

ARNECC's Responses to Questions on Notice from the Senate Economics Reference Committee Inquiry into micro-competition opportunities in the Australian economy relating to e-conveyancing

1. ***What is the budget of ARNECC?*** (Senator O'Neill)

Answer: The budget of ARNECC for the 2025/2026 financial year is \$4.5m (excluding GST). The budget is currently funded by each jurisdiction on a pro-rata basis and based upon the number of transactions processed by each jurisdiction in the previous financial year.

2. ***Can ARNECC table to the Committee the letter from the ABA to ARNECC regarding concerns with the interoperability program, following PEXA communication with the banks in late 2024?*** (Senator Smith)

Answer: The ABA emailed David Backley (ARNECC Interoperability Program Director) on 11 December 2023 advising that PEXA had written to NAB directing it not to engage in scheduled scope discussions because these discussions may involve disclosure of PEXA's intellectual property. The ABA advised that due to this letter, the ABA and banks would not be participating in discussions to resolve contested scope items. A copy of this email is attached.

3. ***Did ARNECC seek to test the ABA's response by going individually to each bank?*** (Senator Smith)

Answer: ARNECC's Interoperability Program Director conducted direct discussions with the four major banks, Westpac, CBA, ANZ and NAB in addition to the ABA. In addition, ARNECC invited the major banks (among other financial institutions) to quarterly industry panels and monthly stakeholder forums, where each had an opportunity to express their views, separately to the ABA.

4. ***During the course of today—much of which you have heard—we've tested how much intellectual property there really is in PEXA's system. And it was the access to, or the disclosure of, that intellectual property which was the grounds on which the banks withdrew. So I'm keen to test those things if you can, perhaps on notice, elaborate on some of those lines of inquiry.*** (Senator Smith)

Answer: In the Interoperability Industry Panel held on 26 March 2024, ARNECC provided industry with intellectual property guidelines to assist with consultations and facilitate the appropriate sharing of information. A copy of these guidelines is attached. We note the Committee has been provided with correspondence from PEXA to ARNECC raising intellectual property concerns as well as an excerpt from correspondence from PEXA to banks. ARNECC continued to engage with PEXA on the substance of its intellectual property claims however ultimately discussions with the banks did not progress. The current Functional Requirements Review includes an intellectual property expert as a reviewer, who is testing whether PEXA's intellectual property claims will or are likely to impact implementation of interoperability. In addition, ARNECC and PEXA have recently negotiated a way forward whereby PEXA has released the banks from their confidentiality obligations in relation to the functionality of systems requirements and the reviewer's engagement with banks is taking place on this basis.

5. ***I have a couple of quick questions, because I'm conscious of time. Firstly, the changes that were made to the Electronic Conveyancing National Law in New South Wales in 2022 mandate interoperable ELNOs, is that correct? Okay. And do they put a timeline on which ELNOs should be interoperable, or is it when the law is given assent?*** (Senator Sharma)

Answer: Amendments made to the Electronic Conveyancing National Law (ECNL) in 2022 require an ELNO to establish and maintain interoperability in accordance with the Operating Requirements (section 18A).

Version 7 of the Model Operating Requirements (MOR) was published in January 2024 and took effect in jurisdictions in March and April. Under Version 7 of the Operating Requirements, ELNOs are required to implement interoperability over three releases:

Release 1 – lodge an Interoperable Mortgage and Discharge of Mortgage by a limited group of Authorised deposit-taking Institutions (ADIs) acting on their own behalf as approved by the Registrar – on or before 31 July 2025:

Release 2 – lodge an Interoperable Mortgage and Discharge of Mortgage by any Subscriber - on or before 31 December 2025:

Release 3 – lodge all available electronic Registry Instruments and other electronic Documents required under Operating Requirement 5.2.1 as part of an Interoperable Lodgment Case by any Subscriber - on or before 31 December 2025.

