



## Financial Framework Legislation Amendment Bill 2004

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### Contents

Glossary . . . . .	2
Purpose. . . . .	4
Background. . . . .	4
Exposure draft and JCPAA recommendations . . . . .	5
Government’s response . . . . .	6
JCPAA report issues. . . . .	7
Deeming provisions . . . . .	7
Approval and delegation powers . . . . .	8
Main Provisions . . . . .	8
Schedule 1—Amendments relating to the Financial Management Legislation Amendment Act 1999 and Special Accounts. . . . .	8
Part 1-Removal of references to Loan Fund. . . . .	9
Part 2-Special Accounts and references to paid to the Consolidated Revenue Fund . . . . .	9
Schedule 2-Other amendments. . . . .	11
Schedule 3-Repeal of Acts. . . . .	12
Concluding Comments. . . . .	12
Endnotes. . . . .	12

## Financial Framework Legislation Amendment Bill 2004

**Date Introduced:** 1 December 2004

**House:** House of Representatives

**Portfolio:** Finance and Administration

**Commencement:** In most cases, when the Act receives the Royal Assent. Other commencement dates are as per the 'commencement' table on pages two and three of the Bill.

**Note:** Following the 2004 Federal election, Dr Sharman Stone, Parliamentary Secretary to the Minister for Finance and Administration, reintroduced this Bill on 1 December 2004.

### Glossary

**Commonwealth Authorities and Companies Act 1997 (CAC Act).** The CAC Act sets out the financial management, accountability and audit obligations of Commonwealth statutory authorities and companies in which the Commonwealth has at least a direct controlling interest. In particular, the Act provides: the reporting and audit obligations on directors of authorities; standards of conduct for officers of authorities; and requirements for ensuring that wholly-owned Commonwealth companies keep ministers and Parliament informed of their activities. [CAC bodies](#) are divided into Commonwealth authorities and companies.

**Consolidated Financial Statements.** Section 55 of the *Financial Management and Accountability Act 1997* requires the Finance Minister to prepare annually [consolidated financial statements](#) (CFS) for the Commonwealth. The statements contain consolidated results for all Commonwealth-controlled entities, and disaggregated information for all three sectors: general government, public non-financial corporations, and public financial corporations. The CFS are prepared on the basis of Australian Accounting Standards including Australian Accounting Standard 31.

**Consolidated Revenue Fund (CRF).** Section 81 of the Constitution requires that all revenue raised or money received by the Executive Government has to form one consolidated revenue fund to be appropriated for Commonwealth purposes. The CRF is thus the principal operating fund where the transactions associated with the general activities of the government are recorded. The CRF is deemed to be 'self-executing', that is, money that the Executive Government raises or receives automatically forms part of the CRF, without the need to credit a ledger account designated CRF or make a payment into a bank account so designated.

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**Financial Management and Accountability Act 1997 (FMA Act).** The main Act governing the financial activities of agencies including the collection of public money, the maintenance of accounting records, control and management of public property, the responsibilities of chief executives of agencies in regard to the control and management of public money and property, and the power of the Finance Minister to make regulations and delegate powers. The *Financial Management Legislation Amendment Act 1999* amended the FMA Act to facilitate the adoption of accrual budgeting by all Commonwealth budget-funded agencies.

**Loan Fund.** A fund, established under the *Audit Act 1901* (since repealed), into which were credited all monies raised by loan upon the public credit of the Commonwealth (other than certain monies raised by way of advances made by banks in pursuance of agreements under section 20 of the Audit Act). The Loan Fund no longer exists, having been converted into a Special Account under the *Financial Management Legislation Amendment Act 1999*.

**Reserved Money Fund.** The Reserved Money Fund comprised moneys held in trust for persons and authorities other than the Commonwealth, and other moneys reserved (hence the name) to meet future expenditure. The Fund no longer exists having been replaced by Special Accounts.

