



Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email: legcon.sen@aph.gov.au

June 24, 2011

Dear Sir/Madam

The Australian Psychological Society (APS) welcomes the opportunity to make a submission to the Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010.

Australian psychologists, along with members of other health professions, are concerned about the deleterious effects of mandatory, indefinite detention on the mental health of asylum seekers and refugees.

A key goal of the APS is to actively contribute psychological knowledge for the promotion and enhancement of community wellbeing. The APS therefore takes a stand against the policies and laws which significantly harm mental health and wellbeing of those most vulnerable.

The APS has no interests or affiliations relating to the subject of the consultation and the representations submitted, other than our concern that the Australian Government be well-informed and effective in its strategies.

For further information about this submission please contact Susie Burke on

Yours sincerely,

Harry Lovelock
Senior Manager
Strategic Development and Public Interest
Australian Psychological Society

The Australian Psychological Society Ltd

Submission to the

**Migration Amendment (Detention Reform and
Procedural Fairness) Bill 2010**

The Senate

APS contact:

Susie Burke
Senior Psychologist, Public Interest

This submission was prepared for the Australian Psychological Society by Ms Emma Sampson, Ms Heather Gridley and Dr Susie Burke, with assistance from members of the APS Refugee Reference Group including, Professor Nick Haslam, Dr Dean Lusher, Dr Anne Pedersen, Ms Joan Beckworth, Dr Jeanette Shopland, Associate Professor Robert Schweitzer and Ms Amanda Gordon.

June 2011

1. Overview

The Australian Psychological Society (APS) welcomes the opportunity to make a submission to the Senate's Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010.

The APS is the premier professional association for psychologists in Australia, representing more than 20,000 members. Psychology is a discipline that systematically addresses the many facets of human experience and functioning at individual, family and societal levels. Psychology covers many highly specialised areas, but all psychologists share foundational training in human development and the constructs of healthy functioning.

The APS is in a good position to provide input into this review from a psychological perspective. For almost a decade, psychologists have been actively involved in advocating for the mental health needs and human rights of those seeking asylum in Australia. The APS, in consultation with psychologists working directly with asylum seekers, has long expressed concern regarding the impact of policies of deterrence such as mandatory detention and temporary visas on the psychological wellbeing and mental health of asylum seekers.

While the APS is not in a position to comment on the specific legal context of the bill, our response draws on the research and practice of psychologists working with asylum seekers, including those in detention.

Along with the submission, the APS draws the Committee's attention to its recent Position Statement on the psychological wellbeing of refugees and asylum seekers, a comprehensive Literature Review on psychological wellbeing of refugees resettling in Australia, and numerous submissions made to government inquiries into detention and migration reform over the past 10 years. These resources can be accessed at:

<http://www.psychology.org.au/community/public-interest/refugees/>

2. Recommendations

Based on psychological research and practice, the APS makes the following recommendations.

2.1 General recommendations

Recommendation 1: Research has shown that detention has an independent, adverse effect on mental health by exacerbating the impacts of previous traumas and is in itself an ongoing trauma. Detention has been found to be particularly harmful for children. The APS therefore recommends that immigration detention is only used as a short-term option, for as long as is needed to enable appropriate security and health clearances to be completed. Detention should not take place offshore or in remote locations. Community-based alternatives to detention should be prioritised. Children should not be detained.

Recommendation 2: That the government meet its obligations under the UN Refugee Convention and uphold the fundamental right of refugees to seek protection, by adopting a fair, efficient refugee status determination process. The right to safe haven and security are essential for psychological health.

Recommendation 3: While it is recommended that mental health services are provided to detainees, including access to appropriately trained interpreter and translation services, the APS acknowledge that the provision of effective and ethical mental health services within detention, particularly off-shore detention is severely compromised by such a harmful environment, making significant improvements in mental health for asylum seekers improbable within this context.

2.2 Recommendations in relation to the proposed amendments

Recommendation 4: Based on a significant body of research linking indefinite mandatory detention to prolonged psychological harm and a range of poor mental health outcomes, the APS strongly endorses the proposed amendment to establish the following Asylum seeker principles:

- Immigration detention that is indefinite or arbitrary is unacceptable, and must be subjected to regular review.
- Detention must only be used as a last resort.
- People in immigration detention must be treated fairly.
- The inherent dignity of a person in immigration detention must be upheld.

