

## **Education, Employment and Training Committee**

### **Examination of the Education and Care Services National Further Amendment Regulations 2023 made under the Education and Care Services National Law**

#### **Key Points**

- On 14 July 2023, the Education Ministers Meeting (the Ministerial Council, as defined in section 5(1) of the *Education and Care Services National Law* (National Law) made the *Education and Care Services National Further Amendment Regulations 2023* (the Amendment Regulations).
- The Amendment Regulations made amendments to the National Regulations to implement recommendations of the 2019 National Quality Framework (NQF) Review.
- The Amendment Regulations made amendments to the National Regulations across the following areas:
  - Emergency evacuations from and service approval process for services in multi-storey buildings;
  - Ability to apply for service waivers and temporary waivers relating to compliance with the National Quality Standard (NQS);
  - Sleep and rest requirements;
  - Gaps between the National Law and the National Principles for Child Safe Organisations;
  - The safe arrival of children travelling between an education and care service and another education or early childhood setting;
  - Swimming pools, water features and water hazards at family day care residences and venues;
  - Safety glass height requirements;
  - Currency of first aid qualifications and training;
  - Details to be included on family day care registers;
  - Assistance provided by a family day care educator assistant when transporting children;
  - Notification of circumstances that may pose a risk to the health, safety and wellbeing of children;
  - Requirements to display certain information in relation to family day care services and service premises;
  - Notification of changes to ages of children being cared for and the nature of care provided;
  - Privacy protection for personal information contained in prescribed records;
  - Determinations of the National Education and Care Services Freedom of Information Commissioner;
  - Jurisdiction-specific exemption from NQF physical environment requirements;
  - Maximum penalties for offences; and
  - Compliance directions.

#### **Background**

- The NQF establishes a national approach to the regulation, assessment and quality improvement for early childhood education and care, and outside school hours care services across Australia. Most early childhood education and care services in Queensland are regulated under the NQF.

## Overview of the *Education and Care Services National Further Amendment Regulations 2023*

- The NQF commenced on 1 January 2012 and comprises the National Law, the Education and Care Services National Regulations (National Regulations) and the NQS. The NQF sets the national benchmark for early childhood education and care and outside school hours care services in Australia.
- The National Law and National Regulations outline the legal obligations of approved providers, nominated supervisors, and educators; and explain the powers and functions of the state and territory regulatory authorities and the Australian Children's Education and Care Quality Authority (ACECQA).
- Each state and territory have a regulatory authority, which implements the functions and approvals, monitoring and compliance and quality assessment under the NQF. In Queensland, the Department of Education is the regulatory authority.
- The review of the NQF in 2019 had the aim of ensuring the NQF continues to meet its objectives and considered its ongoing effectiveness and sustainability in light of the continuing evolution of the early childhood education and care sector.
- On 6 May 2022, the Education Ministers Meeting endorsed the Final Report on the 2019 NQF Review and policy decisions in the Decision Regulation Impact Statement and other policy changes previously agreed to by Education Ministers.
- Amendments to the National Law implementing the outcomes of the 2019 NQF Review were passed by the Victorian Parliament in September 2022 as part of the *Early Childhood Legislation Amendment Act 2022*. Some amendment to the National Law commenced on 1 July 2023, with the remaining amendments commencing on 1 October 2023.
- The *Education and Care Services National Amendment Regulations 2022* implemented the 2019 NQF Review recommendations to improve the safety of children during regular transportation and commenced on 1 March 2023.
- The *Education and Care Services National Amendment Regulations 2023* implemented various recommendations of the 2019 NQF Review and commenced on 1 July 2023.
- The Amendment Regulations given effect to the remaining recommendations and policy changes of the 2019 NQF Review and amend the National Regulations across 18 areas.

### **Commencement**

- The Amendment Regulations commenced on 1 October 2023.
- Regulation 53(3), which relates to the currency period for approved first aid qualifications, takes effect on 1 April 2024.
- The Amendment Regulations will apply in all participating jurisdictions except Western Australia where corresponding amendments will be made to the *Education and Care Services National Regulations 2012 (WA)*.