**Special Account.** Special Accounts are a mechanism for recording moneys designated for a particular purpose and for making payments for that purpose, and are ledgers in the Consolidated Revenue Fund. Examples are unclaimed moneys under the control of a trustee, levies collected by the National Registration Authority for Veterinary Chemicals, industry levies collected and applied to research in that industry, and charges that the Great Barrier Reef Marine Park Authority imposes. Agencies include estimates of Special Accounts flows and balances in their Portfolio Budget Statements. A Special Account can be established either by the Finance Minister under section 20 of the *Financial Management and Accountability Act 1997* (FMA Act), or by enabling legislation as recognised under section 21 of the FMA Act. As of November 2003, 241 Special Accounts were in existence. A total of \$3.4 billion was reported as held in Special Accounts at 30 June 2003. During 2002–03, \$10.33 billion was reported as credited to, and \$10.06 billion in payments (debits) from, Special Accounts.<sup>1</sup>

**Trust Fund.** Section 60 of the *Audit Act 1901* (since repealed) provided that a separate account, called the Trust Fund, be kept of all moneys placed to the credit of that Fund under such separate heads as may be directed by the Finance Minister. The Minister was empowered to establish trust accounts and to define the purposes for which they were established. The Trust Fund no longer exists. The Reserved Money Fund and the Commercial Activities Fund replaced the Trust Fund. Components of the Reserved Money Fund and the Commercial Activities Fund were, in turn, converted into Special Accounts under the *Financial Management Legislation Amendment Act 1999*.

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## Purpose

The Financial Framework Legislation Amendment Bill 2004 (the FFLA Bill) has several purposes. They include:

- principally to amend the wording in a number of Acts to replace deeming provisions in the [Financial Management and Accountability Act 1997](#) (FMA Act) and align their wording with the FMA Act. This includes amending Acts to reflect the concept that the Consolidated Revenue Fund (CRF) is self-executing
- consolidating powers to make decisions about investments, money raisings and other financial matters in the Finance Minister, by transferring these powers from the Treasurer
- repealing redundant Acts, and
- amending the FMA Act and the [Commonwealth Authorities and Companies Act 1997](#) (CAC Act)
  - the amendments to the FMA Act (1) expand the information required when the Finance Minister establishes a Special Account by determination, (2) allow the Finance Minister to nominate a chief executive as a member of an advisory committee established to consider large act of grace payments or waivers, and (3) clarify the powers of chief executives to delegate powers and give directions relating to delegated powers, and
  - the amendments to the CAC Act align the offence provisions applying to the conduct of officers in CAC bodies with the *Criminal Code Act 1995*.

## Background

The FMA Act is the main Act governing the Commonwealth's financial and related activities, while the CAC Act sets out the financial management and other obligations on statutory authorities and companies in which the Commonwealth has a financial interest. A feature of the FMA Act is that, under section 20, the Finance Minister can establish Special Accounts by determinations. Enabling Acts can also establish Special Accounts.

The FMA and CAC Acts were enacted before the Government introduced accrual accounting and accrual budgeting in 1999–2000. As part of the preparations for the adoption of accrual budgeting, the [Financial Management Legislation Amendment Act 1999](#) (FMLA Act) amended the FMA Act. The Joint Committee of Public Accounts and Audit (JCPAA) considered that a review was warranted of the effectiveness of the FMA and CAC Acts following the adoption of accrual budgeting. The JCPAA's report, [Report](#)

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[374, Review of the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997](#), which was tabled in March 2000, contains the findings of this review. Among the report's recommendations was one that:

The Department of Finance and Administration and the Department of Prime Minister and Cabinet should review the terminology of [the] Commonwealth's financial management legislation and the public and parliamentary service legislation with a view to removing inconsistency and increasing consistency with the terminology used by the private sector.<sup>2</sup>

### Exposure draft and JCPAA recommendations

The Government did not formally respond to the report. However, in 2002–03, the Department of Finance and Administration developed a draft Financial Framework Legislation Amendment Bill (draft Bill). The draft:

- aligned financial management provisions and practices in other Acts with the FMA Act, and
- consolidates ministerial approval powers in relation to money raising, investments and guarantees by, and for, entities that are legally separate from the Commonwealth.

