

Introduction to the board member role for new board members

Legal information for community organisations



This fact sheet covers:

- role of a board member
- legal obligations of board members
- personal liability of board members, and
- what board members should know about their organisation.

As a new board member, you should understand the role of the board you sit on and your role as a member of that board. This fact sheet has been prepared to help new board members understand these roles, so they can contribute effectively to the successful running of their organisation from day one. Understanding the role of a board member is fundamental to the good governance of any organisation and ultimately, its success.

This fact sheet has been prepared so it can be used by committee members of a charity in the form of an incorporated association, or by directors of a charitable company.

This fact sheet uses the words 'board', 'board member' and 'member'. These words have been used in a generic sense to refer to and identify the decision-making body of an organisation, the people that form the decision-making body, and the group of stakeholders that the decision making body serves.

In this fact sheet we use	The equivalent name used by your organisation might be
Board	Committee, Committee of Management, Council
Board member	Committee member, Director, Councillor
Constitution	Rules, Rule Book

1. Role of a board member

There are many different roles and people involved in the running of an organisation. These people may be members, employees, volunteers, clients and customers. As a board member, it is important that you understand your role and how that role differs to the roles of other people involved in your organisation. This is because, legally, you have different relationships and legal duties to other people involved with your organisation. If you do not have an understanding of your role within your organisation and the legal relationships that exist between yourself and others, it will be difficult for you to properly perform your role as a board member.

1.1 The role of a board

The board of an organisation has an important role to play. The board is a collection of individuals (board members) that form the 'leadership group' of an organisation. The board is primarily responsible for governing, overseeing the affairs of, and making strategic decisions for an organisation and on behalf of its members.

The precise role and responsibilities of a board may vary depending on the context and circumstances of an organisation's purpose and operations. The extent and scope of a board's authority is set out in the organisation's constitution. Generally, a board will be responsible for governing and overseeing affairs of the organisation, including:

- making decisions about planning, resources, strategic direction, goals and activities of an organisation
- monitoring the performance and activities of an organisation against the organisation's legal purposes and organisation's strategic plan
- overseeing risk management for the organisation
- recruiting, overseeing and supporting the Chief Executive Officer (if an organisation has this role) to manage the organisation
- ensuring the sustainability of an organisation by monitoring the financial viability and finances of an organisation
- making decisions about whether or not to take disciplinary action against a member
- reporting to members and stakeholders, and
- ensuring an organisation operates within the law, including maintaining its charitable status if it is a charity.

In order to properly oversee the affairs of an organisation, a board should consist of board members that possess a mix of skill sets, diversity and experiences. A skills matrix can be used to identify the skills, knowledge, experience, capabilities and diversity needed for a board to meet the current and future needs of an organisation.

1.2 The role of a board member

A board member has a defined role and responsibilities that he or she must perform. Generally, a board member is responsible for contributing to the collective decision making of the board. A board member cannot make decisions for the organisation independently of other board members.

A board member is responsible for:

- understanding the business of the organisation and being aware of key developments
- attending and participating in board meetings
- being active in the organisation, such as by attending functions or events as a representative of an organisation
- attending the Annual General Meeting
- providing advice, opinions and independent judgment to inform board decisions

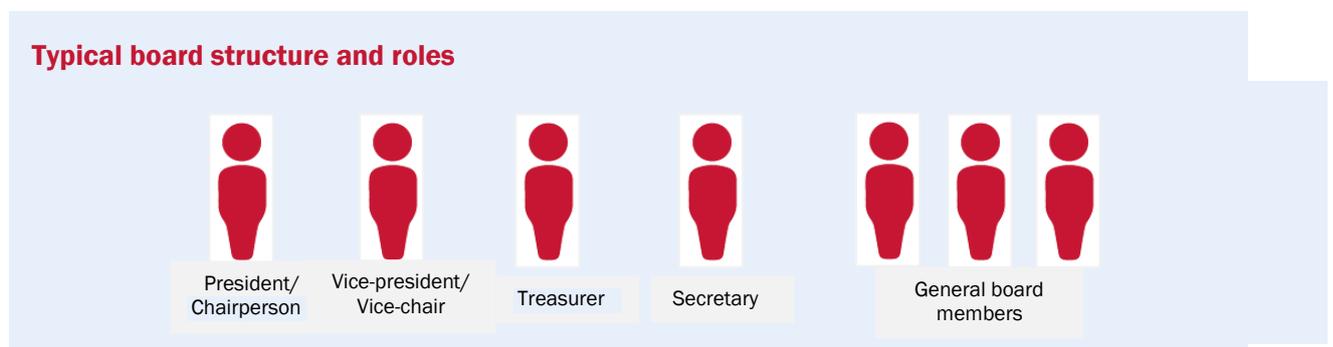
- declaring and monitoring actual or perceived conflicts of interest, and
- governing and overseeing an organisation's operations and performance.

