



**EEO Fairness and Equity Protocol**  
Adopted 19 September 2009  
Finance Corporate and Commercial Services



# EEO Fairness and Equity

## 1.0 Purpose

The aim of this document is to outline Council's approach to ensuring:

- equity within the workplace
- all employees and delegates of Council are treated with dignity and respect
- all employees and delegates of Council are free from unlawful discrimination, harassment, bullying and vilification.

## 2.0 Objectives

The objectives of this protocol are:

- detail Council's expectations of employees and delegates of Council in relation to conduct that may constitute unlawful discrimination, harassment, bullying or vilification
- provide information and set boundaries for employees and delegates of Council in terms of appropriate and acceptable behaviour in the workplace
- detail Council's approach to ensuring that the work environment is harmonious and supportive
- detail Council's approach to Equal Employment Opportunity (EEO)
- ensure Council and its employees comply with relevant legal responsibilities.

## 3.0 Scope

The Fairness and Equity Protocol applies to all:

- detail Council's expectations of employees and delegates of Council in relation to conduct that may constitute unlawful discrimination, harassment, bullying or vilification
- provide information and set boundaries for employees and delegates of Council in terms of appropriate and acceptable behaviour in the workplace
- detail Council's approach to ensuring that the work environment is harmonious and supportive
- detail Council's approach to Equal Employment Opportunity (EEO)
- ensure Council and its employees comply with relevant legal responsibilities.

## 4.0 References

This document should be read in conjunction with:

This document should be read in conjunction with:

- Council's EEO Management Plan
- Council's Code of Conduct
- Council's EEO Bullying Prevention Protocol
- Council's Grievance Handling Protocol (attached in the Appendix)
- the Local Government (State) Award 2010

The following EEO related legislation also applies to Council:

- Local Government Act 1993 (NSW)
- Disability Discrimination Act 1992 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Anti-Discrimination Act 1977 (NSW)
- Racial Discrimination Act 1975 (Cth)
- Age Discrimination Act 2004 (Cth)
- Australian Human Rights and Equal Opportunity Act 1986 (Cth)
- Industrial Relations Act 1996 (NSW)
- Work Health and Safety Act 2011 (NSW)
- Work Health and Safety Regulation 2011 (NSW)
- Crimes Act 1996 (NSW)
- Equal Employment Opportunity for Women in the Workplace Act 1999 (Cth)

## 5.0 Definitions

For the purpose of this document the following definitions apply:

- **Bullying:** repeated unfair or unreasonable behaviour by an individual or group directed towards another person in the work environment that intimidates, degrades, insults, humiliates, belittles or causes physical or psychological harm to an individual or group. Bullying may be obvious and carried out in front of other people or subtle and carried out privately.
- **Complainant:** a person who has lodged, or is considering lodging, a grievance or complaint.
- **Discrimination – Direct:** treating a person or group of people unfairly or differently compared to someone else in the same or similar circumstances, and this is because of their sex, pregnancy, race, age, marital or domestic status, homosexuality, disability, transgender status, carer's responsibilities or being a relative or associate of a person with any of the abovementioned characteristics. Where a person is rightly or wrongly assumed to be a member of an abovementioned category, direct discrimination also applies.
- **Discrimination – Indirect:** results from a written or unwritten requirement, rule or protocol that is applied in that same way, but results in a particular person or group of people being treated differently because of their sex, pregnancy, race, age, marital or domestic status, homosexuality, disability, transgender status, carer's responsibility or being a relative or associate of a person with the abovementioned characteristics being disadvantaged or treated unreasonably given the circumstances. Where a person is rightly or wrongly assumed to be a member of an abovementioned category, direct discrimination also applies.
- **Grievance:** concern/s or complaint/s about unfair treatment, discrimination, harassment, vilification and/or bullying. Grievances vary in their level of seriousness. Less serious grievances are not unlawful but should be addressed to avoid further escalation. Serious grievances are matters that constitute unlawful behaviour, assault and sexual



harassment and behaviour contrary to Council's Code of Conduct and policies.

- **Harassment:** any form of behaviour that:
  - o a person does not want; and
  - o belittles, offends, humiliates and/or intimidates a person or group; or
  - o targets a person or group because they belong to a group or are a relative or associate of a person or group with particular characteristics as defined in the relevant legislation; and
  - o a reasonable person, taking into account all the circumstances, would be belittled, offended, humiliated and/or intimidated.

