

Inquiry into reform of South Australia's Regulatory Framework

**South Australian Productivity
Commission – Draft Report**

October 2021

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Executive Summary

The LGA's submission on the Inquiry's Issues Paper¹ advocated for the re-establishment of the State-Local Government Red Tape Taskforce (the Taskforce).

In response to the Inquiry's Draft Report, the LGA maintains this advocacy position and contends that a re-established Taskforce can be used as part of a wider system of regulatory stewardship. Through this model business regulations and regulatory reform options – implemented by and/or enforced by the local government sector – can be canvassed, researched and considered by representatives of South Australian Government agencies and the local government sector.

In this regard, a re-established Taskforce may be incorporated into one of the Commission's key draft recommendations – the establishment of a dedicated unit, located in a central South Australian Government agency, with responsibility to oversee whole-of-government regulatory strategy, regulator capability and provide expert advice on regulatory impact assessment and post implementation reviews.

The LGA also contends that a re-established Taskforce can perform the valuable functions of fostering and enhancing a regulatory culture within the local government sector which proactively searches for the regulatory pathways to facilitate beneficial and appropriate business investment and expansion opportunities.

Prior to its disbandment in 2018, the Taskforce met several times and developed a workplan of regulatory issues to investigate. Given the Taskforce was disbanded prior to its workplan having been completed, many items remain outstanding. As an initial first step, an opportunity now exists for these items to be re-examined under the auspices of a re-established Taskforce.

Identified opportunities for business regulatory reform include the following areas:

- Small / start-up business regulatory understanding and compliance.
- Business use of Crown and Community land.
- Disposal of Community Land.
- Temporary or special events.
- Live music.
- Environment Health Officers food health inspections.
- Outdoor dining.
- Small Venue Liquor Licensing.²

However, a caveat should be added to the items listed above in the Taskforce's outstanding workplan.

Consultation with various council representatives has revealed divergent views within the local government sector regarding the value in establishing local government sector regulatory consistency.

For instance, while some councils believe that greater local government sector consistency in how regulatory processes are administered, and fees charged, would reduce the regulatory complexity that businesses are required to navigate, other councils argue that differences in council regulatory processes can reflect local variances.

¹ See: https://www.lga.sa.gov.au/_data/assets/pdf_file/0028/910684/ECM_761175_v4_LGA-Submission-May-2021-Issues-Paper-Inquiry-into-reform-of-South-Australia-s-regulatory-framework.pdf

² For further details and background context on these areas of potential regulatory reform, see: LGA, Submission on South Australian Productivity Commission Issues Paper, Inquiry into reform of South Australia's regulatory framework, pp. 12-5, https://www.lga.sa.gov.au/_data/assets/pdf_file/0028/910684/ECM_761175_v4_LGA-Submission-May-2021-Issues-Paper-Inquiry-into-reform-of-South-Australia-s-regulatory-framework.pdf

In the latter case, it is argued that regulatory processes (and accompanying fees) have been designed to not only suit the local business environment, but reduce administrative costs, and ultimately the fees charged to businesses. It is argued that rarely do councils charge more than a cost recovery model for business regulatory compliance processes and operations, and so any impetus for fee-setting consistency across the local government sector could result in an increase in regulatory charges to businesses (e.g., outdoor dining permit fees, or food health inspections), rather than reductions.

In light of these findings, the LGA advises that caution should be exercised when examining cross-council regulatory inconsistencies.

Many council respondents have expressed dissatisfaction with the lack of transparency involved in the South Australian Government's Regulatory Impact Assessment (RIA) process, carried through the Cabinet Office.

Criticisms include that it is unclear when RIAs are carried out, and there is no requirement for the RIA process to involve a rigorous process of consultation with key stakeholders, including businesses and councils affected by proposed regulatory changes.

The Commission's findings, documented in the Inquiry's Draft Report, detailed how on some occasions South Australian Government "agencies' assessment procedures departed from the principles and processes developed in the *Better Regulation Handbook*" and "that completed regulatory impact assessments ... have not been published on agencies' websites, as required under the RIA framework."³

In light of these findings, the LGA maintains the advocacy position contained in its previous Inquiry submission that greater transparency and structured stakeholder consultation be made part of the South Australian Government's RIA processes and practice.