Boards will normally have specific roles that board members will need to perform. These roles include:

- Chair/Chairperson/President – runs meetings and usually represents the organisation at public events
- Deputy chair/Vice-chair/Vice-president – takes on the role of the Chair when that person is unavailable
- Treasurer/Financial officer – deals with the financial affairs of the organisation, and
- Secretary – reports to CAV, organises meetings, deals with documents and maintains records.

The people who take on these positions are also sometimes called 'officers' or 'office bearers' of the organisation.

Each of these roles has specific responsibilities that are customarily performed by the people who hold these positions on a board. If you are required to perform a specific role on a board, you should familiarise yourself with the responsibilities of that role and ensure that you have the appropriate skills to undertake the role. Information about the responsibilities of a specific role may be found in an organisation's constitution (may also be referred to as 'rules') and related documents (such as board or committee charters or by laws), external resources (such as legislation or guides published by governance bodies) and an organisation's policies and procedures.



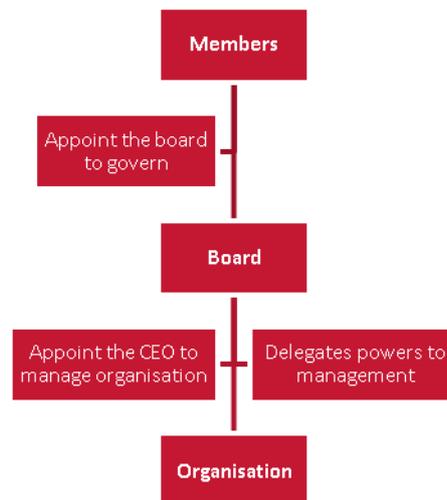
1.3 The difference between a board member's role and other roles

A board member role is a strategic position within an organisation and consequently, a board member is responsible for governing their organisation. A board member's role should not be confused with the management and operational roles of an organisation (that is, employees like an Executive Director or CEO, or other management staff). The day-to-day work of your organisation should be managed and completed by the staff and volunteers of your organisation. Unless you also hold an execution (managerial) role, it is not your responsibility to perform or be involved in the day-to-day running of your organisation.

The board may delegate certain powers to senior officers or committees of an organisation, such as the Chief Executive Officer or Chief Financial Officer. Delegating certain decision-making powers and responsibilities allows routine operational matters to be dealt with by authorised individuals, on behalf of an organisation.

'Delegations of Authority' (or documents with a similar name) will set out who within your organisation has been delegated powers and responsibilities by the board. This document should be reviewed and updated regularly and formally agreed to by the board.

The diagram below sets out the relationships between members, a board and an organisation.



2. Board member obligations

2.1 Sources of obligations

As a board member, you have a number of legal obligations or 'duties' that you must comply with and understand.

These legal obligations come from a number of sources, including:

- legislation
- common law
- organisation's constitution/rules, and
- organisation's policies.

2.2 Summary of obligations

There are four main legal duties all board members must comply with and understand and board members who breach these duties may be held personally liable (legally responsible) for their breach (see section 3 below). It is therefore essential that you properly understand your duties and obligations.

2.2.1 Duty to act in good faith and for proper purposes

The duty to act in good faith requires board members to act honestly, fairly and loyally in furthering the best interests of their organisation. This means you must place the interests of your organisation above your own when making board decisions.

Board members must also only act for proper purposes. This means when you make decisions, those decisions must be made for the purpose of benefitting your organisation.

An organisation's constitution will also set out the scope of a board's decision making powers. Under your organisation's constitution, your board may have the power to make decisions regarding certain matters, but not others. You should familiarise yourself with your organisation's constitution, to understand the power conferred on the board and ensure your board only makes decisions within the scope of this power.