Harassment may be a single act of behaviour or an ongoing pattern of behaviours. Bullying is a form of harassment.

- **Respondent:** an employee whose action or behaviour is complained about in a grievance.
- **Vexatious:** action of a person that is brought forward without sufficient grounds purely to cause annoyance or harm to another person or persons.
- **Vilification:** anything that happens publicly that could encourage hatred, serious contempt or severe ridicule of a person or group of people, because of their race, ethno-religion, homosexuality, transgender or HIV/AIDS status.
- **Victimisation:** subjecting a person to some detriment if they have:
  - o lodged a complaint
  - o provided information or documents relating to a complaint
  - o attended a conciliation conference or appeared as a witness in respect of a complaint
- **Unlawful discrimination:** Treating someone unfairly or differently because of their sex (including pregnancy and breastfeeding), race (including colour, ethnicity and decent), disability, sexual preference, religion, transgender, carer's responsibilities, marital status, social origin, political belief, employee association activity, irrelevant criminal record or age. Discrimination may be unlawful regardless of whether it is direct or indirect, intentional or unwitting. Discrimination also includes harassment of another person based on the grounds for unlawful discrimination detailed in this protocol.

## 6.0 Protocol Statement

- 6.1.1 Council is committed to the goals of equal opportunity that all people are treated fairly and with respect and dignity in all Council decisions and operations. Council aims to provide a work environment that fosters fairness, equity and respect for diversity.
- 6.1.2 All employees and delegates of Council have the right to a working environment that is free from unlawful discrimination, harassment, bullying and vilification. Unlawful discrimination, harassment and vilification have serious impacts on health, safety and wellbeing and will not be tolerated.

6.1.3 Council will ensure that all people are treated fairly and decisions are made on the basis of merit. This is regardless of a person's:

- sex (including pregnancy and breastfeeding)
- race, colour, religion, or lack thereof, ethnic or ethno-religious background, descent or nationality
- marital, relationship or domestic status
- disability (including past, present or future physical, intellectual, psychiatric, learning disorders, or having any organism capable of causing disease, for example HIV)
- homosexuality (male, female, actual or presumed)
- age
- transgender/transsexuality
- family/carer's responsibility
- industrial/trade union membership or non-membership
- religious belief or activity
- political belief, activity or membership
- employer association membership, non-membership or activity
- irrelevant criminal record or irrelevant spent convictions
- irrelevant medical record
- temporary absence from work because of illness or injury

6.1.4 Council will:

- ensure all people who interact with Council are not discriminated against on unlawful grounds
- foster a culture that values and responds to the diversity of all employees
- provide EEO by removing the barriers to participation and progression for members of EEO target groups including women, people from culturally diverse backgrounds, people with a disability and people of Aboriginal and/or Torres Strait Islander descent
- ensure all employees and delegates of Council are aware of their rights and responsibilities
- ensure it prepares an EEO Management Plan in accordance with the Local Government Act

6.1.5 Council acknowledges it's moral and legal responsibility to provide EEO. The success of the implementation of EEO programs at Council depends on the cooperation of all employees and delegates of Council.

## **7.0 Implementation of Equal Employment Opportunity Programs at Council**

7.1.1 The General Manager is ultimately responsible for the implementation of the EEO Management Plan. Council adopts and implements an EEO Management Plan that outlines Council's objectives and strategies for the achievement of those objectives over a four year period.

7.1.2 In accordance with the requirements of the Local Government Act, the General Manager has appointed the Senior Human Resources Officer with the responsibility of coordinating the day-to-day EEO activities and the implementation of the EEO Management Plan.

7.1.3 Council has established an EEO Network which is comprised of Council's EEO Contact People. The EEO Network is a sub-committee of the Consultative Committee which monitors the implementation of the EEO Management Plan and makes recommendations regarding the implementation of relevant strategies and policies. As such, details of the activities of the EEO Network shall be reported to Council's Consultative Committee.

