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Robyn Webb  
Chief Parliamentary Counsel  
Dated 7 September 2021



TASMANIA

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## **SUPREME COURT ACT 1959**

**No. 41 of 1959**

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**SCHEDULE 1 – ENACTMENTS REPEALED**



## **SUPREME COURT ACT 1959**

**No. 41 of 1959**

**An Act to revive the office of the Master of the Supreme Court, to rename that office as the office of Associate Judge and to consolidate and amend certain enactments relating to the Supreme Court**

**[Royal Assent 30 November 1959]**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **PART I – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Supreme Court Act 1959*.

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Part I – Preliminary

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**2. Repeals**

The enactments that are specified in Schedule 1 are repealed.

**3. Interpretation**

In this Act, unless the contrary intention appears –

*Associate Judge* means the Master and Keeper of the Records mentioned in the Charter of Justice and includes an Acting Associate Judge;

*barrister* means a barrister within the meaning of the *Legal Profession Act 2007*;

*Charter of Justice* means the Charter of Justice granted by the letters patent of King William IV, dated 4 March 1831, constituting the Supreme Court of Van Diemen’s Land;

*Court* means the Supreme Court;

*Registrar* means the Registrar mentioned in the Charter of Justice;

*Secretary* means the Secretary of the Department;

*spouse* includes the person with whom a person is, or was at the time of his or her death, in a significant relationship, within the meaning of the *Relationships Act 2003*;

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**PART II – ASSOCIATE JUDGE OF THE SUPREME COURT**

**4. Appointment of Associate Judge**

- (1) The Governor may appoint a person to be the Associate Judge.
- (2) A person is eligible for appointment to the office of Associate Judge if the person –
  - (a) is an Australian lawyer of no less than 10 years' standing who has attained the age of 35 years; or
  - (b) is, or has been, a judge of –
    - (i) the Federal Court of Australia; or
    - (ii) the Family Court of Australia; or
    - (iii) the Supreme Court of another State or a Territory; or
    - (iv) the High Court of New Zealand; or
    - (v) the Supreme Court of New Zealand; or
  - (c) is, or has been, appointed as a magistrate under the *Magistrates Court Act 1987*.
- (3) An appointment of a person as Associate Judge under this Act, as in force before the commencement of the *Supreme Court Amendment (Judges) Act 2016*, is not invalid by

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reason only that the person did not hold the qualifications required under this Act as in force at the time of the appointment.

- (3A) An appointment of a person as Associate Judge in respect of which subsection (3) applies, is deemed for the purposes of any Act –
- (a) to have been validly made on the relevant day; and
  - (b) to have always been validly made on the relevant day; and
  - (c) to have been validly made before the person served as, or performed or exercised a function, duty or power of, Associate Judge under any Act –

and no action taken or omitted to be taken by the person after such an appointment is invalid by reason only that, at the time when the action was taken or omitted to be taken, this section was not in force.

- (4) After 30 September 1996, the Associate Judge is to be paid a salary at the rate of 85% of the salary payable to a puisne judge of the Court.
- (4A) Notwithstanding subsection (4), the Associate Judge may elect, in writing to the Secretary, at any time but not more than once in a period of one year, that the salary determined in accordance with this section may be provided –
- (a) in part by the payment of salary to the Associate Judge; and

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- (b) in part by the payment of employer superannuation contributions to an RSA or a complying superannuation scheme, which may include the accumulation scheme.
- (4B) If the Associate Judge elects to sacrifice some or all of his or her salary in accordance with subsection (4A) –
  - (a) the election has effect from the date of the election or from a later date specified in the election for that purpose; and
  - (b) the Associate Judge is taken, for any purpose related to superannuation, to have received the salary determined in accordance with subsection (4), notwithstanding the salary sacrifice.
- (5) In addition to the salary payable under this Act, the Associate Judge is entitled to be paid any travelling allowances and other allowances as the Governor determines and, until the Governor makes a determination under this subsection, is entitled to be paid the same travelling allowances and other allowances as are applicable to the Head of a State Service Agency.
- (6) The Associate Judge is entitled to be paid out of the Public Account.
- (7) Any allowance payable to the Associate Judge under this Act is to be paid out of the Public Account.

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- (8) The Public Account is appropriated to the extent necessary for the purposes of subsections (7) and (8).