2.2.2 Duty to act with care, skill and diligence

Board members are required to monitor and make decisions about the strategic direction of their organisation and also keep on top of financial affairs. For example, board members must ensure their organisation is trading while solvent (that is, will be able to pay its debts when they become due).

You must take your role seriously and give sufficient time, thought and energy to the tasks you must undertake, and decisions you are required to make as a board member. For example, you must spend time properly preparing for board meetings and commit to regularly attending those meetings.

Board members may be appointed to a board because they possess specialised knowledge or skills. In these circumstances, the knowledge and skills a board member has should be used for the benefit of an organisation and applied when making decisions. Board members are not necessarily required to have any special expertise, however all board members should have a basic level of financial literacy so they can understand the financial operations of their organisation.

The duty to be diligent requires board members to be thorough in their decision making. Diligence also requires you to keep up to date on developments in the organisation's business, to ask for more information if you need it to make a decision and to seek out skills or professional advice where necessary. While you are allowed to seek advice from experts (including multiple experts), you must still make your own independent decisions using the advice of those experts.

2.2.3 Duty not to dishonestly use position or information

Board members hold a position of power and trust within an organisation. As a board member you will have access to confidential and important information about your organisation. It is important that you do not use your position or information to gain an advantage for yourself. A board member is required to use their position, and all information they encounter because of their position, to benefit their organisation. You must not use your position, or information gained from your position, to benefit yourself, and/or harm your organisation.

2.2.4 Duty to avoid conflicts of interest

Board members have a duty to avoid conflicts of interest. However, conflicts of interest are common and having a conflict of interest is not necessarily a breach of this duty. A conflict of interest arises where a board member puts themselves in a position where he or she will prefer their own interests, or someone else's interests (such as a friend or family member) to those of their organisation. For example, if you make a decision as a board member that will result in you personally benefitting from

that decision, you will be in breach of this duty, unless you have disclosed the conflict and pursuing the conflict has been pre-approved by your organisation.

If you realise that you have a conflict of interest you must disclose that interest to the board as soon as possible and avoid taking part in board decisions that relate to your conflict of interest.

Importantly, you must record the conflict and the steps you take to avoid the risks of the conflict of interest arising. You may be able to participate in a board decision where you have a conflict of interest if you have told all of the other board members about your conflict and they have agreed that you can still participate, but the better course of action is to avoid the conflict of interest by not participating in the decision.

Your organisation will keep a register of declarations of conflicts of interest. As a board member you must ensure the register is up to date in order to properly manage any conflicts of interest that may arise.

RELATED RESOURCES

For more information about the four main legal duties, read Not-for-profit Law's Duties Guide on the Information Hub at www.nfplaw.org.au/governance.



3. Personal liability of board members

Board members are typically not personally liable (that is, legally responsible) for the debts or consequences arising from an organisation's actions or decisions.

There are some circumstances where a board member will be personally liable for their organisation's debts and/or may be subject to regulatory action. For example, a board member may be subject to penalties as a result of their own actions, and they may also be held liable for the actions of the organisation they govern, where that organisation has breached a law.

The following information highlights some of the main areas where board members may be held personally liable for the debts or actions of their organisation. Please be aware that this is not a comprehensive list.

Area of law	Description	Potential penalties
Directors' Duties	As discussed above.	Significant fines, disqualification from acting as a director of a company or (in extreme cases) a term of imprisonment. These penalties vary according to the offence and whether the person is a director of a company or incorporated association.

Employment	<p>The <i>Fair Work Act 2009</i> (Cth) (Fair Work Act) covers the rights and responsibilities of employers and employees in the workplace.</p> <p>It covers unfair dismissal, the National Employment Standards, adverse action and redundancy.</p> <p>Board members will be personally liable for breaches where they were 'involved' in that breach. A person is involved in a breach if they have aided, abetted, induced, were knowingly concerned in, or have conspired to give effect to the breach. Board members can also be personally liable for acts committed in breach of anti-discrimination legislation if they have caused, instructed, aided, permitted, authorised or assisted another person to contravene that legislation.</p>	<p>Significant fines for a breach of the Fair Work Act.</p> <p>Directors found personally liable may also be exposed to orders to pay compensation/damages.</p>
Tax	<p>Where a company fails to pay PAYG income tax instalments (eg on salary and wages paid to employees) or superannuation guarantee payments, board members may be personally liable for these amounts. Where a penalty notice is issued to a board member, they have 14 days in which to rectify the situation.</p>	<p>The PAYG withholding amounts owed by the company.</p>
	<p>Where an organisation commits a tax offence including failure to produce information or making false or misleading statements, board members of the company are deemed to have also committed that offence.</p> <p>Board members may avoid liability by demonstrating they did not aid, abet counsel or procure the act or omission of the organisation and were in no way involved.</p>	<p>Significant fines or a term of imprisonment.</p>