### **Consultation**

- All jurisdictions have been consulted as part of the policy and drafting process for the Amendment Regulations.
- The Australasian Parliamentary Counsels' Committee was consulted on the Amendment Regulations in accordance with the Protocol on Drafting National Uniform Legislation.
- The *Education and Care Services National Further Amendment Regulations 2023* implement recommendations from the 2019 National Quality Framework Review, which involved consultation with all jurisdictions, the Australian Government, ACECQA and the general public, with an Issues Paper published in April 2019, and a Consultation Regulation Impact Statement (CRIS) released in January 2021.

### Authorising provisions

- The Amendment Regulations are made under sections 301 and 324 of the National Law. Section 221 of the National Law empowers the Ministerial Council to make regulations for general matters to support the National Law, transitional matters and specific provisions which apply to individual jurisdictions.
- The *Education and Care Services National Further Amendment Regulations 2023* were published on the New South Wales Legislation website on 21 July 2023 in accordance with section 302(1) of the National Law and Part 6A of the *Interpretation Act 1987 (NSW)*.
- In accordance with section 303 of the National Law, Queensland tabled the Amendment Regulations and related Human Rights Certificate in the Legislative Assembly on 17 October 2023.

### Regulatory impact

- It is not anticipated that the Amendment Regulations will impose additional regulatory burden on early childhood education and care services.

### Effect of the Amendment Regulations

- **Attachment 1** provides comprehensive detail on the effects of the amendments.

## **Attachment 1: Overview of amended changes**

### *1. Emergency evacuations from and service approval process for services in multi-storey buildings*

Regulation 5 inserts definitions for multi-storey building and storey into regulation 4(1). If the proposed service/Family Day Care (FDC) premises are to be located in a multi-storey building shared with other occupants, additional information must be provided in applications for service approval and for amendment of service approval where the application includes an FDC venue. Of the amended regulations:

- Regulation 6 inserts a new paragraph (ba) into regulation 25(1) to require the additional information for a centre-based service approval application;
- Regulation 8 inserts new paragraph (ia) into regulation 26(1)(n) and new sub-regulation (3) into regulation 26, to require the additional information for an FDC service approval application; and
- Regulation 10 inserts new paragraph (ia) into regulation 34(1)(f) and new sub-regulation (1A) into regulation 34, to require the additional information for applications for an amendment of a service approval under section 54 of the National Law.

The additional prescribed information relates to the number of storeys in the building and where the service premises/FDC venue will be located, along with information and ages of children to be located on each storey.

Regulation 7 substitutes 'regulation 25(1)(b)' in regulation 25A(3)(c) with 'regulation 25(1)(b), (ba),' enabling the Regulatory Authority to determine that where the purpose of an application is to change the location of that service due to exceptional circumstances, information in regulation 25(1)(ba) is not required.

Regulation 9 inserts new paragraph (c) into regulation 27, requiring the Regulatory Authority to have regard whether there is direct egress to an assembly area to allow the safe evacuation of all children for each storey on which the service is proposed to be located.

Regulation 31(2) inserts new paragraph (c) into regulation 97(1), requiring that if the service is located within a multi-storey building shared with other occupants and on a storey with no direct egress to an assembly area, the emergency and evacuation procedures under regulation 168 must cover the prescribed matters, which are aligned to best practice advice of fire safety experts.

Regulation 31(4) and (5) inserts new sub-regulation (2A) and (2B) respectively into regulation 97 to prescribe the requirements for risk assessment and related updates to the emergency and evacuation policies and procedures.

New sub-regulations (2A) and (2B) both impose a penalty of \$2200 for non-compliance.

Regulation 48(3) inserts new paragraph (ba) into regulation 116(2) requiring the approved provider of an FDC service, in conducting an assessment under sub-regulation (1) and (2), to consider whether there is direct egress to an assembly area to allow the safe evacuation of children for each storey on which the residence or venue is located.

### *2. Ability to apply for service waivers and temporary waivers relating to compliance with the National Quality Standard (NQS)*

Regulations 11 and 13 substitute regulations 41 and 44 so that applications for a service or temporary waiver may not be made for elements of the NQS for the purposes of sections 87(1) and 94, respectively, of the National Law.

Regulations 12, 14 and 67(3) omit references to elements of the NQS in regulations 42, 45 and 173, respectively, as a consequence of the substitution of regulations 41 and 44.