**4AA. Superannuation entitlements of Associate Judge appointed after 1 July 1999**

- (1) This section applies only in respect of a person appointed as Associate Judge after 1 July 1999.
- (2) A person who is appointed as Associate Judge after 1 July 1999 is an employee for the purposes of the *Public Sector Superannuation Reform Act 2016*.
- (3 - 7) . . . . .
- (8) For the purpose of subsection (1), it is immaterial that, if the appointment referred to in that subsection was made after 1 July 1999 but before the commencement of the *Supreme Court Amendment Act 2007*, the appointment as Associate Judge would have referred to the former style of that office: Master.

4AB - 4AC. . . . .

**4A. Power to appoint Acting Associate Judge**

- (1) If the Associate Judge is, for any reason, unable to perform his or her duties or functions, either generally or in respect of a particular matter or class of matters, the Governor, on the recommendation of the Chief Justice, may

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appoint a person who is eligible under subsection (1A) to be the Acting Associate Judge for such a period, or until the happening of such an event, as the Governor may specify in the instrument of appointment.

- (1A) A person is eligible for appointment to the office of Acting Associate Judge if the person is eligible for the office of Associate Judge.
- (2) Without limiting the generality of subsection (1), a reference to reason in that subsection includes a reference to illness, leave of absence, temporary absence from Tasmania, or disqualification.
- (2A) Subject to subsection (2B), the Acting Associate Judge may—
  - (a) continue to maintain a legal practice and receive a share of the profits of the practice; or
  - (b) continue to maintain chambers as a barrister.
- (2B) The Acting Associate Judge may not actively engage in the practice of a barrister or Australian legal practitioner.
- (2C) Section 5E does not apply to the Acting Associate Judge.
- (3) Except as otherwise provided by the Rules of Court –

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- (a) an Acting Associate Judge may perform any of the functions and exercise any of the powers conferred by any enactment or otherwise on the Associate Judge;
- (b) any act or thing done by, or before, an Acting Associate Judge has the same force and effect as if it were done by, or before, the Associate Judge; and
- (c) the provisions of this Part extend to, and in relation to, a person appointed as Acting Associate Judge under subsection (1).

**5. Tenure of office and terms of appointment of Associate Judge**

- (1) Subject to this Act, a person appointed as Associate Judge holds office during good behaviour on such terms and conditions and with such immunities as apply from time to time to puisne judges of the Court.
- (2) A person is not eligible to be appointed, or to hold office, as Associate Judge otherwise than in an acting capacity after attaining the age of 75 years.

5A - 5B. . . . .

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**5C. Resignation of Associate Judge**

The Associate Judge may resign office by signed notice in writing delivered to the Governor.

**5D. Suspension or removal of Associate Judge from office**

The Associate Judge may only be suspended or removed from office by the Governor on an address from both Houses of Parliament seeking such suspension or removal on the ground of misbehaviour or incapacity.

**5E. Associate Judge not to engage in private practice, &c.**

- (1) The Associate Judge must not, except for the purposes of performing the functions of that office, practise any profession or engage in other employment.
- (2) However, subsection (1) does not preclude the Associate Judge from –
  - (a) holding any office that, by or under an enactment, is to be or may be held by the holder of the office of Associate Judge; or
  - (b) holding any office or engaging in any employment with the express written permission of the Attorney-General.

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**5F. Rights of State Service officer or employee appointed as Associate Judge**

- (1) The Associate Judge is not, as regards that particular office, subject to the provisions of the *State Service Act 2000*.
- (2) However, if a person appointed as Associate Judge was a State Service officer or State Service employee immediately before that appointment –
  - (a) the person retains all of his or her existing and accruing rights; and
  - (b) for the purposes of determining those rights, the person's service as Associate Judge is to be taken into account as if it were service as a State Service officer or State Service employee.

**5G. Assistance for the Associate Judge**

On being requested by the Associate Judge to do so, the Registrar may provide the services of such employees employed in the Supreme Court and Sheriff's Department as the Registrar considers may reasonably be necessary to help the Associate Judge perform the duties of that office.

**5H. Associate Judge may act as magistrate**

In addition to his or her duties as Associate Judge, the person appointed to that office may

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exercise all the functions, powers, and authority  
of a magistrate.

5HA. . . . .