Many councils also argue that the burden of business regulatory compliance would be lessened if a form of business concierge service was established and/or an online repository of applicable business regulations were created.

In this light, and in line with the Commission's Inquiry draft recommendations, it would be of great value if a stocktake was made of applicable business regulations, and the LGA advocates for the South Australian Government to establish a state-wide business regulatory concierge service to assist small and start-up business operators navigate their regulatory compliance responsibilities.

About the LGA

The LGA is the voice of local government in South Australia, representing all 68 councils across the state and the Anangu Pitjantjatjara Yankunytjatjara.

The South Australian *Local Government Act 1999* recognises the LGA as a public authority for the purpose of promoting and advancing the interests of local government. The LGA is also recognised, and has prescribed functions, in 29 other South Australian Acts of Parliament. The LGA provides leadership, support, representation and advocacy relevant to the needs of our member councils.

The LGA is a strong advocate for policies that achieve better outcomes for councils and the communities they represent. As such, the LGA welcomes the opportunity to provide a submission on the Commission's Draft Report, which forms part of their Inquiry into reform of South Australia's regulatory framework.

³ South Australian Productivity Commission (SAPC), 'Draft Report: Inquiry into reform of South Australia's Regulatory Framework', August 2021, p. 64.

Purpose of Submission

This submission consolidates that made by the LGA in response to the Commission's Inquiry Issues Paper.⁴ In so doing, this submission provides clarification to many of the themes raised in the LGA's previous submission.

This submission does not, however, repeat all the analysis contained in the LGA's earlier Inquiry submission, and therefore the two submissions should be read in conjunction.

LGA Consultation Process

In preparation for the LGA's submission on the Inquiry's Issues Paper, the LGA Secretariat publicised details of the Commission's Inquiry through its online Latest News service and requested targeted feedback from the LGA's member councils.

The LGA Secretariat also hosted a consultative webinar with member council staff on Wednesday, 5 May 2021, featuring guest presentations and a 'Question and Answer' session from Inquiry Presiding Commissioner, Dr Matthew Butlin (Chair & CEO, South Australian Productivity Commission) and Inquiry Lead, Ms Christine Bierbaum (Deputy CEO, South Australian Productivity Commission).

In addition, several councils were individually interviewed by the LGA Secretariat based either on senior executive staff having previously served on the State-Local Government Red Tape Taskforce, or their expressed interest in business red tape reduction issues.

Subsequent to this initial round of consultation, the LGA Secretariat has consulted with the local government sector's Authorised Persons Association, comprised of council staff responsible for various regulatory compliance functions.

The LGA Secretariat also publicised details of the Commission's Inquiry Draft Report through its online Latest News service and requested member council feedback and copies of any submissions made direct to the Commission.

In addition, the LGA Secretariat also hosted a second consultative webinar with member council staff on Wednesday, 1 September 2021, featuring guest presentations and a 'Question and Answer' session from:

- Inquiry Presiding Commissioner, Dr Matthew Butlin.
- Inquiry Commissioner, Professor Christopher Finlay.
- Inquiry Commissioner, Mr Jim Hallion.
- Inquiry Lead, Ms Christine Bierbaum (Deputy CEO, South Australian Productivity Commission).

Background

The South Australian Government instructed the Commission to conduct an Inquiry into reform of South Australia's regulatory framework, in so far as it affects businesses.

In commissioning this Inquiry, the South Australian Government documented three contributing factors:

- To ensure that the state's regulatory framework remains fit-for-purpose.
- To assess the benefits of recent business regulatory reforms made in inter-state and overseas jurisdictions.

⁴ See: https://www.lga.sa.gov.au/data/assets/pdf_file/0028/910684/ECM_761175_v4_LGA-Submission-May-2021-Issues-Paper-Inquiry-into-reform-of-South-Australia-s-regulatory-frameworko.pdf

- To embed the regulatory lessons learnt from the COVID-19 pandemic.⁵

Inquiry Terms of Reference

The Terms of Reference⁶ for the Inquiry confine the Commission's investigation to the following issues:

1. Recommendations for reform which are likely to deliver investment, employment and productivity growth.
2. Recommendations to improve both regulators' conduct and performance, and the state's regulatory architecture.
3. Identification of:
 - a. regulatory overlap, duplication and inconsistencies; and
 - b. opportunities for the removal, simplification, streamlining and/or harmonisation of regulations.