Superannuation	<p>Employers must pay a compulsory superannuation contribution (current rate of 9.5%) for salary or wage payments for all eligible employees. The contribution must be paid on time, in full and to the employer's chosen account.</p> <p>Where superannuation payments are underpaid, late or paid to the wrong account, the ATO will impose the superannuation guarantee charge. This includes the amounts owing, interest and administration fees. Penalties may also apply. In certain circumstances board members can be personally liable for unpaid superannuation.</p>	The superannuation guarantee charge and financial penalties imposed by the ATO.
Insolvent trading	<p>Board members must prevent their company from incurring debts where the company is insolvent, or becomes insolvent by incurring the debt(s) and at that time, there are reasonable grounds for suspecting the company is insolvent, or would become insolvent.</p>	Payment of compensation, a pecuniary penalty order, disqualification from acting as a director of a company or a term of imprisonment.
	<p>These obligations are extended, so that where a payment is made to the ATO in respect of a PAYG or superannuation guarantee charge obligation and this payment is set aside due to these insolvent trading provisions, board members can be held personally liable.</p>	The outstanding amounts in respect of the PAYG or superannuation guarantee charge.
Work/Occupational Health & Safety	<p>An organisation must, so far as is reasonably practicable, eliminate or minimise the risk of harm to the health and safety of all workers. Where this duty is breached by the organisation, due to a board member failing to take reasonable care, the board member is guilty of an offence.</p> <p>In some states and territories of Australia, directors must exercise due diligence to ensure the organisation is complying with its safety obligations.</p>	Significant fines or a term of imprisonment.
	<p>Any person involved in the management or control of the organisation must ensure that the workplace is safe and without risks to health. This is limited to matters over which they have management or control.</p>	Significant fines or a term of imprisonment.

Environmental protection	<p>The environmental protection laws of the Commonwealth and the states and territories vary significantly. Offences under Commonwealth and state laws include the emission of ozone depleting substances, leakage or spillage of harmful substances, disposal of waste without authority and actions significantly affected listed species.</p> <p>Board members can be personally liable where:</p> <ul style="list-style-type: none"> • they knew or were reckless or negligent to whether the contravention would occur • they were in a position to influence the conduct of the organisation, and • they failed to take reasonable steps to prevent the contravention. 	Significant fines or a term of imprisonment.
Cartel Conduct	<p>Cartel conduct includes price fixing, allocating territory between competitors, bid-rigging and restricting production output. A person can be personally liable if they have aided, abetted, induced, were knowingly concerned in, or have conspired to give effect to a breach of these provisions.</p>	Significant fines, disqualification from acting as a director of a company or a term of imprisonment.
Australian Consumer Law	<p>This has particular relevance to false or misleading representations and conduct, defective products and warranties and guarantees.</p> <p>Board members will be personally liable where they have attempted, have successfully carried out or have aided or abetted, a contravention of these provisions.</p> <p>They will also be liable where they have induced another to commit a contravention or have conspired or been knowingly involved in such a contravention.</p>	Significant fines, disqualification from acting as a director of a company, an action for damages or compensation orders.

DIRECTOR & OFFICER INSURANCE

There are a number of limits on a company's ability to protect directors against personal liability. Companies are prohibited from indemnifying directors from certain liabilities, including a liability owed to the company itself, liability arising under workplace health and safety legislation and certain fines and compensation orders under the *Corporations Act 2001*, the *Australian Securities and Investments Commission Act 2001* and the Australian Consumer Law, including those arising from restrictive trade practices. In addition, an organisation may not have sufficient resources to cover all of the liabilities that its directors may incur.