Jurisdictions have waived some or all of those dates see:

[ECNL Interoperability Requirement Waivers - ARNECC](#)

[Interoperability Requirement Waiver | Registrar General](#)

6. ***Can ARNECC provide the Committee with some correspondence that fleshes out ARNECC's monitoring and assessment of ELNOs compliance with their licence conditions and operating requirements?*** (Senator O'Neill)

Answer: ARNECC, on behalf of the States and Territories, coordinates compliance and monitoring of ELNO's obligations in certain circumstances. These obligations are outlined in the Model Operating Requirements as well as in the specific Operating Requirements of each State and Territory. ELNOs are required to submit monthly and annual reporting to the Registrar of each State and Territory they have been approved to operate in, demonstrating compliance with these obligations. If an ELNO is found to be in material breach of its obligations, its approval to operate may be suspended or revoked. The list of obligations ELNOs are required to report on annually is set out under Category 3 of Schedule 3 of the Model Operating Requirements, a copy of which is attached.

Category Three – as part of the Annual Report

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
4.1	ABN and GST		No Change Certification or updated Document as required under Category One	
4.2(a) or (b)	Corporate registration	Company search not more than 30 days old		
4.2(c)	Properly empowered		No Change Certification or updated Self-Certification as required under Category One	
4.3.1	Good corporate character and reputation		Good character and reputation	
4.3.1(a)	Principals and Officers of good character		Principals and Officers of good character	
4.3.1(b)	Employees, agents and contractors of good character		Employees, agents and contractors of good character	
4.3.2	Governance		No Change Certification or updated Document and Self-Certification as required under Category One	
4.4	Financial resources	Audited financial statements and reports for the last Financial Year	Sufficient financial resources	
4.5	Technical resources		Sufficient technical resources	
4.6	Organisational resources		No Change Certification or updated Document and Self-Certification as required under Category One	
4.7.1, 4.7.2 & 4.7.3	Insurance	Certificate of currency for the insurance required under Operating Requirement 4.7.2		

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
4.7.4 & 4.7.5	Insurance		Compliance with requirements in Operating Requirements 4.7.4 & 4.7.5	
5.1	Widespread use		No Change Certification or updated Document as required under Category One	
5.2	National system and minimum Documents		No Change Certification or updated Document as required under Category One	
5.3(d)	Licences and regulatory approvals		Licences and regulatory approvals specified, obtained and current	
5.3(m)	Industry Code for e-Conveyancing Payments		No Change Certification or updated Document and Self-Certification as required under Category Two	
5.3(e)	Pricing policy		No Change Certification or updated Document as required under Category Two	
5.3(f)	Training and awareness		Training and awareness programs up to date and adequate	
5.3(g)	Law and policy compliance		Compliance with laws and policies	
5.3(l)	Business Plan		No Change Certification or updated Document as required under Category One	
5.5	Integration (if applicable)		Compliance with the requirements	
5.6.3(c)	Separation Plan (if applicable)			Compliance with the requirements

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
5.7	Interoperability Framework		Compliance with the requirements	
7	System security and integrity		ISMS: No Change Certification or updated Document as required under Category Two	ISMS Fit for Purpose
7.3.2	SOC 2 Type 2 report or other approved report		Compliance with the requirements	
7.12	Cloud Service (if applicable)		Compliance with the requirements	
7.13	Vulnerability assessment and penetration testing		Compliance with the requirements	
8	Public confidence in Titles Register		Nothing done to diminish public confidence in Titles Register	
9.1	Mitigate risk		RMF: No Change Certification or updated Document as required under Category Two	RMF Fit for Purpose
9.2	Risk of fraud or error		Use of ELN does not result in greater fraud or error	
10.1(a)	Functionality		Compliance with the requirements	
10.1(b)	Minimum system requirements: Adaptability		No Change Certification	Where a No Change Certification cannot be given, an Independent Certification as required under Category Two
10.3	Data standards		Compliance with the requirements	
11	Minimum Performance Levels		Performance to measures in Schedule 2	