Recommendation 5: The APS supports the amendments facilitating judicial review of detention decision, including changes to ensure that detention is the exception not the rule, the insertion of all subsections, and the new section requiring an 'order for continued detention'.

Recommendation 6: The APS supports the proposed amendment to repeal all relevant parts within the Migration Act that refer to excised offshore places. The continuing use of Christmas Island (or any offshore detention centre) is not consistent with human rights principles and is significantly harmful to mental health. It is recommended that to prevent

further harm to mental health the Australian government should meet its international obligations by processing all asylum seekers onshore.

Recommendation 7: The APS supports recommendations made by the Commonwealth Ombudsman that immediate review and measures be taken to ensure those who have been successful in their application for refugee status be released onto the Australian mainland. Unaccompanied minors, families with children and those with pre-existing torture or trauma experiences should be processed on the Australian mainland and pending the outcome of their Refugee Assessment Status claims and security clearances, they should be placed in the community.

Recommendation 8: The ethical delivery of mental health services is seriously compromised in offshore detention centres such as Christmas Island. The APS therefore recommends that offshore detention should not be used, and the government should at least immediately address a shortage of facilities on Christmas Island so as to provide appropriate mental health, and health services for existing detainees.

Recommendation 9: Based on the evidence linking longer periods of detention with poorer mental health outcomes, the APS strongly supports the removal of indefinite or arbitrary detention.

Recommendation 10: The APS supports the introduction of the proposed specific time limits on the duration of detention, of no longer than 30 days, unless a court order outlining the reasons for continued detention is agreed to.

2.3 Recommendation in relation to alternatives to detention

Recommendation 11: Along with these amendments to the migration bill, it is recommended that alternatives to detention are explored and established. We refer Senate members to a comprehensive report by La Trobe Refugee Research Centre (2011) titled “There are alternatives: A handbook for preventing unnecessary immigration detention” and to most other countries around the world, where mandatory detention is not utilised.

3. Current context

Psychologists have expressed concern for over a decade about the detrimental impact of detention on the mental health and wellbeing of asylum seekers and refugees.

While there have been some recent changes to detention policy and law, the increase in people being detained, especially those detained for longer than 6 months and the significant number of episodes of reported self harm by detainees, means serious concerns remain. A recent report prepared by the Australian Human Rights Commission (2011) highlights the escalating impacts of detention on mental health, identifying:

- Since the policy of mandatory detention was introduced, over 15,000 people have been detained, many with traumatic experiences in their country of origin.
- As of 11 March 2011 there were 6819 people, including 1030 children, in immigration detention in Australia – 4304 on the mainland and 2515 on Christmas Island.

- More than half of those people had been detained for longer than six months, and more than 750 people had been detained for longer than a year.
- In the past year there have been six deaths in detention (five of which appear to have been the result of suicide).
- Also in the previous year there have been suicide attempts, serious self-harm incidents including lip-sewing, riots, protests, fires, break-outs and the use of force against people in detention on Christmas Island by the Australian Federal Police.

Along with a significant evidence base about the risks of detention to mental health, are several international treaties to which Australia is a party, that specify limitations on the scope of acceptable detention.

In addition, while diplomatic engagement to stop persecution and ensure a safe route for refugees seeking protection is preferable, there is broad acknowledgement that this is not always possible in practice. Given the global political and climate change contexts, there will be a continuing need to resettle refugees in Australia, and not always an accessible, safe route for those seeking asylum (i.e., not all have access to a 'queue').

Along with issues around the refugee determination process, the APS acknowledges the need for laws and policies that uphold the rights of refugees, for provision of adequate support upon resettlement, and for recognition of the potential contribution that refugee communities can make to Australian community life.

4. The mental health and wellbeing of asylum seekers and refugees

Psychologists recognise the vulnerability of people seeking asylum and the potential for mental health problems amongst refugees. A comprehensive literature review undertaken on behalf of the APS (2008) titled the *Psychological Wellbeing of Refugees Resettling in Australia* identified a range of significant impacts and outcomes of the refugee experience.