#### 7.1.4 Affirmative Action

7.1.4.1 Affirmative Action legislation was established by the Federal Government to ensure that women have access to employment and ongoing employment opportunities. The aim of affirmative action legislation is to ensure that women are able to compete on the same terms as men, in a labour market that traditionally favoured males. Over time, Affirmative Action has also become applicable to additional EEO target groups. Affirmative action aims to redress the workforce imbalances of past discrimination. It also aims to provide skills and conditions that EEO target group members need to complete more effectively for available positions and other workplace opportunities.

7.1.4.2 Affirmative action does not mean that EEO target groups are appointed to positions simply because they belong to a target group; they must compete for positions on the basis of merit. Affirmative action aims to make EEO target members more able to compete for opportunities.

7.1.4.3 Council is committed to redressing the disadvantages of particular groups that are acknowledged to have been disadvantaged in the past. As such, Council shall implement appropriate programs to improve opportunities for people from EEO target groups which include women, Aboriginal and Torres Strait Islander people, people with a disability and people from non-English speaking background.

7.1.4.4 There may be occasions where Council is required to discriminate in favour of a particular group. In such cases Council must demonstrate that such discrimination is a genuine occupational requirement and obtain exemption in accordance with relevant legislation.

## 8.0 The Merit Principle

8.1 The merit principle is a central legal concept of equal opportunity. It demands that operational and service related decisions are based on the merit of those concerned rather than consideration of irrelevant factors. Following the merit principle involves:

- ensuring job requirements are not discriminatory
- advertising positions in a manner that attracts suitably qualified pools of applicants developing employment policies and practices which aim to eliminate bias and nepotism
- making fair and equitable decisions about recruitment, training, promotion, discipline, access to overtime, technology and equipment.

## 9.0 Making reasonable adjustment and unjustifiable hardship

9.1 Council is required to make reasonable adjustment to cater to all people who deal with Council with specific needs to ensure that discrimination does not occur. Examples of reasonable adjustments may be for example:

- providing reasonable facilities or services
- making changes to the position description
- providing training or other assistance
- modifying equipment or premises

9.2 Any adjustment or alterations that will enable the person to do their job or interact with Council must be made unless they impose an 'unjustifiable hardship' on Council.

## 10.0 Rights and responsibilities

10.1 Council is responsible for taking reasonable steps to prevent unlawful discrimination, harassment, bullying and vilification.

10.2 Directors, Managers and Supervisors are:

- required to lead by example and have a duty of care to all employees
- responsible for actively intervening to prevent unlawful discrimination, harassment, bullying and vilification
- accountable for ensuring that appropriate standards of conduct are maintained in the workplace as Council is liable for the behaviour of employees unless it can show it took reasonable steps to prevent the behaviour

10.3 All employees and delegates of Council have responsibility for:

- ensuring they do not unlawfully discriminate against, harass, bully or vilify other employees, delegates of Council, contractors, consultants, suppliers or members of the public
- contributing in a positive and productive way to ensure the workplace is free from unlawful discrimination, harassment, bullying and vilification
- their own behaviour

10.4 EEO Contact People

10.4.1 EEO Contact People are responsible for providing advice to employees in respect to lodging grievances and managing specific issues relating to equity, dignity and respect at Council. An EEO Contact Person must make a report to a member of the Human Resources section, the General Manager or the relevant Director if they believe there is a



serious threat to the health and wellbeing of the person to whom they provide advice.

## 11.0 Inappropriate workplace behaviours

### 11.1 Unlawful Discrimination

11.1.1 Unlawful discrimination may be direct or indirect. Both forms of discrimination are unlawful and will not be tolerated.

11.1.2 Direct discrimination is the result of beliefs and stereotypical attitudes some people may have about the characteristics and behaviours of members of a group. Examples of direct discrimination are:

- Being excluded from a job or training opportunity because you are female
- Being excluded from a recruitment process because you are Aboriginal
- Excluding a woman from a job opportunity as she has children and would be likely to have time off work on Carer's Leave
- Not being offered training as you will be retiring soon.

11.1.3 Indirect discrimination occurs when rules, requirements or policies are applied to people equally and appear to be neutral, when in fact the chances of members of some groups obtaining an employment or service related opportunity are significantly reduced. Examples of indirect discrimination are:

- a protocol preventing employees from working part-time (results in people with carer responsibilities being disadvantaged)
- Minimum height requirements to apply for a job, with no apparent reason (results in women and people from particular racial backgrounds being disadvantaged).