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### 3. *Sleep and rest requirements*

Regulation 22 revokes regulation 81, which is replaced by the new Division 1A.

Regulation 26 inserts new Division 1A into Part 4.2 of the National Regulations, which comprises new regulations 84A, 84B and 84C.

- New regulation 84A requires the approved provider, a nominated supervisor, and an FDC educator take reasonable steps to ensure the needs for sleep and rest of children are met, having regard to the ages, developmental stages and individual needs of the children, subject to a \$1100 penalty for non-compliance. The footnote of 84A(1) notes a compliance direction may be issued for a failure to comply with sub-regulation (1).
- New regulation 84B prescribes the matters that must be included in sleep and rest policies and procedures required under regulation 168(2)(a)(v), which align to best practice guidance from safe sleep experts.
- New regulation 84C(1) prescribes the requirements approved providers must meet regarding sleep and rest risk assessment including when they must be conducted and what they must consider; this is subject to a \$1100 penalty for non-compliance. The foot note at 84C(1) notes that a compliance direction may be issued for a failure to comply with sub-regulation (1).

New regulation 84C(2) prescribes the requirements that a sleep and rest risk assessment must consider, which align to best practice guidance from safe sleep experts.

New regulation 84C(3) provides that as soon as practicable after conducting a sleep and rest risk assessment, the approved provider must make any necessary updates to policies and procedures. Regulation 84C(4) requires the approved provider to keep a record of each risk assessment.

### 4. *Gaps between the National Law and the National Principles for Child Safe Organisations*

Regulation 25 inserts new sub-regulation (2) into regulation 84, expanding scope of the obligation in regulation 84 by requiring the approved provider to ensure volunteers and students who work with children at a service are advised of the existence and application of the current child protection law and any obligations that they may have under that law.

Regulation 57 substitutes regulation 149(1) to require the staff record of a centre-based service to include information about each student or volunteer, including record of their working with children check.

Regulation 63(4) substitutes regulation 168(2)(h) to provide that the policies and procedures relating to a child-safe environment must include matters relating to the promotion of a culture of child safety and wellbeing with the service; and safe use of online environments at the service.

Regulation 63(5) substitutes regulation 168(2)(o) to provide that policies and procedures relating to dealing with complaints must include matters relating to the provision of a complaint handling system at the service that is child focused; and management of a complaint that alleges a child is exhibiting harmful sexual behaviours.

### 5. *The safe arrival of children travelling between an education and care service and another education or early childhood setting*

New regulation 102AA defines **education or early childhood service** for the purposes of the new Division 6A.

New regulation 102AAB(1) provides that the safe arrival of children policies and procedures required under regulation 168(2)(gb) must set out

the procedures to be followed to ensure the safe arrival of children who travel between education and care services and other early childhood services.

New regulation 102AAB(2) provides that in preparing the safe arrival of children policies and procedures, the approved provider must consult with staff, parents and children (if applicable).

New regulation 102AAC(1) provides that an approved provider must ensure that a risk assessment is conducted for the purposes of preparing the safe arrival of children policies and procedures, subject to a penalty of \$2200 for non-compliance. The footnote: a compliance direction may be issued for a failure to comply with sub-regulation (1).

New regulation 102AAC(2) provides that a risk assessment must be conducted at least once every 12 months, and as soon as practicable after becoming aware of any circumstance that may affect the safe arrival of children travelling between education and care services.

New regulation 102AAC(3) provides that a risk assessment must identify and assess any risks that a child's travel between an education and care service may pose to the safety, health or wellbeing of the child, and specify how the identified risks will be managed and minimised.

New regulation 102AAC(4) prescribes the information that a risk assessment must consider.

New regulation 102AAC(5) provides that if a risk relating to a child's travel is identified, the approved provider must make any necessary updates to the policies and procedures as soon as practicable.

New regulation 102AAC(6) requires the approved provider to keep a record of each risk assessment conducted.

#### *6. Swimming pools, water features and water hazards at family day care residences and venues*

Regulation 49 inserts new regulations 116A, 116B and 116C.