While beyond the scope of this inquiry, the review identifies:

- The significant psychosocial impact of the refugee experience, including experiences of pre-migration trauma, migration and resettlement.
- That people seeking asylum are at risk of mental health problems based on specific risk factors including loss and trauma both prior to and post arrival. Mental health problems may be expressed in various ways depending on cultural background, personal experience and reception factors.
- The important role that post-migration stressors may have on adjustment, including the experience of loss, restricted access to appropriate supports, and limited educational and employment opportunities.
- The heightened risk of mental health problems among refugees who are placed in detention, especially children.

The paper highlights, however, that positive settlement outcomes are evident when refugees are afforded adequate rights and provided with appropriate legal, settlement, mental health, education and employment supports. The presence of family was noted as having a particularly therapeutic effect on people who have survived traumatic experiences, and plays

a pivotal role in providing emotional, physical and economic support to refugees upon resettlement.

5. Impacts of mandatory detention on mental health

A recent systematic review of studies from the USA, UK and Australia investigating the impact of immigration detention on the mental health of children, adolescents and adults concluded that research consistently “supported an association between the experience of immigration detention practices and poor mental health....(finding that) detention itself (has) an independent adverse effect on mental health” (Robjant, 2009, p. 310).

Research examining the mental health of refugee claimants in immigration detention specifically, has shown the deleterious effects of detention. A thorough review of relevant psychological theory and available research findings was completed by the APS (2008), which concluded that detention is a negative socialisation experience, particularly for children and that detention exacerbates the impacts of other traumas.

Dudley (2003) estimated that the rates of suicidal behaviours among men and women in these Australian detention centres are 41 and 26 times the national average, respectively. Furthermore, male refugee claimants in detention have rates of suicidal behaviour that are 1.8 times higher than male prison rates (Dudley, 2003). Steel et al. (2004) assessed parents and children who had been held in Australian immigration detention centres for approximately two years. All of the individuals met diagnostic criteria for at least one current psychiatric disorder; 26 disorders were identified among 14 adults, and 52 disorders were identified among 20 children. Mares and Jureidini (2004) confirmed these high levels of psychological distress among adults and children in detention and noted that there was very little support and few interventions provided in those settings.

A host of other factors, including a number of policy-related variables like conflict with immigration officials, obstacles to employment and delays in processing of the refugee’s application, were associated with psychiatric distress (Silove, Sinnerbrink et al., 1999).

“The detention experience incapacitates detainees, in that it does not allow utilisation of usual coping skills, and constitutes a meaningless environment. Detainees are therefore preoccupied by time and experience extreme boredom and frustration as well as a sense of having no future. The potential for the detention environment to reactivate and exacerbate previous traumas was also raised as a theme. The authors conclude that the high incidence of hopelessness, depression and despair among detainees can be regarded as normal reactions to abnormal situations, and detention itself as an ongoing trauma”.
(Robjant, 2009, p. 309).

Children in detention

Holding children and young people in detention is particularly harmful - it accentuates developmental risks, threatens the bonds with significant caregivers, limits educational opportunities, has destructive psychological impacts and exacerbates the impacts of other traumas (APS, 2004; Thomas & Lau, 2002). These impacts were amply documented in the Human Rights Equal Opportunity Commission inquiry into Children in Immigration Detention (2004), which found alarming levels of suicidal ideation and acts of self harm amongst young

detainees; alarming levels of Major Depressive Disorder and Post Traumatic Stress Disorder amongst young detainees; diagnosis of other mental health problems, including anxiety, nightmares, bed wetting, dissociative behaviour, emotional numbing and a sense of hopelessness. Evidence also suggested that the levels of mental health care required by these young people could not be delivered effectively in a detention setting.

Also well documented and of concern are the destructive effects of detention on families; a relationship between family functioning and young people's mental health. Mare et al (2002) for example, identified that the parental role is rendered impotent while families are in detention as parents are "unable to provide adequately for their children's physical and emotional needs, in an environment where opportunities for safe play, development and education are inadequate or unavailable" (p. 96). There have also been significant concerns about the level and quality of education available to children in detention.

While recent government policy states that children will not be detained/released from detention, currently there are still 1030 children in detention.