### 11.2 Harassment

11.2.1 Under both Federal and State legislation, harassment is a form of discrimination and is unlawful. Harassment will not be tolerated. Bullying is a form of harassment.

11.2.2 Harassment is unwanted, unwelcome, offensive or intrusive behaviour that may range from unpleasant comments to physical violence. The perception of whether or not behaviour is threatening or harassing lies with the receiver. A person may inadvertently harass others without intending to do so.

11.2.3 Sexual harassment is unwelcome conduct of a sexual nature that makes a person feel offended, humiliated or intimidated. Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person. However, conduct will not be sexual harassment if a reasonable person, having regard to the circumstances, would not have anticipated that the conduct would offend, humiliate or intimidate the other person. Sexual harassment does not have to be directed at a particular individual to be unlawful.



11.2.4 Harassment or sexual harassment may include but is not limited to:

- offensive physical contact or coercive behaviour that is intended to be derogatory or intimidating
- insulting or threatening gestures
- interference with a person's workspace, materials, equipment or property
- continual unjustified comments about a person's work or capacity for work
- pictures, posters, graffiti, written or electronic materials that are offensive or obscene including images, emails and phone ring tones
- phone calls, letters or messages (electronic or otherwise)
- persistent following or stalking within the workplace, or to and from work
- dismissive treatment or material expressing prejudice or stereotypical assumptions about the group to which the person may belong
- continual exclusion of a person or group from normal conversation
- inequitable assignment of work, access to work related activities or restriction to networks
- jokes about food preferences, religious practices or social customs
- attributing of stereotypical or extreme behaviour to a particular racial group
- practical jokes played on people with physical disabilities
- overbearing or abusive behaviour towards employees with intellectual disabilities
- display of sexually or racially denigrating or otherwise offensive material
- sexual comments
- touching another person in a sexual manner
- disparaging remarks about employees who have made workers' compensation claims

11.2.5 Harassment constitutes misconduct, undermines the employment relationship and the reputation of Council and may also constitute a serious breach of Council's Code of Conduct. Harassment may also be a criminal offence.

### 11.3 Bullying

11.3.1 The Work Health and Safety Act 2011 (NSW) and Work Health and Safety Regulation 2011 (NSW) imposes a duty on employers and employees to provide a safe workplace. This includes a workplace free of bullying. Council's Bullying Prevention Protocol details Council's approach to ensuring the work environment is free of bullying.

## 11.4 Inappropriate display of materials in the workplace

11.4.1 Council has a responsibility to ensure the workplace it provides reflects community expectations and is not offensive. The display of materials considered by a reasonable person to be denigrating is a form of harassment. The display of sexist, racist, sexually denigrating, racially denigrating or otherwise offensive material is prohibited in all Council premises, workplaces, vehicles and facilities. Material includes, but is not limited to:

- pictures, posters, cartoons or picture calendars
- graffiti
- painted or printed clothing
- written, printed or computer generated material such as poems, notes, quotes and jokes

11.4.2 This includes material on both Council equipment and personal equipment such as mobile phones and portable computers that are brought into the workplace.

11.4.3 All Managers and Supervisors must enforce this protocol by monitoring the workplace, removing offensive material and taking other appropriate action. Managers of contractors, suppliers, volunteers and work experience students must also ensure that people for whom they are responsible abide by Council's protocol.

## 11.5 Vilification

11.5.1 Vilification will not be tolerated at Council.

11.5.2 Vilification is unlawful on the grounds of race, homosexuality, transgender status and actual or alleged HIV/AIDS infection.

## 11.6 Victimisation

11.6.1 Victimisation or detrimental action towards any person who raises a complaint of unlawful discrimination, harassment, bullying or vilification in accordance with this protocol, will not be tolerated.

11.6.2 Employees must not retaliate against a person who raises a complaint or subjects them to any detriment.

11.6.3 Examples of victimisation include:

- Moving an employee to a less responsible position while their complaint is being considered
- An employee being ostracised by other employees because of their role in the investigation of a complaint
- An employee being denied opportunities in the workplace after lodging a complaint

## 11.7 Counter-Complaints

11.7.1 Council acknowledges that counter – complaints are not productive and do not promote the resolution of issues in accordance with this protocol. However, it is also important for all people, including the respondent to have matters resolved fairly.