In February 2003, the Minister for Finance and Administration, Senator the Hon. Nick Minchin, released an exposure draft, and proposed that the JCPAA inquire into it. On 20 August 2003, the JCPAA tabled its report, [Report 395, Inquiry into the Draft Financial Framework Legislation Amendment Bill](#). The Report made five recommendations:

- **Recommendation 1:** the proposed amendments to subsection 20(1) of the FMA Act contained in the draft Bill should include the following:
  - a determination of the Finance Minister establishing a Special Account should include a reference to amounts that are allowed or required to be debited from a Special Account and this reference should be linked to the reference to the purposes of the Special Account, and
  - a determination of the Finance Minister may specify that amounts debited from a Special Account may be or must be otherwise than for the making of real or notional payments
- **Recommendation 2:** the draft Financial Framework Legislation Amendment Bill should include amendments to the FMA Act and all other relevant Acts to replace references to 'Special Account' with references to 'Designated Purpose Account'
- **Recommendation 3:** the annual Appropriation Acts should not authorise the crediting of appropriated amounts to a Special Account if the Act or the Finance Minister's

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determination that establishes the Special Account does not specifically provide for appropriated amounts to be credited to the Special Account

- **Recommendation 4:** the Financial Framework Legislation Amendment Bill should include an amendment to establish the Aboriginal Advancement Account under the section 38 of the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*
  - the Condah Land Account and the Framlingham Forest Account should be subsumed into the Aboriginal Advancement Account, and
- **Recommendation 5:** the Government should introduce the Financial Framework Legislation Amendment Bill into Parliament as soon as possible.

### Government's response

On 26 June 2004, the Government tabled its response to the JCPAA's report on the draft Bill. The Government's response is set out in Attachment A of the [Explanatory Memorandum](#).

The Government agreed with the first, fourth and fifth recommendations. The effect of acceptance of the first recommendation is to increase the amount of information that the Finance Minister must provide when proposing to establish a Special Account by determination, by including references to amounts and the Account's purpose.

The Government did not agree with the second recommendation. Consequently, the term 'Special Account' stands.

The Government agreed, in principle, with the third recommendation. As noted, Special Accounts can be established either by determinations that the Finance Minister issues under section 20 of the FMA Act or by an enabling Act. In the latter case, section 21 of the FMA Act applies. Subsection 21(1) provides that the CRF is appropriated up to the amount in the Special Account. The Note that follows subsection 21(1) provides that where an Act establishes a Special Account, the Act will identify the amount that is to be credited to the Special Account. The anomaly that led the JCPAA to make recommendation 3 stems from paragraph 4.64 of its report which states:

The annual Appropriation Acts appear to facilitate the crediting of appropriated amounts to Special Accounts whereas some Acts that establish particular Special Accounts do not specifically provide for appropriated amounts to be credited to those Accounts.<sup>3</sup>

The Government's proposed solution to this anomaly is to attach Notes—similar to that following subsection 21(1)—to sections 20 and 21 of the FMA Act:

... the Government considers that the most appropriate way to clarify the arrangements is for the Office of Parliamentary Counsel to be instructed to include, in

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the FFLA Bill, Notes attached to sections 20 and 21 of the FMA Act to provide cross-references to the authority provided by the annual Appropriation Acts for crediting appropriated amounts to Special Accounts.<sup>4</sup>

The effect of the acceptance of recommendation four is that an Aboriginal Advancement Fund will be established, and the Condah Land and Framlingham Forest accounts will be subsumed into the Fund.

### JCPAA report issues

The Explanatory Memorandum discusses issues that the JCPAA canvassed in its report on the draft Bill but on which the report did not make recommendations.<sup>5</sup> The following comments on several of these issues as they relate to accountability and transparency.