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
12	Business continuity and disaster recovery		No Change Certification or updated Document as required under Category Two	Business Continuity and Disaster Recovery Management Program Fit for Purpose
13	Change management		No Change Certification or updated Document as required under Category Two	
13.3	Implementation plan		No Change Certification or updated Document as required under Category Two	
14.1, 14.2 & 14.3	Subscriber registration		Compliance with the requirements	
14.4	Subscriber insurance		No Change Certification or updated Document as required under Category Two	
14.5	Participation agreement		No Change Certification or table of material amendments to Document required under Category Two	
14.6	Subscriber training		Compliance with the requirements	
14.7	Subscriber review		No Change Certification or updated Document as required under Category Two	
15.1	General compliance		Compliance with all requirements	
15.7, 15.8 & 15.9	Non-compliance remediation	Consolidated and categorised compliance failure notifications together with remediation action plans and their outcomes		
18.2	Annual Report	Annual Report		
19.3	Information use		Compliance with restrictions	

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
21	Transition		No Change Certification or updated Document as required under Category Two	

Category Four – as the Monthly Report

Operating Requirement	Subject	Documents to be published
5	Operation of an ELN	Categorised complaints received, justified, resolved and outstanding.
11	Minimum Performance Levels	Compilation of performance against targets set out in Schedule 2.
14.2	Refusal to accept Subscriber	Complaints received, justified, resolved and outstanding.
14.6	Subscriber training	Complaints received, justified, resolved and outstanding.

Interoperability – Intellectual Property Guidelines

Why do we need these guidelines?

The Australian Registrars' National Electronic Conveyancing Council (**ARNECC**) is continuing to consult with industry stakeholders as part of its implementation of the Electronic Conveyancing National Law (**ECNL**) and to facilitate an interoperability model between Electronic Lodgment Network Operators (**ELNOs**).

These guidelines are intended to assist with consultations and aid stakeholder awareness of the intellectual property principles that may need to be considered to facilitate an effective interoperability model, and how the interoperability model has been designed with these in mind.

ARNECC encourages a good faith collaboration approach to these consultations, based on open communication and an appropriate sharing of information to enhance competition and innovation in this space. The stakeholders participating in this program represent various sectors of the property market, including competing ELNOs, conveyancers, lawyers and financial institutions.

It is important to ensure that any discussions between stakeholders in the context of this process do not inadvertently give rise to any risk of infringement of intellectual property rights.

These guidelines provide general information in relation to some relevant intellectual property matters. These guidelines are not intended to be an exhaustive guide, nor do they constitute legal advice on any particular matter. Stakeholders wishing to understand how the law applies in a particular situation should seek their own independent legal advice.

1 General principles

- Each stakeholder is **responsible** for understanding any intellectual property rights and confidential information they might have in the context of interoperability.
- Set out below are some general statements of law.
- The most relevant potential species of intellectual property in this context is copyright, which is governed by the *Copyright Act 1968* (Cth) in Australia. Copyright comes into existence automatically when a copyright “work” is created, and registration is not required.
- **Australian copyright law protects, relevantly:**
 - **literary works** (text works) such as articles, novels, reports and relevantly here, tables, forms, computer programs and compilations. In relation to compilations, the original selection and arrangement of material may be protected separately from the individual items contained in the compilation;
 - **artistic works** such as drawings, paintings, graphics, sculpture, architectural plans, plans, maps and photographs;
- Whether or not a work is protected by copyright will also depend on whether or not the human creators/ authors of the works can be identified and whether or not the work is **original** (that is, not a mere copy and the creators/ authors used a sufficient level of intellectual effort and judgement to create the work).
- **Australian copyright law does not protect:**
 - ideas, rather, it protects the way those ideas are expressed, such as in the form of original literary works including compilations and computer programs;
 - facts, information or raw data;

- names, titles, short descriptions, or anything that could be considered “de minimis”; or
- the functionality of computer programs, only the form in which it is expressed, i.e., the underlying source code.
- **Confidential Information:** for information to be considered ‘confidential’, it must have the necessary quality of confidence and not be within the public knowledge.
 - **Basic functionality requirements** which are primarily driven by the process of paper / electronic conveyancing are unlikely to amount to intellectual property or confidential information.
- Interoperability requires participants to exchange **unintelligent data** such as, a flag, a document number, or a figure determined by the type of conveyancing instrument or document.
 - For example, during the design process, an ELNO may request a new data flow to cater to a new feature it is developing (without divulging details of the functionality of the new feature). In ARNECC’s view, this would be a reconciliation of the data required and would not be a sharing of intellectual property rights or any other confidential information.
- **User interface:** to the extent the interface is determined by the nature of the conveyancing transaction, instrument or document and therefore lacks the requisite originality, it is unlikely to be protected by copyright. However any form of *original* design, colours or layout of a particular interface is likely to be protected and should not be copied. ELNOs should design the look and feel of their own interfaces from a visual design point of view.
- **Third parties:** ensure that any third party rights are considered and dealt with appropriately.