For the purposes of the Inquiry, regulation is defined to include any principal legislation or statutory instruments made under an act, such as regulations, rules, by-laws or any instruments of a legislative character, that principally affect businesses. This includes state legislation and regulatory schemes which involve the local government sector but excludes national regulatory schemes (of which South Australia is part) where change requires the agreement of other jurisdictions.

The Inquiry will also assess administrative instruments that have a quasi-legislative character which impose a regulatory burden on businesses.

SA Productivity Commission Inquiry Issues Paper

The Commission released for consultation on 31 March 2021 an Issues Paper, prepared to support stakeholders and other interested parties participate in the inquiry by highlighting key issues of importance and raising questions designed to elicit feedback.

Within the Issues Paper, the Commission detailed its preference for a state-wide regulatory framework which adheres to a set of principles assisting the development and implementation of regulations which are necessary, effective and minimise unnecessary burdens on affected stakeholders.

The Commission also indicated in the Issues Paper that it intended to use the inquiry process, including analysis of inter-state and overseas regulatory systems, to recommend the adoption of better practice regulatory approaches, which includes adherence to life-cycle regulatory review and the implementation of a whole-of-government, overarching framework of regulatory oversight in which competing economic, environmental and social concerns are monitored and the processes for assessing and balancing these factors is improved over time.⁷

SA Productivity Commission Inquiry Draft Report

The Commission's Inquiry Draft Report documents the Commission's initial findings and draft recommendations – targeted at identifying “regulatory reforms to better support investment, reverse negative productivity trends and foster economic growth while protecting public interests.”⁸

⁵ These contributing factors were included in a letter from the Premier, Hon Steven Marshall MP, (dated 29 January 2021) which also contains the Inquiry's Terms of Reference. The letter is copied in: South Australian Productivity Commission (SAPC), 'Issues Paper: Inquiry into reform of South Australia's regulatory framework', 31 March 2021, Appendix 1, pp. 40-1.

⁶ See the Inquiry Terms of Reference copied in: SAPC, 'Issues Paper: Inquiry into reform of South Australia's regulatory framework', Appendix 1, pp. 40-1.

⁷ SAPC, 'Issues Paper: Inquiry into reform of South Australia's regulatory framework', pp. 9, 14-5, 18, 22-4, 27-8, 33, 38.

For further analysis of the Inquiry Issues Paper, see the LGA's submission at:

https://www.lga.sa.gov.au/_data/assets/pdf_file/0028/910684/ECM_761175_v4_LGA-Submission-May-2021-Issues-Paper-Inquiry-into-reform-of-South-Australia-s-regulatory-framework.pdf

⁸ SAPC, 'Draft Report: Inquiry into reform of South Australia's Regulatory Framework', p. 7.

Major Findings

The most prominent conclusions drawn by the Commission in the Inquiry Draft Report are:

- **Structural oversight** – “The SA Government does not currently have a full suite of statewide policies in place to guide and promote improvements in regulatory performance. Unlike some other Australian jurisdictions, there is currently no agency or minister charged with leading modernisation of the state’s regulatory system.”⁹
- **Regulator oversight** – “Significant gaps were identified, including in accountability, transparency and assessment of regulator performance; governance, policy guidance and policy capability; and across government strategy and coordination.” The Commission also observed that “performance reporting and practice improvement is highly variable across SA regulators and falls short of best practice.”
- **Policy development** – “The area in greatest need of reform in developing regulation is the policy development process, which is central to effective and efficient regulation.”
- **RegTech** – “The level of digital and technology uptake by SA regulators was observed to be lower than expected.”¹⁰
- **Business regulation register** – “The Commission found that there is no comprehensive list of SA’s business regulators or a readily accessible and complete register of all the state’s regulations.”¹¹

Draft Recommendations

In response to these findings, the Commission’s Draft Report included the following draft recommendations for the South Australian Government to implement:

- **Regulatory quality** – “Commit to an across government policy to support regulatory quality, drawing on the OECD’s better practice principles, to ensure that the economic, social and environmental benefits of regulation justify the costs and that distributional effects are considered in order to maximise the net benefits of regulation.”¹²
- **Ministerial oversight of business regulation** – “Establish a dedicated unit, located in a central agency and responsible to a minister whose responsibilities include modern regulation reform with three key accountabilities:
 1. Across government regulatory strategy, performance and priorities.
 2. Building regulator capability.
 3. Expert advice on regulatory impact assessment and post implementation reviews.”¹³
- **Accountability reforms for Regulatory Impact Assessments/Statements** – “Enhance transparency as well as Regulatory Impact Statement [RIS] capabilities through publication of RIS’s” and “subject the Regulatory Impact Assessment process to monitoring, regular evaluation and continuous improvement.”
- **Regulation review** – Enhance the functioning of the Regulation Expiry Program (REP) through the provision of guidance materials, tools, training and education, as well as improved coordination and reporting processes. “Develop an across government policy to guide the prioritisation of regulation reviews”¹⁴ and require all state-based regulators to adopt a “regulatory

⁹ SAPC, ‘Draft Report: Inquiry into reform of South Australia’s Regulatory Framework’, p. 8.

¹⁰ *Ibid.*, p. 7.

¹¹ *Ibid.*, p. 9.

¹² *Ibid.*, p. 17.

¹³ *Ibid.*, p. 21.

¹⁴ *Ibid.*, p. 19.

stewardship approach” that includes proactive management of regulation over its life cycle (including post-implementation review and evaluation).¹⁵

- **Regulator oversight** – “Establish an across government policy framework to guide measurement, monitoring and assessment of performance by regulators, in line with good practice principles”¹⁶ and “provide statements of expectations (SOE) to all state business regulators. These SOEs would include a requirement to foster economic growth and specify key performance indicators (KPI) that regulators will be assessed against.”¹⁷
- **RegTech** – “Commit to all regulators migrating to digital business-to-government data transfers and the greater use of regulatory technology (RegTech)” and “identify and fund specific priorities for investment in RegTech and digital solutions that enable: more efficient data collection from regulated entities; more efficient data sharing between regulators, including regulators in other jurisdictions where appropriate; and improved coordination between regulators.”¹⁸
- **Business regulation register** – “Create, or build on an existing, online regulation register that lists all current SA Government regulation (primary and delegated legislation) in a format that can be readily navigated and searched and information exported to enable review.”¹⁹

LGA Responses to Inquiry Draft Recommendations

Based on feedback received from member councils throughout the Inquiry process, below the LGA provides observations, commentary, and recommendations of relevance to the Commission’s Inquiry Draft Recommendations.

Re-establishment of the State-Local Government Red Tape Taskforce

The LGA’s submission on the Inquiry’s Issues Paper advocated for the re-establishment of the State-Local Government Red Tape Taskforce.

The Taskforce was established by the South Australian Government as part of the 2017 Simplify Day (on 10 August 2017), in response to the volume of issues involving local government that were identified for regulatory review. The Taskforce featured membership from metropolitan and regional councils, as well as representatives from South Australian Government agencies and the LGA. The Taskforce was provided with secretariat support from the Simpler Regulation Unit of the Department of Treasury and Finance.

The Taskforce had the overriding objective: “to identify opportunities and progress reforms that address regulatory barriers and reduce red tape to drive economic development and growth of small business in South Australia.”²⁰

In response to the Inquiry’s Draft Report, the LGA maintains this advocacy position and contends that a re-established Taskforce can be used as part of a wider system of regulatory stewardship. Through this model business regulations and regulatory reform options – implemented by and/or enforced by the local government sector – can be canvassed, researched and considered by representatives of South Australian Government agencies and the local government sector.

In this regard, a re-established Taskforce may be incorporated into one of the Commission’s key draft recommendations – the establishment of a dedicated unit, located in a central South Australian

¹⁵ SAPC, ‘Draft Report: Inquiry into reform of South Australia’s Regulatory Framework’, p. 20.

¹⁶ *Ibid.*, p. 17.

¹⁷ *Ibid.*, p. 18.

¹⁸ *Ibid.*, p. 20.

¹⁹ *Ibid.*, p. 18.

²⁰ State-Local Government Red Tape Taskforce, ‘Charter of Operations’, p. 1.

Government agency, with responsibility to oversee whole-of-government regulatory strategy, regulator capability and expert advice on regulatory impact assessment and post implementation reviews.