With respect to accountability, an issue is parliamentary scrutiny of Special Accounts that the Finance Minister establishes. Section 22 of the FMA Act provides for the disallowance of such Accounts by either House. The Explanatory Memorandum states that, to assist scrutiny, the Department of Finance and Administration will provide more information about such Special Accounts.<sup>6</sup> This is a welcome move. Many of the documents that Parliament scrutinises are short on plain English explanation.

On the issue of transparency, the JCPAA expressed concern (paragraph 6.23) that the Consolidated Financial Statements no longer report on the CRF.<sup>7</sup> Reporting is now relegated to a note in Statement 10 of Budget Paper No. 1. Given that under the Constitution, all revenues or moneys raised or received by the Executive Government of the Commonwealth enter the CRF, the lack of reporting on the CRF is remarkable. The Explanatory Memorandum notes that the Department of Finance and Administration is examining ways of providing more information on the CRF including in the Consolidated Financial Statements.<sup>8</sup>

### Deeming provisions

The FMLA Act, which amended the FMA Act and came into effect on 1 July 1999, contained deeming provisions (outlined in Attachment C of the Explanatory Memorandum). These provisions deemed that certain amendments to other Acts also came into effect on 1 July 1999. For example, section 6 of the FMLA Act deemed that references to the Loan Fund in these other Acts were to be read as references to the CRF. The main amendments to these other Acts consequent to the deeming provisions fell into four categories:

- references to the Loan Fund and to amounts in the Loan Fund, became amounts in the CRF
- references to the Reserved Money Fund were abolished, and references to allocations to the Reserved Money Fund became references to allocations to the CRF

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- the term Special Accounts replaced components of the Reserved Money Fund, and
- paid ‘to the Commonwealth’ replaced paid ‘into the Consolidated Revenue Fund’.

The deeming provisions had the advantage of not having to change the wording of these other Acts. In effect, the deeming provisions were a ‘shorthand’ way of changing these other Acts but were seen as an interim measure, pending amendments to these other Acts. The FFLA Bill changes the wording in these other Acts thereby rendering the deeming provisions redundant.

### Approval and delegation powers

The Treasurer has approval powers under several Acts in relation to borrowing and money raising by entities that are legally separate from the Commonwealth (for example, the Australian Broadcasting Corporation); the investment of surplus money by certain authorities; and the provision of borrowing guarantees. Most of the approval powers relate to bodies established under the CAC Act. The FFLA Bill proposes transferring these powers to the Finance Minister. In evidence to the JCPAA, the Department of Finance and Administration claimed three advantages of the proposed transfer. These claims are reproduced in paragraph 613 of the Explanatory Memorandum. In short, they are more efficient administration, and the alignment of approval powers with other finance-related powers the Finance Minister already has.

The Treasurer also has delegation powers in some of the Acts for which the Treasurer has approval powers. Generally, the delegation powers are to Treasury officials. The FFLA Bill transfers these powers to the Finance Minister. The FFLA Bill also provides to the Finance Minister delegation powers for the *Health Insurance Commission Act* and the *Sydney Harbour Federation Trust Act 2001*. The JCPAA considered that the transfer of approval and delegation powers would improve the financial framework by providing more uniform, and hence more efficient, approval processes. The JCPAA also proposed replacing references to ‘Minister for Finance’ with ‘Finance Minister’ for consistency.<sup>9</sup>

## Main Provisions

### Schedule 1—Amendments relating to the Financial Management Legislation Amendment Act 1999 and Special Accounts

**Schedule 1** contains most amendments. Most items relate to the deeming provisions in the FMLA Act and change the wording in a number of Acts to align them with the FMLA Act. The main consequence of the wording changes is to make the deeming provisions redundant. Schedule 1 has two Parts. Part 1 deals with the removal of references to the Loan Fund, while Part 2 deals with Special Accounts and references to ‘paid to the Consolidated Revenue Fund’.

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### Part 1-Removal of references to Loan Fund.

The main purpose of **Items 1 to 57** in Part 1 is to remove references to the Loan Fund in other Acts and (usually) substitute other words. For example, subsection 118(1) of the *Higher Education Funding Act 1988* states:

The Consolidated Revenue Fund and the Loan Fund are, by force of this subsection, appropriated as necessary for the purposes of this Act other than Chapters 4, 4A and 4B.