It is therefore very important that you consider Directors & Officers (D&O) insurance. D&O insurance policies are designed to protect company directors against personal liability, for claims that may arise out of the decisions they make while carrying out these roles. D&O insurance policies provide varying levels of cover and can be tailored to suit your needs, so it is important that you carefully consider what policy is most appropriate for your needs.

CAUTION

Be aware that D&O insurance will not cover directors under certain circumstances, including intentional breaches of the law, fraudulent or otherwise criminal activity or where the director has obtained illegal remuneration or acted for personal profit.

Companies are also prevented from paying D&O insurance premiums on behalf of directors, where the premium is paid to insure them against conduct involving a wilful breach of duty to the company, or the improper use of their position or sensitive company information. In relation to these areas of potential liability, directors should consider purchasing an additional insurance policy or personally covering the relevant portion of the insurance premium.



4. Understanding your organisation

A board member should understand the organisation he or she will be governing in order to properly discharge their directors' duties. To understand your organisation, ask yourself the following questions:

4.1 What are the organisation's purposes?

It is important to understand the stated purpose(s) of your organisation, as this will shape its short and long-term goals and the strategy for achieving them. As a board member you must govern your organisation in line with its purpose and always keep in mind the reason for which it exists. To find information about your organisation's purposes, you should read its constitution and other strategic documents such as business plans, strategic goals or vision statements.

4.2 What is the organisation's legal structure?

A number of different legal structures are used within the not-for-profit sector, including companies limited by guarantee, incorporated associations and trusts. Generally speaking, the obligations attached to your role as a board member are consistent across these structures. However, each of these structures brings different benefits and challenges, such as: where the organisation may operate, the cost of these operations and information reporting requirements. You may wish to change the structure of the organisation as it develops, however this can be a costly exercise.

4.3 Is the organisation a charity?

Your organisation will need to be registered as a charity with the Australian Charities and Not-For-Profits Commission (**ACNC**) in order to be eligible for Commonwealth grants and charity tax concessions from the Australian Taxation Office (**ATO**). Where your organisation is a company limited by guarantee and is registered with the ACNC as a charity, it will report to the ACNC rather than the

Australian Securities and Investments Commission (**ASIC**). This means your organisation will no longer be subject to annual ASIC filing fees and will have fewer reporting obligations.

4.4 Can your organisation access tax concessions?

Once an organisation is registered with the ACNC, it can apply for a number of tax concessions including an income tax exemption, GST concessions and fringe benefits tax rebates. Registration with the ACNC will also mean that the organisation will be subject to annual reporting and filing requirements.

Some charities, if they meet strict legislative requirements, can also obtain deductible gift recipient (DGR) status, meaning that donations to your organisation can be claimed by the donor as an income tax deduction. To obtain DGR status, an entity must be endorsed by the ATO and may also need to get approval from other government departments. The process of obtaining DGR status is complex and professional advice and support may be required.

To learn more about these concessions, visit the ACNC [website](#) and Not-for-profit Law's tax page on the Information Hub at www.nfplaw.org.au/tax.

4.5 Who are the organisation's members?

As a board member you need to understand the demographics of your organisation's members. This will help you to determine which member benefits and events are the most appropriate to offer. This will also assist you to determine which mediums of communication are most appropriate for engaging with your members, including Annual General Meetings, newsletters, email updates and social media.

4.6 Who is the organisation's staff?

The board of an organisation will typically deal only with high-level matters, rather than the day to day running of the business. As such, the board must be able to rely on paid workers and volunteers to successfully implement the organisation's business plan, without the need to closely oversee the performance of day to day activities required to fulfil the business plan. To be confident in your workforce you need to understand its strengths, as well as being aware of any skill deficiencies that may need to be addressed.

4.7 What is the composition of the board?

To be effective, a board needs the right group of people with the right set of skills (eg financial literacy, Not-For-Profit/philanthropic experience, industry or management experience and of course passion for the cause). It will be important to understand where the board's strengths and weaknesses lie in these areas.

This skills matrix will be particularly important in larger and growing organisations which seek to share the workload among directors and streamline board functions through sub-committees. Common sub-committees include:

- nomination or human resources committees
- audit and risk committee, and

- fundraising committee.