**5HB. Transitional office holder provision**

To avoid doubt –

- (a) the person who held the office of Master of the Supreme Court immediately before the commencement of the *Supreme Court Amendment Act 2007* continues to hold that office on and after that commencement, under and subject to the *Supreme Court Act 1959* and on the same terms and conditions of appointment, under its new title of “Associate Judge”; and
- (b) a person who held appointment as Acting Master of the Supreme Court immediately before the commencement of the *Supreme Court Amendment Act 2007* continues to hold that appointment on and after that commencement, under and subject to the *Supreme Court Act 1959* and on the same terms and conditions of appointment, under the new title of “Acting Associate Judge”.

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**PART IIA – REGISTRAR OF THE SUPREME COURT**

**5J. Registrar and Deputy Registrar**

- (1) Subject to and in accordance with Part 6 of the *State Service Act 2000*, a person may be appointed to be the Registrar of the Supreme Court.
- (2) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed as Deputy Registrar of the Supreme Court and Assistant Deputy Registrar of the Supreme Court.

**5K. Deputies acting in place of Registrar**

Subject to the Rules of Court, the Deputy Registrar or the Assistant Deputy Registrar may exercise any of the functions conferred by any enactment or otherwise on the Registrar, and any act or thing done by or before the Deputy Registrar or the Assistant Deputy Registrar has the same force and effect as if it were done by or before the Registrar.

**5L. Functions of Registrar in other offices**

- (1) Where the person who holds office as Registrar also holds an office to which this section applies, the Deputy Registrar or the Assistant Deputy Registrar appointed pursuant to this Act may act as, and exercise any of the functions conferred on, the holder of that office, and any act or thing done by or before the Deputy Registrar or the

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Assistant Deputy Registrar so acting has the same force and effect as if it were done by or before the person holding that office.

- (2) This section applies to the offices of –
- (a) Registrar of Building Societies;
  - (b) Registrar of Business Names;
  - (c) Registrar of Friendly Societies; and
  - (d) Registrar under the *Trades Unions Act 1889* –

and to any other office declared by the Governor by order to be an office to which this section applies.

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Part III – Miscellaneous

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**PART III – MISCELLANEOUS**

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**7. Postponement of sittings**

- (1) If from any cause a judge does not open the session or sittings appointed to be held at any place on the day appointed therefor, that session or sittings shall be opened and holden either by the same or some other judge as soon afterwards as is practicable.
- (2) If in any case the judges or any one of them are or is of opinion that the matters requiring to be dealt with at any session or sittings appointed to be held at any place are not of sufficient number or importance to justify the holding of that session or sittings, or that for any other reason it is desirable so to do, they or he may, by order in writing, postpone that session or sittings to some later date specified in the order, or may direct that those matters shall be dealt with at some subsequent session or sittings to be holden at the same place.
- (3) Where the trial of a person has been postponed under subsection (2) that person shall be deemed to have been remanded to stand his trial at the time fixed by the order of postponement, and any bond or recognizance entered into for the appearance of that person to stand his trial shall be construed as enlarged accordingly.

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**8. Seals of the Court**

- (1) In addition to the seal of the Supreme Court under the Charter of Justice, the Court shall have and use, as occasion may require, such other seals as are recommended by the Chief Justice and approved by the Attorney-General.
- (2) The judges, or a majority of them, may make Rules of Court providing for and regulating the custody and use of any seal approved under subsection (1) and the purposes for, and occasions on which, any such seal may be used.

**9. Custody, disposal, &c., of records**

The judges, or a majority of them, may make Rules of Court providing for and regulating the custody, preservation, or disposal of –

- (a) all or any records, or portions of records, of the Supreme Court or of its proceedings or of any special jurisdiction of the Court (including records relating to the exercise of any Federal jurisdiction or any jurisdiction under any Commonwealth Act); and
- (b) any documents filed or deposited in connection with any such proceedings or the exercise of any such jurisdiction or under any law of this State or of the Commonwealth –

whether or not the person to be entrusted for the time being or from time to time with the custody

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of any such records or documents is an officer in the service of this State or of the Commonwealth or otherwise.

**10. Taxing officers**

- (1) The Registrar, the Deputy Registrar, the Assistant Deputy Registrar, and the District Registrars shall be taxing officers of the Court.
- (2) The work of the taxing officers shall be divided between them as the Registrar directs.