The proposed amendment (**Item 2**) deletes ‘and the Loan Fund are’ and substitutes ‘is’. In other cases, ‘Consolidated Revenue Fund’ replaces references to the Loan Fund.

### Part 2-Special Accounts and references to paid to the Consolidated Revenue Fund

Part 2 contains three categories of amendment:

- amendments where
  - references to ‘Account’ or ‘Special Accounts’ respectively replace references to ‘Reserve’ or ‘components of the Reserved Money Fund’, and
  - where ‘amount’, ‘credited to’ and ‘debited from’ respectively replace ‘money’, ‘paid into’ and ‘paid out of’
- amendments where references to paid ‘to the Commonwealth’ replace paid ‘into the Consolidated Revenue Fund’, and
- amendments that are not a direct consequence of the FMLA Act.

With respect to the first category, the use of ‘Account’ and ‘Special Accounts’ reflect the fact that the Reserved Money Fund’ no longer exists. The use of ‘amount’, ‘credited to’ and ‘debited from’ reflect the fact that Special Accounts are merely ledgers within the CRF established for different purposes largely for ease of administration

The main purpose of the second category is to give effect to the concept of a self-executing CRF whereby moneys paid to the Commonwealth automatically form part of the CRF irrespective of whether the Commonwealth has credited those moneys to an account. These amendments replace the deeming provisions of section 7 of the FMLA Act.

The first two categories account for a substantial proportion of the amendments in Part 2. However, some of these amendments also give rise to consequential amendments such as those needed to ensure the continued existence of an Account. An example is the proposed amendments in **Item 98** to the *Bankruptcy Act 1966* to ensure the continued existence of the Common Investment Fund Equalization Account.

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Schedule 1 also contains six types of amendment that are not a direct consequence of the FMLA Act. The first type relates to the adoption of the phrase ‘debited from the Account and paid by the Commonwealth’. The FMLA Act deemed that a reference to a payment from a component of the Reserved Money Fund be read as paying money from the CRF and debiting the relevant Special Account. The Bill proposes use of the phrase ‘debited from the Account and paid by the Commonwealth’ to replace this deeming provision.

The Bill proposes that this phrase also be used for notional payments. They are what might be otherwise called book entries. For example, if an agency owes money to another, instead of the first agency paying money to the second agency, the same outcome can be achieved by entries in the books of both agencies. Such payments are considered to be payments out of the CRF even though no money has changed hands. **Items 141 and 144** respectively insert **new paragraphs 20(4)(4A) and 21(1)(1A)** that establish that notional payments can be made from Special Accounts.

Two of the six types of amendment derive from the recommendations of the JCPAA report. **Item 58** relates to the [Aboriginal Land \(Lake Condah and Framlingham Forest\) Act 1987](#) and gives effect to the JCPAA’s fourth recommendation, that is, that an Aboriginal Advancement Account be established, and that the Condah Land Account and Framlingham Forest Account be subsumed into the Aboriginal Advancement Account. The JCPAA concluded, among other things:

- the authority that subsection 38(6) in the Aboriginal Land (Lake Condah and Framlingham Forest) Act supposedly gives to the Minister responsible for administering the Act to establish a Special Account, may not be valid because only the Finance Minister (or enabling legislation) can do that
- it is doubtful whether an Aboriginal Advancement Account has been established, and
- it seems unnecessary to have more than one Special Account (the Condah Land Account and Framlingham Forest Account have never been used).

Item 58 therefore repeals section 38 and substitutes a **new section 38. Subsection 38(6)** specifically establishes the Aboriginal Advancement Account.

**Item 139** gives effect to the JCPAA’s first recommendation by amending subsection 20(1) of the FMA Act. The wording in item 139 is consistent with the existing provision and has three elements: it allows a Special Account to be established, for amounts to be credited to the Account, and requires the specification of the purpose of the Account in which debits may be made. The main difference is the dropping of the words ‘or any’ from the existing subsection. The requirement that determinations must contain all three elements eliminates the discretion that the Finance Minister has in deciding what to include in determinations.