4.8 Who are other important stakeholders?

Other key individuals and entities that may be concerned with the organisation include customers, volunteers, organisations with a similar purpose, funders and regulatory bodies such as the ACNC, ASIC and the ATO. Stakeholders may have competing interests which need to be managed effectively in order to ensure that an organisation continues to run smoothly.

4.9 Where does funding come from?

Each organisation's source(s) of funding can vary significantly, depending on the size and purpose of the organisation. Common sources of funding include:

- donations from the public
- bequests from a deceased estate
- fundraising from public activities
- membership fees
- corporate sponsorship, and
- government grants.

It is very common that grants, bequests and sponsorships are made for a specific purpose. You should familiarise yourself with all obligations or conditions which attach to these funding arrangements.

4.10 What are the key contracts?

Where your organisation has ongoing contracts that are central to its activities, as a board member it is important that you are aware of the main risks and obligations attached to these contracts.

Depending on the size of the organisation, board members may be required to sign high value or high risk contracts it enters into. Whether this is required, is something to be determined by the board.

The board should receive regular updates at its meetings regarding any changes to the key contracts of the organisation, as this may substantially affect its funding and its ability to engage in its ordinary activities.

4.11 What are the organisation's key risks?

As board members you need to manage the risks to your organisation. It is critical that you put in place the correct risk management governance structures such as a risk management sub-committee, designated risk management employees and regular risk assessments to be presented to the board. This will assist the board and your organisation to properly manage and mitigate the risks to your organisation.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub at www.nfplaw.org.au contains many resources on different topics. The following topics contain relevant further information:

➤ Running the organisation – www.nfplaw.org.au/runningtheorg

This section of the Information Hub features resources on positions in companies limited by guarantee and incorporated associations, governance, rules or constitutions, holding meetings and keeping documents and records.

➤ The people involved – www.nfplaw.org.au/people

Check out this section for further information on the people involved in not-for-profit organisations, including employees, volunteers, clients and members.

➤ Tax – www.nfplaw.org.au/tax

Visit the tax page to learn more about tax concessions.

➤ ACNC Governance Standards Guidance – www.nfplaw.org.au/governance

This guide sets out a minimum standard of governance, to help protect public trust and confidence in charities.

Australian Charities and Not-for-profits Commission (ACNC)

➤ ACNC's Governance for Good Guide – www.acnc.gov.au

This [guide](#) provides an overview of the responsibilities of board members of registered charities.

Legislation

➤ Directors' duties and insolvent trading

Depending on the legal structure of the organisation and the jurisdiction in which it was formed, state and Commonwealth legislation will impose certain obligations on an organisation and its directors.

See for example:

- [Corporations Act 2001 \(Cth\)](#)
- [Associations Incorporation Reform Act 2012 \(Vic\)](#)
- [Associations Incorporation Act 2009 \(NSW\)](#)
- [Associations Incorporation Act 1981 \(Old\)](#)
- [Associations Incorporation Act 2015 \(WA\)](#)
- [Associations Incorporation Act 1985 \(SA\)](#)
- [Associations Act \(NT\)](#)
- [Associations Incorporation Act 1991 \(ACT\)](#)
- [Associations Incorporation Act 1964 \(Tas\)](#)

➤ Employment law

[Fair Work Act 2009 \(Cth\)](#) covers the rights and responsibilities of employers and employees in the workplace.

▀ Occupational Health & Safety

Each state and territory has its own legislation governing workplace safety, which place obligations of employees and employers alike to maintain a hazard-free workplace. See for example:

- [Occupational Health and Safety Act 2004 \(Vic\)](#)

▀ Environmental protection

There are a large number of environmental protection laws that operate at both a state and Commonwealth level. See for example:

- [Environmental Protection and Biodiversity Conservation Act 1999 \(Cth\)](#)
- [Environmental Protection Act 1970 \(Vic\)](#)

▀ Tax and superannuation

The imposition, regulation and administration of certain Commonwealth taxes are covered in the following pieces of legislation:

- [Taxation Administration Act 1953 \(Cth\)](#)
- [Income Tax Assessment Act 1997 \(Cth\)](#)
- [Superannuation Act 1976 \(Cth\)](#)

▀ Competition law

This law regulates organisations' conduct in order to promote a competitive market through the following legislation:

- [Competition and Consumer Act 2010 \(Cth\)](#)

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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