed threatened species included in the critically endangered category; or

(New)

(c) is likely to increase the risk, frequency or severity of climate change impacts on a listed threatened species included in the critically endangered category.

Endangered species

(3) A person must not take an action that:

- (a) has or will have a significant impact on a listed threatened species included in the endangered category; or
- (b) is likely to have a significant impact on a listed threatened species included in the endangered category; or

(New)

(c) is likely to increase the risk, frequency or severity of climate change impacts on a listed threatened species included in the endangered category.

Vulnerable species

(4) A person must not take an action that:

- (a) has or will have a significant impact on a listed threatened species included in the vulnerable category; or
- (b) is likely to have a significant impact on a listed threatened species included in the vulnerable category; or

(New)

(c) is likely to increase the risk, frequency or severity of climate change impacts on a listed threatened species included in the vulnerable category.

Critically endangered communities

(5) A person must not take an action that:

- (a) has or will have a significant impact on a listed threatened ecological community included in the critically endangered category; or
- (b) is likely to have a significant impact on a listed threatened ecological community included in the critically endangered category; or

(New)

(c) is likely to increase the risk, frequency or severity of climate change impacts on a listed threatened ecological community included in the critically endangered category.

Endangered communities

(6) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened ecological community included in the endangered category; or

(b) is likely to have a significant impact on a listed threatened ecological community included in the endangered category; or

(New)

(c) is likely to increase the risk, frequency or severity of climate change impacts on a listed threatened ecological community included in the endangered category.

Subdivision D—Listed migratory species (p.36)

20 Requirement for approval of activities with a significant impact on a listed migratory species

(1) A person must not take an action that:

(a) has or will have a significant impact on a listed migratory species; or

(b) is likely to have a significant impact on a listed migratory species; or

(New)

(c) is likely to increase the risk, frequency or severity of climate change impacts on a listed migratory species.

Subdivision F—Marine environment (p.43)

23 Requirement for approval of activities involving the marine environment

Actions in Commonwealth marine areas affecting the environment

(1) A person must not take in a Commonwealth marine area an action that:

(a) has, will have or is likely to have a significant impact on the environment; or

(New)

(b) is likely to increase the risk, frequency or severity of climate change impacts on the environment.

Actions outside Commonwealth marine areas affecting those areas

(2) A person must not take outside a Commonwealth marine area but in the Australian jurisdiction an action that:

(a) has or will have a significant impact on the environment in a Commonwealth marine area; or

(b) is likely to have a significant impact on the environment in a Commonwealth marine area; or

(New)

(c) is likely to increase the risk, frequency or severity of climate change impacts on the environment in a Commonwealth marine area.

Subdivision FA—Great Barrier Reef Marine Park

24B Requirement for approval of activities in the Great Barrier Reef Marine Park

Actions in Great Barrier Reef Marine Park affecting the environment

(1) A person must not take in the Great Barrier Reef Marine Park an action that:

(a) has, will have or is likely to have, a significant impact on the environment; or

(New)

(b) is likely to increase the risk, frequency or severity of climate change impacts on the environment.

Actions outside Great Barrier Reef Marine Park affecting the environment in the Marine Park

(2) A person must not take outside the Great Barrier Reef Marine Park but in the Australian jurisdiction an action that:

(a) has or will have a significant impact on the environment in the Great Barrier Reef Marine Park; or

(b) is likely to have a significant impact on the environment in the Great Barrier Reef Marine Park;

(New)

(c) is likely to increase the risk, frequency or severity of climate change impacts on the environment in the Great Barrier Reef Marine Park.

Subdivision FB—Protection of water resources from unconventional gas development and large coal mining development

24D Requirement for approval of developments with a significant impact on water resources

(1) A constitutional corporation, the Commonwealth or a Commonwealth agency must not take an action if:

(a) the action involves:

(i) unconventional gas development; or

(ii) large coal mining development; and

(b) the action:

(i) has or will have a significant impact on a water resource; or

(ii) is likely to have a significant impact on a water resource.

(New)

iii) is likely to increase the risk, frequency or severity of climate change impacts on a water resource.

(2) A person must not take an action if:

(a) the action involves:

- (i) unconventional gas development; or
- (ii) large coal mining development; and

(b) the action is taken for the purposes of trade or commerce:

- (i) between Australia and another country; or
- (ii) between 2 States; or
- (iii) between a State and Territory; or
- (iv) between 2 Territories; and

(c) the action:

- (i) has or will have a significant impact on a water resource;
- (ii) is likely to have a significant impact on a water resource;

(New)

iii) is likely to increase the risk, frequency or severity of climate change impacts on a water resource.

(3) A person must not take an action if:

(a) the action involves:

- (i) unconventional gas development; or
- (ii) large coal mining development; and

(b) the action is taken in:

- (i) a Commonwealth area; or
- (ii) a Territory; and

(c) the action:

- (i) has or will have a significant impact on a water resource; or
- (ii) is likely to have a significant impact on a water resource

(New)

iii) is likely to increase the risk, frequency or severity of climate change impacts on a water resource.