11.7.2 In some circumstances, a grievance may lead to other, or counter, allegations. In such instances, the grievances shall be considered and resolution sought. It shall be the role of the investigator to consider the facts relating to the situation and make appropriate findings.

## 12.0 Resolution of grievances

- 12.1 An employee or delegate of Council who becomes aware of an incident of unlawful discrimination, harassment, bullying or vilification must report the situation to a management representative as soon as possible regardless of whether or not the complaint is in writing. While it is desirable that all actions take place with the complainants agreement, there are times where duty of care overrides the wish for confidentiality.
- 12.2 In accordance with the provisions of the Local Government (State) Award 2010, an employee may request the support and assistance of a union representative, Council's Employee Assistance Program or EEO Contact Person at any stage of the process.
- 12.3 While it is preferable that complaints are made in writing, the complainant is entitled to choose how they would like to make a complaint. All complaints should provide specific details of the offence and remedy sought.
- 12.4 In the case of a serious allegation, it may be appropriate for an employee or group of employees to be suspended from work. Both an employee making a complaint and the alleged offender should be offered the support of Council's Employee Assistance Program.
- 12.5 Serious complaints may be referred to the Police for investigation.
- 12.6 Managers must ensure they keep appropriate records of any complaints made and any action they take in response to a complaint. This may include notes about the reasons for not taking further action.
- 12.7 General principles of grievance resolution
- 12.7.1 An objective of this protocol is to promote the resolution of grievances in the context of the following principles:
- a) Grievances shall be handled within an appropriate time frame and will be treated sensitively and impartially, having regard to procedural fairness
  - b) Resolution of grievances shall be as close as possible to the source, unless it is serious, unlawful or not practical
  - c) It is expected that all parties involved will approach proceedings with a desire to resolve the grievance cooperatively and in good faith
  - d) Confidentiality shall be strictly observed by all parties involved and at all stages of the grievance procedure
  - e) Complainants and respondents will be informed of the key outcomes of the investigation that relate to them. Whilst it is important that complainants are aware there may have been disciplinary action resulting from an offence, it is not necessary for them to be told full details of sanctions taken against the respondent



## 12.8 Principles of procedural fairness and natural justice

12.8.1 Council recognises that all employees have a legal and ethical right to:

- a) Raise any concern or complaint related to unfair treatment, discrimination, harassment, bullying, vilification, victimisation and other such issues
- b) Have that concern, problem, complaint or grievance dealt with confidentially, fairly, effectively and within an appropriate timeframe in accordance with Council's Grievance Handling Procedures
- c) Have the support of another person throughout the grievance process such as Council's Employee Assistance Program or a Union Representative

12.8.2 Grievance investigators shall observe the rules of natural justice in any action taken in relation to a complaint. This includes:

- a) Informing all parties of the procedure being followed and providing them with copies of relevant policies.
- b) Explaining to the complainant that the requirements of procedural fairness mean that their identity must be disclosed to the respondent.
- c) Informing the respondent of any allegation made against them, and allowing time for a response.
- d) Providing the respondent with the opportunity to state their case, providing an explanation or putting forward a defence.
- e) Conducting factual investigation of the allegation, interviewing all parties and considering all relevant information.
- f) Acting fairly, impartially and without bias by considering all relevant information and any mitigating factors.

## 12.9 Conflict of Interest

12.9.1 Where it can be demonstrated that there is a conflict of interest or the potential for a perceived conflict of interest:

- a) The investigator should refer the matter immediately to an alternative investigator
- b) A complainant or respondent may request an alternate investigator.

## 12.10 Examples of ways in which complaints can be dealt with

12.10.1 Confront the issue

- a) It is preferable that employees address the issue with the person concerned at the lowest level possible if they are comfortable to do so. It may be that the person was not aware that their behaviour was unwelcome or caused offence. This is not a compulsory step.

12.10.2 Report the issue

- a) Where a Council employee is not comfortable to address the issue in accordance with 12.9.1 above, the employee should report the issue.