2 Do’s and Don’ts

The following guidelines should be considered by stakeholders during the consultation process:

Do	Don’t
✓ Share basic descriptions of functionality required to achieve interoperability, as driven by the requirements of electronic conveyancing	✗ Share complex business processes or information structures not required to achieve interoperability with other stakeholders
✓ Discuss and share simple unintelligible data as required to achieve interoperability, such as a flag, document number or a figure determined by the conveyancing transaction	✗ Disclose or exchange any source code underpinning an ELNO’s platform or functionality
✓ Design your own user interface independently, with reference to the functionality and features driven by eConveyancing workflows	✗ Copy any original design, style, colours, images, text, and arrangement of an ELNO’s platform interface when designing your own user interface
✓ Design your own backend technology and code to implement any functionality / features required for interoperability, based on existing observable features or functions of the eConveyancing market	✗ Decompile or reverse-engineer the source code of any other ELNO’s platform
✓ Exchange industry ideas on appropriate requirements and features for interoperability	✗ Seek to obtain commercially sensitive information from other stakeholders
✓ Seek appropriate warranties from third parties in relation to the ability to use any intellectual property	✗ Seek to obtain access to any other ELNO’s backend proprietary technology while developing your own technology
✓ Seek legal advice on intellectual property issues if you are unsure	✗ Assert any rights in relation to things which are unprotected by copyright or other forms of intellectual property

Dated: 19 March 2024

From: [REDACTED]
To: [REDACTED]
Cc: chair@arnecc.gov.au; [REDACTED]; Danusia.Cameron; [REDACTED]
Subject: RE: Interoperability - issues raised by banks
Date: Monday, 11 December 2023 8:54:11 AM
Attachments: [image004.png](#)
[image005.png](#)
[image007.png](#)
[image001.png](#)
[image002.png](#)

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Hi [REDACTED]

Thanks for your time earlier on the phone.

As discussed, NAB wrote to PEXA advising them of their intent to discuss two-line items of functionality with ARNECC/regulators only. PEXA have responded advising they do not consider it reasonable for this process to occur as it may disclose their IP. This means we cannot participate in a session with ARNECC on the two line-items of functionality.

I note PEXA have advised they will be sending correspondence to yourself and ARNECC affirming this position.

We would be grateful to have a meeting with you at your earliest convenience regarding where to from here once you've received the letter from PEXA.

As we've previously discussed, banks require certainty regarding customer equivalence under eConveyancing and interoperability, which is a key principle of interoperability determined by ARNECC. An inability to engage with ARNECC on, or work through examples of functionality, and hence scope, for the interoperability program is contrary to this principle and a significant concern for banks.

Thanks,

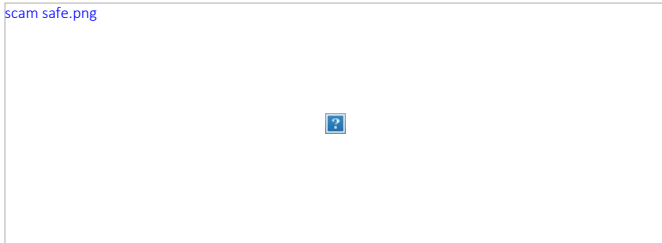
[REDACTED]
Director, Business Engagement and Policy



PO Box H218, Australia Square NSW 1215

M: [REDACTED]
E: [REDACTED] ausbanking.org.au W: ausbanking.org.au

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Australian Banking Association Limited. ABN 60 117 262 978.