Part 8—Assessing impacts of controlled actions (p.172)

Division 2—Application of this Part

82 What are the relevant impacts of an action?

If the CEO has decided the action is a controlled action

(1) If the CEO has decided under Division 2 of Part 7 that an action is a controlled action, the relevant impacts of the action are the impacts that the action:

(a) has or will have; or

(b) is likely to have;

on the matter protected by each provision of Part 3 that the CEO has decided under that Division is a controlling provision for the action; and

(New)

(c) direct and downstream greenhouse gas emissions from the action triggering each provision of Part 3 that the CEO has decided under that Division is a controlling provision for the action;

(d) the contribution of direct and downstream greenhouse gas emissions from the action triggering each provision of Part 3 that the CEO has decided under that Division is a controlling provision for the action, to cumulative global emissions.

Division 6—Environmental impact statements (p.195)

101B Standard guidelines

(1) The Minister may prepare one or more sets of standard guidelines, in writing, for the preparation of draft environmental impact statements about the relevant impacts of actions.

(2) A set of standard guidelines must set out requirements for the content and presentation of draft environmental impact statements about the relevant impacts of actions.

(New)

(3) A set of standard guidelines must set out a requirement for draft environmental impact statements to include information on the direct and downstream greenhouse gas emissions of actions, reported on both an annual and lifetime basis.

(4) A set of standard guidelines must set out a requirement for draft environmental impact statements to include information on whether and how the action will contribute towards a reduction in aggregate greenhouse gas emissions.

Re-number (5) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:

- (a) actions that are proposed to be taken by a specified industry sector; or
- (b) actions for which a specified provision of Part 3 is a controlling provision.

(4) A set of standard guidelines made under this section is ~~not~~ a legislative instrument.

Part 9—Approval of action

Subdivision B—Considerations for approvals and conditions (p.237)

136 General considerations

Mandatory considerations

(1) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the CEO must consider the following, so far as they are not inconsistent with any other requirement of this Subdivision:

(a) matters relevant to any matter protected by a provision of Part 3 that the CEO has decided is a controlling provision for the action;

(New)

(b) the direct and downstream greenhouse gas emissions resulting from the action;

(c) the contribution of direct and downstream greenhouse gas emissions resulting from the action to cumulative global emissions;

Note: In considering the potential for direct and downstream greenhouse gas emissions to contribute to climate change impacts, the CEO must apply the

assumption that any emissions produced by the taking of an action would be additional to current global stores of atmospheric greenhouse gases.

(d) the potential for the action to contribute towards a reduction in aggregate greenhouse gas emissions;

Re-number: (d) economic and social matters.

Factors to be taken into account

(2) In considering those matters, the CEO must take into account:

(a) the principles of ecologically sustainable development; and

(New)

(b) current scientific evidence on the contribution of greenhouse gas emissions to the risk, frequency or severity of climate change impacts on protected matters;

(Renumber from here on) (c) the assessment report (if any) relating to the action; and...

Subdivision F—Impacts (p.508)

(New)

527F—Meaning of *climate change impacts*

(1) For the purposes of this Act, climate change impacts include, but may not be limited to, those relating to:

(a) disruptions in seasonal weather cycles supporting a healthy environment for ecosystem functions and biodiversity; or

(b) disruptions to climatic conditions necessary to support habitats and/or food and/or water sources; or

(c) sea level rise, ocean heating and/or acidification; or

(d) increased frequency and severity of extreme weather events.

(2) For the purposes of this Act, climate change impacts may arise as a consequence of an individual action or the cumulative effect of multiple actions which the action under consideration will contribute to.

5. Conclusion

Protecting nature from climate change requires a new approach to assessing and approving projects under Australia's national environment law. Delivering this is urgent, and cannot be allowed to fall off the national agenda.

In the absence of a clear plan and timeframe for the Albanese Government to bring forward promised 'Stage 3' Nature Positive reforms, the Parliament can step up and fix the gaping holes in the EPBC Act now.

We cannot protect nature from climate change while our national environment law continues to greenlight new projects which will produce millions of tonnes more climate pollution. We cannot mitigate the harm climate change is already doing to precious natural places, species and habitats without efficient approval of responsibly-delivered clean energy and industry projects. The criteria and standards used to assess projects under our national environment law need to reflect the reality of the situation we now face, with catastrophic damage to protected Matters of National Environmental Significance like the Great Barrier Reef already occurring in a rapidly heating climate.

We can reduce the climate threat to nature and promote thriving natural environments for generations to come. To do so, we must fix Australia's national environment law so that it properly protects nature from climate change, and works seamlessly together with other parts of our national climate policy architecture to ensure a genuine, permanent reduction in direct and downstream emissions produced as the result of activities in Australia. Nature can't wait, and the Parliament doesn't have to. Put climate at the heart of our national environment law now.

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