Recommendation 1: Research has shown that detention has an independent, adverse effect on mental health by exacerbating the impacts of previous traumas and is in itself an ongoing trauma. Detention has been found to be particularly harmful for children. The APS therefore recommends that immigration detention is only used as a short-term option, for as long as is needed to enable appropriate security and health clearances to be completed. Detention should not take place offshore or in remote locations. Community-based alternatives to detention should be prioritised. Children should not be detained.

Recommendation 2: That the government meet its obligations under the UN Refugee Convention and uphold the fundamental right of refugees to seek protection, by adopting a fair, efficient refugee status determination process. The right to safe haven and security are essential for psychological health.

Providing mental health services within detention

The detention setting places many obstacles in the way of clinicians providing effective, ethical mental health services, making significant improvement in such an impoverished environment improbable. It is difficult for psychologists to assist in recovery as much of the trauma for those in detention is the uncertainty about their future – both in relation to the time in detention and future visa outcomes. Healing is unlikely while concerns about safety remain. Refugees' experiences of immigration detention have also offered compelling evidence that detention has impeded efforts to address their mental health needs, while mental health professionals have noted the challenge "to remain advocates for the civil and human rights of these detainees, while retaining the counselling role" (Gordon, 2011, p. 12).

While the Detention Health Advisory Group on which the APS is represented, has developed mental health policies and procedures in regard to the health and wellbeing of detainees, particularly around suicide and self harm issues, the implementation of these policies in practice has remained poor. For example, while training for all detention centre staff has been developed in mental health policies, not everyone with client contact has undergone this training, with "those with least understanding of issues of mental health, but who had the potential to have the most impact on client day-to-day functioning, often given truncated courses...leaving them lacking in understanding of core concepts, or without the capacity to

use the policies...” (Gordon, 2011, p. 13). Concerns have also been raised about the mental health of detention centre staff and the development of services outside existing system of state and commonwealth health and mental health services.

“The particular circumstances of immigration detainees in Australia (including prolonged detention in isolated facilities with limited access by visitors or health professionals) makes appropriate provision of care difficult. There is an ethical dilemma for clinicians wishing to provide humane care for detainees within a system which may be seen to contribute to their plight.”
(Mares, et al, 2002, p.96).

Recommendation 3: While it is recommended that mental health services are provided to detainees, including access to appropriately trained interpreter and translation services, the APS acknowledge that the provision of effective and ethical mental health services within detention, particularly off-shore detention is severely compromised by such a harmful environment, making significant improvements in mental health for asylum seekers improbable within this context.

6. Responding to the proposed amendments

6.1 Asylum seeker principles

Based on the research identified above, the APS strongly endorses the proposed amendment to establish asylum seeker principles. These principles are important as the foundation for guiding how asylum seekers are treated, especially in relation to ensuring Australia is upholding the rights and dignity of all whom seek asylum.

Endorsement of these principles is based on the significant body of research (cited above) linking detention to poor mental health, but also on more recent evidence that suggests the impacts of detention are prolonged, beyond the period of detention.

Coffey et al (2010), for example, found that along with significant psychological harm caused while in detention, psychological consequences of detention continue post-release even after the gaining of permanent residency. The severe difficulties experienced by all participants in this study included a sense of insecurity and injustice, relationship difficulties (half the participants identified that they resorted to isolating themselves), profound changes to view of self (loss of role as protector and provider for families and a more general loss of agency) and mental health symptoms such as depression, anxiety, PTSD, low quality of life and persistent and debilitating problems with concentration and memory (Coffey et al, 2010).

“Detention was experienced as a dehumanising environment characterised by confinement, deprivation, injustice, inhumanity, isolation, fractured relationships, and mounting hopelessness and demoralisation. In the post-detention period...all participants were struggling to rebuild their lives under conditions of insecurity and uncertainty. For the majority, the difficulties experienced were pervasive, disrupting the quality of their relationships and their sense of agency and worth...several years after being released from detention, most participants showed clinically significant levels of depression and symptoms of post traumatic stress disorder. The difficulties participants spoke of in their current lives appear to be a direct transposition of the kinds of harm experienced while detained. It is contended that the enduring nature of these adverse psychological effects can be understood in terms of changes to core belief systems affecting views of the self and relationships, and values about justice and humanity.”
(Coffey et al, 2010, p. 2077).