New regulation 116A(1) requires the FDC approved provider to conduct monthly inspections of any swimming pool, water feature or other potential water hazard at each family day care residence or venue of the service, subject to a \$2200 penalty. The footnote of regulation 116A(1) states that a compliance direction may be issued for a failure to comply with regulation 116A(1).

New regulation 116A(2) provides that an inspection must identify and assess any risks that a swimming pool, water feature or other potential water hazard at a FDC may pose to the health, safety and wellbeing of children.

New regulations 116A(3) and (4) provide that the approved provider may nominate a person to conduct an inspection, other than a person who provides education and care to children or who resides at the residence or venue.

New regulation 116A(5) provides that an inspection may be conducted in person, or, subject to sub-regulations (6), remotely by means of technology. Sub-regulation (6) provides that an inspection must not be conducted remotely if the previous 2, or if 6 or more, inspections were conducted remotely in the current calendar year.

New regulations 116B(1) and 116B(2) provides that after conducting an inspection, the FDC approved provider, or the person nominated, must prepare a written report and prescribes the information that must be in the report, including details of any identified risk, any actions to be taken to rectify and to mitigate the risk before it is rectified and an estimate of the time required.

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New regulation 116B(3) provides that if an inspection is conducted by a person nominated they must provide the **inspection** report to the approved provider within 24 hours of conducting the inspection, where a risk to the health, safety and wellbeing of children has been identified; or within 7 days of conducting the inspection, where no risk has been identified.

New regulation 116B(4) provides that as soon as practicable after receiving or preparing an inspection report, the approved provider must give the inspection report to each FDC educator.

New regulation 116B(5) requires the approved provider keep a copy of the inspection report.

New regulation 116C provides that the FDC approved provider must ensure that any swimming pool at the service has a fence that complies with law of the jurisdiction. The footnote states that a compliance direction may be issued for a failure to comply with regulation 116C.

#### *7. Safety glass height requirements*

Regulation 50 of the Amendment Regulations substitutes regulation 117(1)(b) with sub-regulation (2) with the threshold that a glazed area that is accessible to children must comply with sub-regulation (2) where it is 0.75 metres or less above floor level.

#### *8. Currency of first aid qualifications and training*

Regulation 53(3) inserts new sub-regulation (4A) into regulation 136 to clarify when an approved first aid qualification is taken to be current for the purposes of regulations 136 and 153. Sub-regulation (4A) prescribes the currency periods for the different components of the required training including: cardio-pulmonary resuscitation training, any other training that makes up the first aid qualification, approved anaphylaxis management and approved emergency asthma management training.

Regulation 58(1), (3) (4) and (5) of make substitutions and insertions to regulation 153 to reflect clarification of the qualification and training currency requirements in new regulation 136(4A).

Regulation 85 inserts new Part 7.15 into the National Regulations, comprising regulation 416, which provides that new regulation 136(4A) does not apply until 1 April 2024, allowing for a transition period to ensure necessary qualifications are obtained or training is undertaken.

#### *9. Details to be included on family day care registers*

Regulation 58(2) of the Amendment Regulations inserts new paragraph (ma) into regulation 153(1), which sets out information that, for the purposes of section 269(1)(a) of the National Law, the register of FDC educators, co-ordinators and educator assistants must include. New paragraph (ma) requires additional information is captured for each FDC educator, where the FDC approved provider has approved, in writing, care for more than 7 children, or more than 4 children who are preschool age or under, in exceptional circumstances under regulation 124(5).

#### *10. Assistance provided by a family day care educator assistant when transporting children*

Regulation 56 of the Amendment Regulations inserts 'or escort' into regulation 144(4)(a) to expand the scope of an FDC educator assistant's duties, to include escorting as a means of conveying a child to a nearby school, another children's service or the child's family home.

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*11. Notification of circumstances that may pose a risk to health, safety and wellbeing of children*

Regulation 61(1) substitutes the heading to regulation 164 to reflect the substitutions.

Regulation 61(2) substitutes paragraph (b) of regulation 164(1) to provide that the FDC approved provider must require each FDC educator to notify them of any circumstance relating to a person who resides, or intends to reside, at an FDC residence that may affect whether the person is fit and proper to be in the company of children.