The ABA acknowledges that our office sits on the traditional land of the Gadigal people of the Eora nation and that our member banks and their services are located across many traditional lands of Aboriginal and Torres Strait Islander peoples. We pay our respect to all first nation peoples and thank them for their custodianship of our country over thousands of years.

From: [REDACTED]
Sent: Thursday, December 7, 2023 10:53 AM
To: [REDACTED]
Cc: chair@arnecc.gov.au; [REDACTED]; Danusia.Cameron; [REDACTED]
Subject: RE: Interoperability - issues raised by banks
Morning [REDACTED]

Just following up on this to ensure we are ok for the 21st?

Thanks

[REDACTED]
Program Director

Interoperability Program

M: [REDACTED] E: [REDACTED] customerservice.nsw.gov.au

Working days Monday, Wednesday and Thursday

From: [REDACTED] <[REDACTED]@ausbanking.org.au>

Sent: Thursday, 30 November 2023 12:20 PM

To: [REDACTED] <[REDACTED]@customerservice.nsw.gov.au>

Cc: chair@arnecc.gov.au; [REDACTED] <[REDACTED]@ausbanking.org.au>; Danusia.Cameron <Danusia.Cameron@customerservice.nsw.gov.au>; [REDACTED] <[REDACTED]@nab.com.au>

Subject: RE: Interoperability - issues raised by banks

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Thanks [REDACTED] Are you able to advise who would be in attendance for this meeting?

As part of NAB's sign off process, they will need to know which parties will be involved as they will also need to approach PEXA to ensure they are comfortable with the bank sharing the functionality examples.

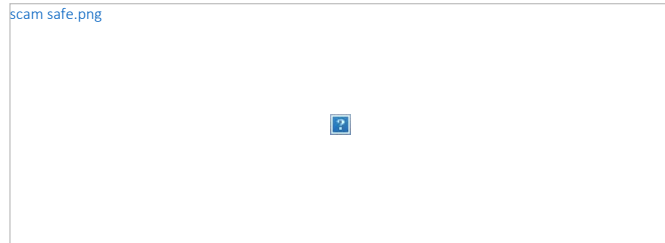
[REDACTED]
Director, Business Engagement and Policy



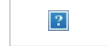
PO Box H218, Australia Square NSW 1215

M: [REDACTED]

E: [redacted]@ausbanking.org.au W: ausbanking.org.au



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From: [redacted] <[redacted]@customerservice.nsw.gov.au>
Sent: Thursday, November 30, 2023 12:18 PM
To: [redacted] <[redacted]@ausbanking.org.au>
Cc: chair@arnecc.gov.au; [redacted] <[redacted]@ausbanking.org.au>; Danusia Cameron <Danusia.Cameron@customerservice.nsw.gov.au>
Subject: RE: Interoperability - issues raised by banks

Hi [redacted]
Thanks for the follow up, the team is available December 21st between 14:00 and 17:00 we suggest 14:30 to 16:00 if that works for the NAB team.
Kind regards

[redacted]
[redacted]
Program Director

Interoperability Program

M [redacted] E [redacted]@customerservice.nsw.gov.au
Working days Monday, Wednesday and Thursday

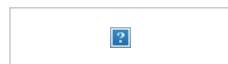
From: [redacted] <[redacted]@ausbanking.org.au>
Sent: Wednesday, 29 November 2023 10:05 AM
To: [redacted] <[redacted]@customerservice.nsw.gov.au>
Cc: chair@arnecc.gov.au; [redacted] <[redacted]@ausbanking.org.au>; Danusia Cameron <danusia.cameron@customerservice.nsw.gov.au>
Subject: RE: Interoperability - issues raised by banks