The harmful impact of detention has further implications given that most asylum seekers detained go on to be granted refugee status and live in the Australian community. While the refugee recognition rates vary according to national origin and mode of arrival (with boat arrivals resulting in higher number of permanent protection visas than air arrivals), figures show that between 70-97% of asylum seekers are subsequently found to be refugees and granted protection in Australia or elsewhere.¹

The nature of the harm caused by detention therefore compromises the capacity of refugees to benefit from opportunities ultimately afforded by permanent protection (Coffey et al, 2010), is likely to significantly impact on the settlement process and inevitably requires significant further government investment in public, health and mental health services. Those who are deported are returned with increased vulnerability (Lorek et al, 2009).

There is clearly a need for principles (such as those proposed) and significant changes to law and policy to prevent the level of harm previously experienced and documented above.

Recommendation 4: Based on a significant body of research linking indefinite mandatory detention to prolonged psychological harm and a range of poor mental health outcomes, the APS strongly endorses the proposed amendment to establish the following Asylum seeker principles:

- *Immigration detention that is indefinite or arbitrary is unacceptable, and must be subjected to regular review.*
- *Detention must only be used as a last resort.*
- *People in immigration detention must be treated fairly.*
- *The inherent dignity of a person in immigration detention must be upheld.*

¹ For example, the Human Rights Commission found that of the 2184 children who arrived without valid visas as asylum seekers from July 1999 to June 2003 and held in immigration detention centres, 92 per cent were awarded refugee status and granted TPVs. More recently, 94 per cent of all refugee status claims were granted from people arriving by boat, after initial assessments and independent merits reviews, between 2008 and 2010.

6.2 Facilitating judicial review of detention decisions

Based on the evidence cited above, the APS supports the proposed amendments to ensure that detention is the exception not the rule. Shifting the responsibility from the asylum seeker to the government (detainer) to justify both the initial and/or continued detention is consistent with human rights and mental health best practice.

In addition, detaining children (in any context) is strongly discouraged under the Convention on the Rights of the Child and is discriminatory. Any detention of children should and must be subject to periodic judicial review; this amendment would bring the act in line with international human rights conventions.

Recommendation 5: The APS supports the amendments facilitating judicial review of detention decision, including changes to ensure the detention is the exception not the rule, the insertion of all subsections, and the new section requiring an 'order for continued detention'.

6.3 Repealing excised offshore places provision

The APS has numerous concerns about asylum seekers who are detained in off-shore detention facilities, such as those on Christmas Island, including:

- The remoteness (Christmas Island - 2,600 kilometres northwest of Perth) restricts the access of mental health and other services, as well as links to community resources and networks, including a range of appropriate legal and migration assistance.
- Inequity in that asylum seekers lodging applications from Christmas Island do not have the same rights when applying for refugee status as those on mainland Australia. All asylum seekers claiming protection should have the same rights, regardless of whether they arrived by plane or boat.
- That longer processing times mean that asylum seekers are detained for long periods of time (often more than 3 months), usually while security checks are being undertaken.
- Vulnerable groups such as unaccompanied minors, children and families and those with pre-existing torture and trauma experience are at particular risk of being detained in a remote detention centre, with inadequate supports.
- The lack of availability and appropriateness of interpreters and translation services.
- Over-crowding is of particular concern currently, with numbers rising from 31 people in detention in October 2008 to 2603 by September 2010 - this significantly exceeds the detention capacity by more than 500 people. (Commonwealth Ombudsman, 2011). Over-crowding magnifies the above-mentioned concerns, particularly intensifying mental health difficulties faced within the detention environment.
- The lack of access to mental health services - while a recent Ombudsman report has identified that mental health staffing has increased and by end August 2010 comprised seven mental health nurses, four team leaders and four psychologists, the demand for services is 20 to 50 consultations a day with medications being dispensed to an additional 70 to 80 detainees (Commonwealth Ombudsman, 2011).

Regardless of the capacity of existing mental health support, the APS has concerns that the system of mandatory immigration detention of asylum seekers in a remote high security detention facility outside of the migration zone inevitably compromises the ethical delivery of

psychological services. As Davidson (2010) points out, there are concerns about the suitability of clinical expertise and assessment instruments in this context, along with the lack of suitable interpreter services or mental health services for children and young people. Suitable continuing professional development and peer supervision is also unlikely to be available for mental health professionals providing services in detention in offshore locations.