Regulation 61(4) substitutes paragraph (b) of regulation 164(2) to provide that an FDC educator must notify the approved provider of any circumstances relating to a person who resides, or intends to reside, at the FDC residence that may affect whether the person is fit and proper to be in the company of children.

Regulation 61(6) inserts new sub-regulations (3) and (4) into regulation 164. Sub-regulation (4) provides that a person who notifies under regulations 164(1)(b) or 164(2)(b) is not required to provide specific details that they consider may affect whether a person is fit and proper to be in the company of children. Sub-regulation (3) provides that a relevant circumstance that may affect whether a person is fit and proper, for the purposes of regulations 164(1)(b) and 164(2)(b) includes:

- the person is charged with or convicted of any of the following: an offence of a sexual nature; a violent nature; involving drugs; involving a weapon;
- rejection or revocation or suspension of the person's application/holding of any of the following: a working with vulnerable people check or registration; a working with children check or card; and
- the person is prohibited from working with children.

Regulation 70 substitutes regulation 176A. Substituted regulation 176A(1) prescribes, for the purposes of section 174A(c) of the National Law, a FDC educator in a family day care service must notify the approved provider of any circumstances arising at the FDC residence or the approved FDC venue, that may pose a risk to the health, safety and wellbeing of children.

Substituted regulation 176A(2) provides that for the purposes of substituted regulations 176A(1)(a) and (b), relevant circumstances that may pose a risk to the health, safety and wellbeing of children include:

- any renovations or other changes to the residence or venue;
- an infectious disease outbreak at the residence or venue;
- a bushfire, flood or other natural disaster that may affect the residence or venue.

*12. Requirements to display certain information in relation to family day care services and service premises*

Regulations 67(1), (2) and (4) amend regulation 173 to clarify that it applies to education and care services other than an FDC service, in line with amendments to section 172 of the National Law.

Regulation 68 inserts new regulation 173A which prescribes, for the purposes of section 172(2) of the National Law, information in respect of the matters in sections 172(2)(a)-(e) which must be displayed at an FDC service.

New regulation 173A(2) prescribes the information which the FDC approved provider must ensure is displayed for the purposes of section 172(2)(f) of the National Law.

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New regulation 173A(3) provides that the prescribed information in regulations 173A(1) and (2) must be positioned so it is clearly visible to anyone from the main entrance to each office of the FDC service.

New regulation 173A(4) prescribes that, for the purposes of section 172(2)(f) of the National Law, in addition, the approved provider of an FDC service must ensure that the following matters and information are displayed:

- the hours and days of operation;
- in relation to a FDC residence, a diagram of the area or areas that are assessed, to be suitable for ECEC to be provided to children;
- in relation to an approved FDC venue, a diagram of the venue;
- if applicable: a notice stating that a child who has been diagnosed as at risk of anaphylaxis is enrolled at the FDC; attends the FDC;
- a notice stating that there has been an occurrence of an infectious disease at the FDC residence or FDC venue.

New regulation 173A(5) provides that prescribed information in regulation 173A(4) must be positioned so that it is clearly visible to anyone from the main entrance to the FDC venue to which the information relates.

### *13. Notification of changes to ages of children being cared for and the nature of care provided*

Regulation 69 of the Amendment Regulations inserts new regulations 175(2)(ab) and (ac), prescribing for the purposes of section 174(c) of the National Law, that in addition, an approved provider must notify the Regulatory Authority, in relation to a centre-based service, of any change to the range of ages of children being educated and cared for by the service; or any change to the nature of education and care offered by the service.

### *14. Privacy protection for personal information contained in prescribed records*

Regulation 71(4) inserts new sub-regulations (4A), (4B) and (4C) into regulation 177.

- New sub-regulation (4A) provides that, before disclosing to a parent any personal information relating to a person specified in sub-regulation (4B) that is contained in a document referred to in sub-regulation (1), the approved provider must obtain the written consent of the person.
- New sub-regulation (4B) specifies the persons for the purposes of sub-regulation (4A).
- New sub-regulation (4C) provides that a person who has given their written consent under sub-regulation (4A) may withdraw their consent in writing at any time before the personal information is disclosed.