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**SCHEDULE 1 – ENACTMENTS REPEALED**

Section 2

Enactments Repealed		
<b>Year and number of Act</b>	<b>Short title</b>	<b>Extent of repeal</b>
2 Will. IV No. 1	<i>Supreme Court Act 1831</i>	The whole Act.
7 Vict. No. 10	<i>Supreme Court Act 1844</i>	The whole Act.
21 Vict. No. 12	<i>Supreme Court Act 1857</i>	The whole Act.
50 Vict. No. 36	<i>Supreme Court Act 1887</i>	Sections 7, 8, and 10

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**NOTES**

The foregoing text of the *Supreme Court Act 1959* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 6 September 2021 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Statute Law Revision Act 1958</i>	No. 36 of 1958	24.7.1958
<i>Supreme Court Act 1959</i>	No. 41 of 1959	30.11.1959
<i>Supreme Court Act 1965</i>	No. 44 of 1965	3.12.1965
<i>Supreme Court Act 1974</i>	No. 92 of 1974	1.1.1975
<i>Statutory Salaries Act 1975</i>	No. 15 of 1975	15.5.1975
<i>Supreme Court Amendment Act 1979</i>	No. 48 of 1979	5.12.1979
<i>Retirement Benefits Act 1982</i>	No. 10 of 1982	1.7.1982
<i>Supreme Court Civil Procedure Amendment Act 1982</i>	No. 34 of 1982	28.10.1982
<i>Retirement Benefits Act 1982</i>	No. 10 of 1982	1.7.1983
<i>Tasmanian State Service (Miscellaneous Amendments) Act 1984</i>	No. 29 of 1984	1.12.1985
<i>Supreme Court Amendment Act (No.2) 1984</i>	No. 102 of 1984	12.12.1984
<i>Statute Law Revision Act 1985</i>	No. 51 of 1985	6.6.1985
<i>Supreme Court Amendment Act 1993</i>	No. 75 of 1993	23.11.1993
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Statutory Salaries Act (Repeal) Act 1996</i>	No. 45 of 1996	26.6.1995
<i>Judges' Contributory Pensions Amendment Act 1995</i>	No. 19 of 1995	24.7.1995
<i>Magistrates Court (Civil Division) Act 1992</i>	No. 27 of 1992	30.3.1998
<i>Superannuation (Parliament, Judiciary and Statutory Legal Officers) Reform Act 1999</i>	No. 91 of 1999	15.12.1999
<i>Superannuation (Miscellaneous and Consequential Amendments) Act 2000</i>	No. 103 of 2000	13.12.2000
<i>State Service (Consequential and</i>	No. 86 of 2000	1.5.2001

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Act	Number and year	Date of commencement
<i>Miscellaneous Amendments) Act 2000</i>		
<i>Retirement Benefits (Parliamentary Superannuation Trustee Arrangements and Miscellaneous Amendments) Act 2002</i>	No. 52 of 2002	27.11.2002
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004 On the day on which the Relationships Act 2003 commences
<i>Supreme Court Civil Procedure Amendment Act 2004</i>	No. 30 of 2004	27.10.2004
<i>Statutory Officers (Age for Retirement) Act 2005</i>	No. 17 of 2005	10.6.2005
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2005</i>	No. 65 of 2005	15.12.2005
<i>Supreme Court Amendment Act 2007</i>	No. 55 of 2007	1.3.2008
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2009</i>	No. 60 of 2009	1.10.2010
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2013</i>	No. 6 of 2013	13.5.2013
<i>Supreme Court Amendment (Judges) Act 2016</i>	No. 9 of 2016	10.6.2016
<i>Public Sector Superannuation Reform (Consequential and Transitional Provisions) Act 2016</i>	No. 54 of 2016	31.3.2017
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Justice Miscellaneous (Increasing Judicial Retirement Age) Act 2021</i>	No. 11 of 2021	6.9.2021

**TABLE OF AMENDMENTS**

Provision affected	How affected
The long title	Amended by No. 55 of 2007, Sched. 1
Section 3	Amended by No. 102 of 1984, s. 4 Substituted by No. 91 of 1999, s. 79