Recommendation 6: The APS supports the proposed amendment to repeal all relevant parts within the Migration Act that refer to excised offshore places. The continuing use of Christmas Island (or any offshore detention centre) is not consistent with human rights principles and is significantly harmful to mental health. It is recommended that to prevent further harm to mental health the Australian government should meet its international obligations by processing all asylum seekers onshore.

Recommendation 7: The APS supports recommendations made by the Commonwealth Ombudsman that immediate review and measures be taken to ensure those who have been successful in their application for refugee status be released onto the Australian mainland. Unaccompanied minors, families with children and those with pre-existing torture or trauma experiences should be processed on the Australian mainland and pending the outcome of their Refugee Assessment Status claims and security clearances, they should be placed in the community.

Recommendation 8: The ethical delivery of mental health services is seriously compromised in offshore detention centres such as Christmas Island. The APS therefore recommends that offshore detention should not be used, and the government should at least immediately address a shortage of facilities on Christmas Island so as to provide appropriate mental health, and health services for existing detainees.

6.4 Amendments relating to the duration of detention

Research has also accumulated demonstrating the harm associated with extended periods of detention. This research indicates that “longer periods of detention are associated with worse outcomes” (Robjant et al, 2009, p. 310).

Sultan and O’Sullivan (2001) suggest that psychological difficulties observed among detainees increased through successive stages, triggered by negative outcomes on asylum decisions, while Green and Eagar (2010) found that time in detention was significantly related to the rate of new mental health problems among detainees, finding that 40% of those held for 2 years or longer developed new mental health symptoms.

Steel et al (2006) found that those who were detained for longer than 6 months showed greater levels of traumatic distress related specifically to past detention compared to those who had been detained for shorter periods. A higher proportion of those who had been detained in excess of 6 months met diagnostic cut-offs for PTSD, depression, and moderate to severe mental health-related disability than those who had been detained for shorter periods or who had not been detained. While some initial improvement in individuals immediate post release has been observed, Steel et al (2006) noted that the harmful effects of detention remain.

This has been further validated by Coffey et al (2010), who interviewed refugees who had been detained for extended periods (three years on average) three years post-release and found that all participants were struggling to rebuild their lives in the years following release from detention, and for most the difficulties experienced were pervasive.

“The data from all sources converge in demonstrating that prolonged detention has adverse mental health and psychosocial impacts on adults, families and children. Recent studies suggest that the mental health effects may be prolonged, extending well beyond the point of release into the community.”
(Silove & Steel, 2007, p.359).

Recommendation 9: Based on the evidence linking longer periods of detention with poorer mental health outcomes, the APS strongly supports the removal of indefinite or arbitrary detention.

Recommendation 10: The APS supports the introduction of the proposed specific time limits on the duration of detention, of no longer than 30 days, unless a court order outlining the reasons for continued detention is agreed to.

7. Alternatives to detention

While it is beyond the scope of this inquiry, the key to preventing mandatory indefinite detention is to explore and implement alternatives to detention. We refer the committee to a recent publication by the Latrobe Refugee Research Centre (2011) which is a comprehensive review of alternatives to detention. The report identifies:

- that within an international context, “most countries do not use detention as the first option in the majority of cases; that a number of countries rarely resort to immigration detention, if at all; and that successful migration systems break down the population before considering management or placement options” (p.6).
- that alternatives to detention involve laws and policies that enable asylum seekers to reside in the community with freedom of movement while their claims are being assessed.
- assessment of each case is the focus of alternatives to detention and ensuring that community structures are in place to support the individual while their claims are being assessed.
- a range of benefits associated with the prevention of unnecessary detention including lower costs, higher rates of compliance, reduced wrongful detention, improved client health and welfare.

The research concludes that “with effective laws and policies, clear systems and good implementation, managing asylum seekers, refugees and irregular migrants can be achieved in the community in most instances” (p.5).

Recommendation 11: It is recommended that along with these amendments to the migration bill, alternatives to detention are explored and established. We refer Senate members to a comprehensive recent report by La Trobe Refugee Research Centre (2011) titled “There are alternatives: A handbook for preventing unnecessary immigration detention” and to most other countries around the world, where mandatory detention is not utilised.

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