The LGA's submission on the Inquiry's Issues Paper argued that the state's regulatory framework is almost entirely structured by the South Australian Government and the Parliament, and therefore the LGA advocates that the re-establishment of the Taskforce be adequately resourced through South Australian Government resources.

Regarding regulatory stewardship, the Commission's Draft Report makes the following pertinent observations:

Managing the stock of regulation refers to a deliberate process aimed at ensuring that regulation remains fit for purpose, relevant, and efficiently achieves its stated objectives over time. It is much more than reducing unnecessary red tape – although that is an important element. It also requires the identification of leading practices and appropriate comparisons with existing practices, identification of reform opportunities, and capability to implement reforms. This requires leadership and long term commitment to building a culture that supports continuous improvement as well as a strategic framework to guide and prioritise improvements to the quality of the regulation stock.²¹

In the context of these observations, the LGA contends that a re-established Taskforce can perform the valuable functions of not only reviewing the local government sector's stock of business regulation, but also foster and enhance a regulatory culture within the local government sector which proactively searches for the regulatory pathways to facilitate beneficial and appropriate business investment and expansion opportunities.

Prior to its disbandment in 2018, the Taskforce met several times and developed a workplan of regulatory issues to investigate. The Taskforce workplan included identified opportunities to research, recommend, and implement reforms designed to reduce unnecessary regulations, enhance regulatory understanding (amongst key stakeholders and the public), and simplify application and compliance processes.

Given the Taskforce was disbanded prior to its workplan having been completed, many items remain outstanding. As an initial first step, an opportunity now exists for these items to be re-examined under the auspices of a re-established Taskforce.

Identified opportunities for business regulatory reform include the following areas:

- Small / start-up business regulatory understanding and compliance.
- Business use of Crown and Community land.
- Disposal of Community Land.
- Temporary or special events.
- Live music.
- Environment Health Officers food health inspections.
- Outdoor dining.
- Small Venue Liquor Licensing.²²

The impetus for these areas to be re-examined is bolstered by the recent introduction of the Planning and Design Code into the state's planning system (from 31 July 2020 in regional council areas and 19

²¹ SAPC, 'Draft Report: Inquiry into reform of South Australia's Regulatory Framework', p. 12.

²² For further details and background context on these areas of potential regulatory reform, see: LGA, Submission on South Australian Productivity Commission Issues Paper, Inquiry into reform of South Australia's regulatory framework, pp. 12-5, https://www.lga.sa.gov.au/data/assets/pdf_file/0028/910684/ECM_761175_v4_LGA-Submission-May-2021-Issues-Paper-Inquiry-into-reform-of-South-Australia-s-regulatory-framework.pdf

March 2021 in major regional and metropolitan council areas) – having replaced the planning rules previously contained in council development plans.

Caveat on cross-council regulatory consistency

A caveat should be added to the items listed above in the Taskforce's outstanding workplan. Consultation with various council representatives has revealed divergent views within the local government sector regarding the value in establishing local government sector regulatory consistency.

For instance, while some councils believe that greater local government sector consistency in how regulatory processes are administered, and fees charged, would reduce the regulatory complexity that businesses are required to navigate, other councils argue that differences in council regulatory processes can reflect local variances.

In the latter case, it is argued that regulatory processes (and accompanying fees) have been designed to not only suit the local business environment, but reduce administrative costs, and ultimately the fees charged to businesses. Members of the local government sector's Authorised Persons Association have argued, for instance, that rarely do councils charge more than a cost recovery model for business regulatory compliance processes and operations, and so any impetus for fee-setting consistency across the local government sector could result in an increase in regulatory charges to businesses (e.g., outdoor dining permit fees, or food health inspections), rather than reductions.

In this context, it is interesting to note the concerns raised through the Inquiry process from South Australian-based industry associations regarding the lack of regulatory consistency between councils.²³

In light of the considerations mentioned above, the LGA contends that caution should be exercised when examining cross-council regulatory inconsistencies.

Regulatory Impact Assessments – Process and Practice

Many council respondents have expressed dissatisfaction with the lack of transparency involved in the South Australian Government's Regulatory Impact Assessment (RIA) process, carried through the Cabinet Office.

Criticisms include that it is unclear when RIAs are carried out, and there is no requirement for the RIA process to involve a rigorous process of consultation with key stakeholders, including businesses and councils affected by proposed regulatory changes.