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## Schedule 2-Other amendments

**Items 1 to 71, 79 to 112, 119 to 134, and 136 to 174** amend Acts to implement:

- the transfer of approval powers pertaining to certain financial matters from the Treasurer to the Finance Minister
- provide delegation powers to the Finance Minister, and
- change references from the Minister for Finance to the Finance Minister.

**Items 72 to 78** harmonise the CAC Act with the *Criminal Code Act 1995*. The main item is **item 75**, which repeals subsection 27C(4). Section 27 deals with disqualification orders for contraventions of civil penalty provisions. It provides that a Court may disqualify a person from managing a corporate body if the person has contravened a civil penalty provision. Subsection 27C(4) provides that if a disqualification order is in force against a person, the person must not be a director of a Commonwealth authority except with the leave of the Court. Item 75 repeals subsection 27C(4) and provides that if a person subject to disqualification order is a director of a Commonwealth authority, that person is subject to a maximum penalty of imprisonment for one year. However, the penalty does not apply if the person is a director with the leave of the Court.

**Items 113 to 118** amend the FMA Act. **Item 116** relates to section 53 which empowers the Chief Executive to delegate powers. Item 116 repeals subsection 53(2) and substitutes a **new subsection 53(2)** which provides that if a Chief Executive is subject to directions relating to his powers, the Chief Executive must give corresponding directions to a second delegate, who must comply with those directions. **Item 118** amends section 59 which deals with advisory committees for reporting on large waivers, act of grace payments etc. Subsection 59(1) specifies that the advisory committee is to consist of the Chief Executive Officer of Customs, the secretary of the Department of Finance, and the Chief Executive of the agency responsible for the matter on which the committee has to report. Item 118 repeals section 59(2) and substitutes **new subsection 59(2)** to provide that when no agency is responsible for the matter, or if the responsible agency is the Department of Finance and Administration or the Australian Customs Service, the Finance Minister is to nominate the third member of the committee.

**Item 135** adds to section 206 of the *Native Title Act 1993* a requirement that the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account examine the annual report of the Indigenous Land Corporation.

Several Items also include a definition of the Finance Minister as ‘the Minister who administers the *Financial Management and Accountability Act 1997*’.

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## Schedule 3-Repeal of Acts

Schedule 3 lists the Acts that are to be repealed on the grounds that they are redundant.

## Concluding Comments

The JCPAA, in its concluding comments on the exposure Bill, observed:

7.3 The financial framework of the Commonwealth includes not only the framework legislation (mainly the FMA and CAC Acts), but also many enabling Acts that establish separate entities, Special Accounts, provide special appropriations and other financial management matters.

7.4 The Committee notes that the deeming provisions of the FMLA Act were always intended as an interim measure, pending amendments to the enabling Acts themselves being passed. Unfortunately there has been an element of confusion about the status and concept of Special Accounts which the FMLA Act introduced on 1 July 1999.

7.5 It is therefore becoming increasingly important that the deeming provisions be replaced with the amendments proposed in Schedule 1 of the Bill.

The FLAA Bill gives effect to these conclusions.

## Endnotes

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1. Australian National Audit Office, *Agency Management of Special Accounts*, Audit Report No. 24, 2003–04.
  2. Joint Committee of Public Accounts and Audit, *Report 374. Review of the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997*, 16 March 2000, p. 27.
  3. Joint Committee of Public Accounts and Audit, *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, Report 395, 20 August 2003, p. 44.
  4. Explanatory Memorandum, p. 121.
  5. Explanatory Memorandum, pp. 122–4.
  6. Explanatory Memorandum, p. 123.
  7. Joint Committee of Public Accounts and Audit, *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, Report 395, paragraph 6.23, p. 67.
  8. Explanatory Memorandum, p. 124.
  9. Joint Committee of Public Accounts and Audit, *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, Report 395, p. 24.

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