- b) While it is preferable that the initial report be made to the complainant's direct supervisor, where the employee is not comfortable to do this, or the complaint is about the employee's direct supervisor, the employee should report the issue in the first instance to their Manager. Alternatively, the issue may be reported to the Director, General Manager or Human Resources section.
- c) The person receiving the complaint should advise their Manager and the Manager Human Resources immediately on receipt of the complaint. The complaint will then be handled in line with Council's Grievance Handling Procedure.

#### 12.11 Confidentiality

12.11.1 Maintaining strict confidentiality gives all parties confidence in this protocol, minimises the disruption caused by gossip and rumour, can prevent escalation of the situation and/or possible victimisation, and can minimise the risk of defamation claims.

12.11.2 All employees involved in a complaint must maintain confidentiality. Breaches of confidentiality will not be tolerated and may result in disciplinary action.

12.11.3 Where a formal investigation takes place, it may be necessary for the investigator to speak with other Council employees to determine what happened, to afford fairness to those against whom the complaint has been made and to resolve the complaint. If a complaint is raised and it appears that unlawful conduct has potentially occurred, Council will take appropriate action in relation to the complaint.

12.11.4 All parties are responsible for maintaining confidentiality when providing information or investigating complaints and are required to report any incidents in such a way to enable Council to effectively manage and resolve them.

### 13.0 Breaches of this Protocol

13.1 Breaches of Council's Fairness and Equity Protocol and related policies will not be tolerated. Where there are found to be acts of unlawful discrimination, harassment, bullying and/or vilification Council will take appropriate actions which may include disciplinary action in accordance with the provisions of the Local Government (State) Award 2010.

13.2 Any intentional misuse of this protocol, including knowingly making false allegation of unlawful discrimination, harassment, bullying or vilification will be treated seriously and may result in disciplinary action or exposure to a defamation claim.

13.3 Where it is found that a respondent breaks criminal law such as physical or sexual assault the complaint must be referred to the Police.

#### 13.4 Possible Outcome/s

13.4.1 The outcome/s will depend on the nature of the complaint and other relevant factors. Where an investigation results in a finding that a person has engaged in unlawful conduct, breach of this protocol, or breach of the Code of Conduct,

that person may be disciplined in accordance with the Local Government (State) Award 2010.

13.4.2 The type and severity of disciplinary action will depend on the nature of the complaint and other relevant factors. Disciplinary action may include a note to file, a formal warning, a final warning, demotion or compulsory counselling. Where an employee is found to have engaged in serious misconduct, this may result in termination of employment. The nature and severity of each case shall be determined by the General Manager.

13.4.3 Council may initiate a range of other non-disciplinary outcomes to resolve a complaint, depending on the particular circumstances. Examples include, but are not limited to:

- a) Training to assist in addressing the problems underpinning the complaint
- b) Mediation or conciliation between the complainant and the respondent
- c) Clarifying appropriate behaviour
- d) Monitoring to ensure there are no further problems
- e) Requiring an apology or undertaking that certain behaviour will stop
- f) Changing work arrangements
- g) Providing preventative or awareness raising measures to an individual or group of people.

13.4.4 Damages may apply where anti-discrimination legislation is breached. Penalties imposed against individuals will not be paid or reimbursed by Council.

## 14.0 Appeal Process

14.1 If any party involved in a complaint is not satisfied with the way the complaint was handled or the outcome of the complaint process they can contact the Manager Human Resources. If a review is undertaken the Manager Human Resources decision in relation to the review will be final.

14.2 Council's goal is to resolve issues in-house wherever possible. Employees may seek the assistance of an external agency if they feel that their complaint has not been adequately addressed in - house.

## 15.0 Review History

15.1 This protocol was formally adopted on Tuesday 19 September, 2006 and last reviewed by MANEX on 24 October 2013.

15.2 Council reserves the right to review or vary this protocol subject to legislative requirements in consultation with the Union representatives of employees affected by this protocol. Once the consultative process has been finalised, the protocol will be referred to the Consultative Committee for endorsement.

## 16.0 Attachments

- Grievance Handling Protocol
- Grievance Report Form



## 17.0 Document control

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| <b>Directorate:</b>                    | Finance Corporate and Commercial Services |
| <b>Protocol name:</b>                  | EEO Fairness and Equity Protocol          |
| <b>Date adopted by Council or N/A:</b> | 19 September 2009                         |
| <b>Date endorsed by Manex:</b>         |   |
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