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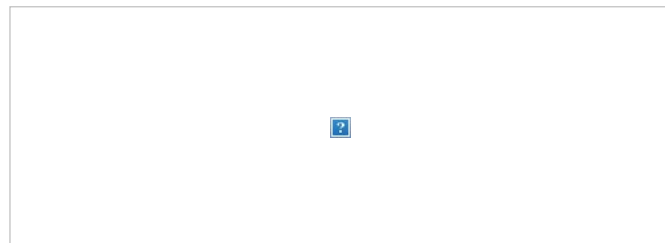
Hi [redacted]
Thanks for your time on Monday to discuss our concerns relating to the interoperability program.
Following ARNECC's offer for the project team to meet with one bank to undertake an end-to-end review of the eConveyancing process in an interoperable transaction, I can confirm that NAB has volunteered to assist with this process. NAB has identified two functionalities to test with your technical team, being 'shortfall of funds' and 'ready to book'.
NAB will need to go through its internal process to obtain approvals etc. before kicking off this work but there is opportunity for it to be done this side of the year in the week of 17 December 2023 if your team are available. Alternatively, we can schedule a time slot for the week of 21 January 2024.
Please let me know what works and I can connect you with NAB to make appropriate arrangements.

Thanks in advance

[redacted]
Director, Business Engagement and Policy



PO Box H218, Australia Square NSW 1215
M: [redacted]
E: [redacted]@ausbanking.org.au W: ausbanking.org.au



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From: ARNECCadmin <ARNECCadmin@landgate.wa.gov.au>
Sent: Tuesday, November 28, 2023 2:51 PM
To: [redacted] <[redacted]@ausbanking.org.au>
Cc: chair@arnecc.gov.au; [redacted] <[redacted]@ausbanking.org.au>; [redacted] <[redacted]@ausbanking.org.au>; [redacted] <[redacted]@customerservice.nsw.gov.au>; Danusia Cameron <danusia.cameron@customerservice.nsw.gov.au>
Subject: Interoperability - issues raised by banks

Dear Ms [REDACTED]

Thank you for your and the ABA's time yesterday afternoon; this was a very helpful discussion. It was also useful to hear the practical examples provided by NAB and Westpac.

We appreciate the need for detailed discussions with banks to ensure the interoperability reform achieves the objective of maintaining or enhancing the customer experience in keeping with the capability and experience of the ELN chosen by the customer. At the meeting yesterday, banks also noted the importance of coherence between the AusPayNet Payments Industry Code and the technical design in the interoperability reform.

I will ask the interoperability project team to convene a forum with AusPayNet, the ABA and banks to discuss these issues in more detail, and to ensure there is a way to identify and address them as the project continues towards Day 2.

One action item was for the interoperability project team to meet with one of the banks to undertake an end-to-end review of the eConveyancing process in an interoperable transaction. We understand the banks are considering this request and we look forward to these discussions.

We look forward to continuing to work with the ABA on this important reform, and thank you again for your time and the frank discussion.

Kind regards

Danusia

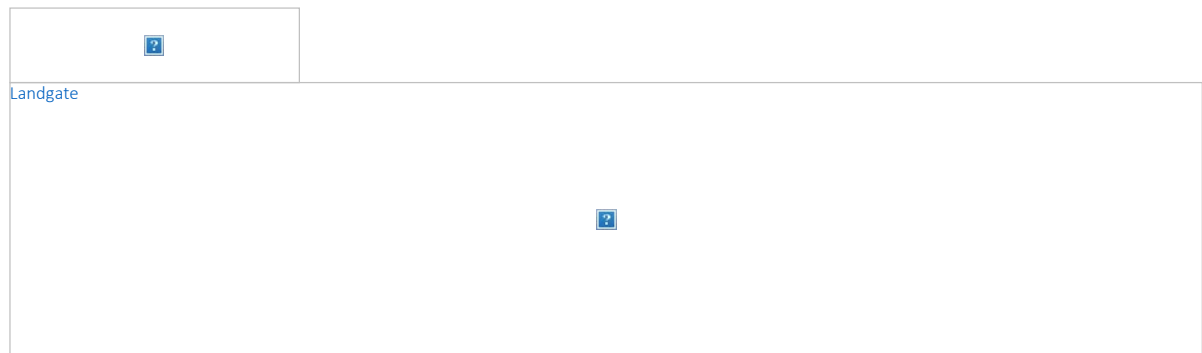
Danusia Cameron

Chair

Australian Registrars' National Electronic Conveyancing Council

m [REDACTED]

e chair@arnecc.gov.au | www.arnecc.gov.au/



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