Regulation 72(2) substitutes 'sub-regulations (4) and (5)' for 'sub-regulation (4)' in regulation 178(3), providing documents referred to in sub-regulation (1) in relation to a child enrolled at the service is subject to the requirement to obtain written consent, under new sub-regulation (5), in addition to being subject to the existing requirement in sub-regulation (4).

Regulation 72(4) inserts new subsections (5), (6), (7) and (8) into regulation 178.

- New regulation 178(5) provides that before disclosing to a parent any personal information the FDC educator must obtain the written consent of the person to whom the personal information relates.
  - New regulation 178(6) specifies persons for the purposes of sub-regulation (5)
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- New regulation 178(7) provides that a person who has given written consent under regulation 178(5) may withdraw their consent in writing at any time before the personal information is disclosed.
- New regulation 178(8) clarifies that personal information has the same meaning as it has in the *Privacy Act 1988* (Cth).

Regulation 73 substitutes regulation 181(b,) providing that the approved provider must ensure information kept under the National Regulations is not divulged or communicated, to another person other than a parent of the child to whom the information relates. The information may still be divulged or communicated in accordance with regulations 181(a), (c), (d) or (e). The substitution of regulation 181(b) is intended to clarify the interaction of regulation 181(b) with regulation 177, including new sub-regulations (4A) and (4B).

Regulation 74 substitutes regulation 182(b), providing that an FDC educator must ensure information kept under the National Regulations is not divulged or communicated, to another person other than a parent of the child to whom the information relates. The information may still be divulged or communicated in accordance with regulations 182(a), (c), (d), (e) or (f). The substitution of regulation 182(b) is intended to clarify the interaction of regulation 182(b) with regulation 178, including new sub-regulations (5) and (6).

#### 15. *Determinations of the National Education and Care Services Freedom of Information Commissioner*

Regulation 77 inserts new subparagraphs (iaa) and (iab) into regulation 205(f), providing that the power of the National Education and Care Services Freedom of Information Commissioner (NECS FOIC) to make a determination under sections 8(3) and 11C(2) of the *Freedom of Information Act 1982* (FOI Act), as modified under new regulation 209(ja) of the National Regulations, cannot be delegated.

Regulation 78 inserts new paragraph (ja) into regulation 209, providing that the FOI Act applies as if a reference in sections 8(3) and 11C(2) of that act, to clarify that a determination made by the NECS FOIC is made by an instrument under State or Territory law.

#### 16. *Jurisdiction-specific exemption from NQF physical environment requirements*

Regulation 84 revokes regulation 353 to remove jurisdiction-specific exemption that applies in limited circumstances for centre-based services in Tasmania operating preschool programs in non-government schools.

Regulations 80 and 81 consequentially substitute references to revoked regulation 353 in regulations 256(3) and 257(5).

#### 17. *Maximum penalties for offences*

Regulations 15, 17, 18, 19, 20, 23, 24, 27, 28, 29, 30, 31(3), (5) and (6), 33, 34, 37, 39, 40, 41, 42, 43, 44, 45, 48, 53(1) and (2), 54, 55, 60, 61(3) and (5), 62, 67(5), 71(1), 72(1) and (3), 73(2), 74(2), 76 and 83 of the Amendment Regulations update the relevant penalty amount for various regulations to \$2200.

Regulations 21, 25(2), 30(2), 32, 35, 38, 46, 47, 51, 52, 59, 63(1), 64, 65, 66 and 75 of the Amendment Regulations update the relevant penalty amount for various regulations to \$1100.

Regulation 79 of the Amendment Regulations substitutes 'relevant fee' for 'prescribed fee' in regulation 236O(4), to accurately state that the fee is a relevant fee rather than a prescribed fee, consistent with the references in regulation 236(O)(1)-(3).

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*18. Compliance directions*

Regulation 86 amends Schedule 3 to prescribe, for the purposes of section 176 and in accordance with regulation 188, that the Regulatory Authority may issue a compliance direction where it is satisfied that a service has not complied with new regulations 84A(1), 84C(1), 97(2A), 102AAC(1), 116A(1) and 116C.

Regulation 86(1) omits revoked regulation 81(1) from Schedule 3, and regulation 86(2) substitutes the existing reference to regulation 84 in Schedule 3 to 84(1) due to the addition of new regulation 84(2).

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