In the Inquiry's Draft Report, the Commission established that between January 2019 and April 2021, of 14 Cabinet submissions which met the threshold for a full Regulatory Impact Statement (RIS) assessment,²⁴ only 5 RIS assessments were undertaken. The remainder were alternatively "supported by stakeholder engagement and impact analysis methods that stand outside the formal RIS framework. ... [and included] extensive stakeholder consultation, commissioned reviews from external experts, and ... use of alternative impact assessment methods, such as taskforces comprised of government and business representatives, to determine the likely regulatory impact on businesses."²⁵

²³ See: SAPC, 'Draft Report: Inquiry into reform of South Australia's Regulatory Framework', p. 9; Business SA, Submission to the South Australian Productivity Commission's SA Regulatory Framework Inquiry, May 2021, p. 5, <https://www.sapc.sa.gov.au/inquiries/inquiries/south-australias-regulatory-framework/submissions-in-response-to-issues-paper/Business-SA.pdf>; Restaurant and Catering Australia (SA), Submission to the South Australian Productivity Commission's SA Regulatory Framework Inquiry, May 2021, p. 3, https://www.sapc.sa.gov.au/_data/assets/pdf_file/0009/391554/Restaurant-and-Catering-Australia.pdf

²⁴ As explained in the Commission's Inquiry Draft Report, RIS assessments are required to accompany any South Australian Government "proposal that introduces or amends a significant regulatory burden on the broader community, including businesses". See: SAPC, 'Draft Report: Inquiry into reform of South Australia's Regulatory Framework', p. 62.

²⁵ SAPC, 'Draft Report: Inquiry into reform of South Australia's Regulatory Framework', p. 64.

The Commission explains that data received from the Department of Premier and Cabinet indicates that “most SA Cabinet submissions proposing regulatory action received a formal RIA assessment or were backed by extensive consultation with affected sectors.”²⁶

However, despite these methods of consultation being implemented, the Commission also notes:

Given that agencies’ assessment procedures departed from the principles and processes developed in the *Better Regulation Handbook*, it is unclear to what extent Cabinet Office was able to assess, and provide effective advice to Cabinet on, the regulatory impact of the proposals. The Commission [also] notes that completed regulatory impact assessments (whether full RIS assessments or alternative approaches) have not been published on agencies’ websites, as required under the RIA framework.²⁷

In light of these findings, the LGA maintains the advocacy position contained in its earlier Inquiry submission that greater transparency and structured stakeholder consultation be made part of the South Australian Government’s RIA processes and practice.

Business Regulatory Concierge Service

In the Draft Report, the Commission “recommends that the SA Government build on the existing online regulation register to create one in a format that can be readily navigated and searched, with information able to be exported to support reviews.”²⁸

During the Inquiry consultation process, many council respondents have argued that the burden of business regulatory compliance would be lessened if a form of business concierge service was established and/or an online repository of applicable business regulations were created.

This type of business concierge service is commonly provided (often at no charge) by councils. This can include council staff walking businesses through complicated regulatory processes, such as those involved in event planning, which can include application processes involving more than one council as well as South Australian Government agencies, and involve public consultation, road closure approvals, use of council land approvals, development approvals, liquor licensing applications etc.

However, in line with the Commission’s Inquiry draft recommendations, it would be of great value if a stocktake was made of applicable business regulations. Further, the LGA advocates for the South Australian Government to establish a state-wide business regulatory concierge service to assist small and start-up business operators navigate their regulatory compliance responsibilities.

The Taskforce previously included consideration of a council proposal for the establishment of a single state-wide advisory service for small businesses that would provide a dedicated channel to manage legislative issues and promote cross-government coordination. This type of assistance would support businesses exploring innovative product or service offerings, which do not fit neatly within current regulatory categories, and would lessen business confusion, frustration, avoidance of regulatory responsibilities, and the cost to businesses of seeking expert advice.

Most significantly, the streamlining of business regulatory processes will enable businesses to focus on their operations and business planning, by reducing the amount of time spent completing necessary compliance activities.

²⁶ SAPC, ‘Draft Report: Inquiry into reform of South Australia’s Regulatory Framework’, p. 63.

²⁷ *Ibid.*, p. 64.

²⁸ *Ibid.*, p. 13.



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