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Provision affected	How affected
	Amended by No. 103 of 2000, Sched. 1, No. 45 of 2003, Sched. 1, No. 65 of 2005, Sched. 1, No. 55 of 2007, Sched. 1, No. 66 of 2007, Sched. 1 and No. 54 of 2016, s. 114
Part II	Heading amended by No. 92 of 1974, s. 2 and No. 55 of 2007, Sched. 1
Section 4	Substituted by No. 92 of 1974, s. 3 Amended by No. 15 of 1975, s. 3, No. 45 of 1996, s. 7, No. 91 of 1999, s. 80, No. 86 of 2000, Sched. 1, No. 52 of 2002, s. 25, No. 65 of 2005, Sched. 1, No. 55 of 2007, Sched. 1, No. 9 of 2016, s. 10 and No. 4 of 2017, Sched. 1
Section 4AA	Inserted by No. 91 of 1999, s. 81 Amended by No. 103 of 2000, Sched. 1, No. 65 of 2005, Sched. 1, No. 55 of 2007, Sched. 1, No. 60 of 2009, s. 91, No. 6 of 2013, s. 18 and No. 54 of 2016, s. 115
Section 4AB	Inserted by No. 91 of 1999, s. 81 Amended by No. 55 of 2007, Sched. 1, No. 60 of 2009, s. 92
Section 4AC	Repealed by No. 54 of 2016, s. 116 Inserted by No. 91 of 1999, s. 81 Amended by No. 45 of 2003, Sched. 1, No. 55 of 2007, Sched. 1
Section 4A	Repealed by No. 54 of 2016, s. 116 Inserted by No. 102 of 1984, s. 5 Amended by No. 51 of 1985, s. 4 and Sched. 2, Pt. II, No. 75 of 1993, s. 4, No. 55 of 2007, Sched. 1, No. 66 of 2007, Sched. 1 and No. 9 of 2016, s. 11
Section 5	Substituted by No. 92 of 1974, s. 3 Amended by No. 75 of 1993, s. 5, No. 30 of 2004, s. 4, No. 17 of 2005, Sched. 1, No. 55 of 2007, Sched. 1 and No. 11 of 2021, s. 9
Section 5A	Repealed by No. 15 of 1975, s. 3
Section 5B	Substituted by No. 92 of 1974, s. 3 Amended by No. 29 of 1984, s. 3 and Sched. 1, No. 68 of 1994, s. 3 and Sched. 1, No. 86 of 2000, Sched. 1 Repealed by No. 30 of 2004, s. 5
Section 5C	Inserted by No. 92 of 1974, s. 3 Substituted by No. 55 of 2007, Sched. 1
Section 5D	Substituted by No. 75 of 1993, s. 6 Amended by No. 55 of 2007, Sched. 1
Section 5E	Inserted by No. 92 of 1974, s. 3 Substituted by No. 55 of 2007, Sched. 1
Section 5F	Inserted by No. 92 of 1974, s. 3 Amended by No. 10 of 1982, s. 8 and No. 29 of 1984, s. 3 and Sched. 1 Subsection (2) omitted by No. 19 of 1995, s. 13 Subsection (3) omitted by No. 19 of 1995, s. 13

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Provision affected	How affected
	Subsection (4) omitted by No. 19 of 1995, s. 13 Amended by No. 86 of 2000, Sched. 1 Substituted by No. 55 of 2007, Sched. 1
Section 5G	Substituted by No. 29 of 1984, s. 3 and Sched. 1 Amended by No. 55 of 2007, Sched. 1
Section 5H	Inserted by No. 92 of 1974, s. 3 Amended by No. 27 of 1992, Sched. 1 and No. 55 of 2007, Sched. 1
Section 5HA	Inserted by No. 91 of 1999, s. 82 Amended by No. 55 of 2007, Sched. 1 Subsection (2) substituted by No. 55 of 2007, Sched. 1 Amended by No. 55 of 2007, Sched. 1 Repealed by No. 54 of 2016, s. 117
Section 5HB	Inserted by No. 55 of 2007, Sched. 1
Part IIA	Inserted by No. 92 of 1974, s. 3
Section 5J	Substituted by No. 29 of 1984, s. 3 and Sched. 1 Amended by No. 86 of 2000, Sched. 1
Section 5K	Inserted by No. 92 of 1974, s. 3 Amended by No. 48 of 1979, s. 5
Section 5L	Inserted by No. 92 of 1974, s. 3 Amended by No. 48 of 1979, s. 6 and No. 29 of 1984, s. 3 and Sched. 1
Section 6	Repealed by No. 34 of 1982, s. 5
Section 9	Amended by No. 29 of 1984, s. 3 and Sched. 1
Section 10	Substituted by No. 92 of 1974, s. 4 Amended by No. 48 of 1979, s. 7
Schedule 1	Amended by No. 36 of 1958, s. 4 and Sched. 3

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