



New South Wales

# Road Transport Legislation Amendment (Interlock Devices) Bill 2002

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Road Transport (General) Act 1999* to enable a court to order the use of breath alcohol interlock devices fitted to motor vehicles as a partial alternative to disqualification for drivers convicted of certain alcohol-related driving offences, and
- (b) to amend the *Road Transport (Driver Licensing) Act 1998* to enable the regulations made under that Act to provide for the issue of conditional licences restricting their holders to driving motor vehicles fitted with breath alcohol interlock devices and to provide for the installation, removal, maintenance and use of such devices.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Road Transport (General) Act 1999* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Road Transport (Driver Licensing) Act 1998* set out in Schedule 2.

## **Schedule 1 Amendment of Road Transport (General) Act 1999**

**Schedule 1 [3]** inserts a Subdivision 2 (Use of interlock devices as alternative to disqualification) in Division 3 (Licence disqualification) of Part 3 of the *Road Transport (General) Act 1999*.

The proposed Subdivision will enable a court that convicts a person of certain alcohol-related offences to order that a licence disqualification imposed by or under section 25 of that Act be suspended if the person participates in an interlock program. Entry into the program will involve the person obtaining an interlock driver licence. An interlock driver licence is a conditional driver licence issued under the *Road Transport (Driver Licensing) Act 1998* that restricts the holder of the licence to driving a motor vehicle fitted with an approved interlock device (within the meaning of Part 2A of that Act to be inserted by the proposed Act). An approved interlock device is a device approved by the Roads and Traffic Authority (the *Authority*) that is designed to analyse a breath sample for the presence of alcohol and prevent a motor vehicle from being started if it detects more than a certain concentration of alcohol.

The convicted person will be able to apply for an interlock driver licence at any time during the disqualification period applicable to the person (but no earlier than 28 days before the expiry of the disqualification compliance period). However, the convicted person will not be able to participate in an interlock program until the expiry of the disqualification compliance period. If an interlock driver licence is issued by the Authority, the original disqualification will be suspended for the interlock participation period specified by or under the proposed Subdivision. On the completion of that period, the convicted person will be taken to have completed the original disqualification.

**Schedule 1 [1] and [4]** insert Subdivision headings in other places in Division 3 of Part 3 of the Act consequent on the insertion of proposed Subdivision 2.

**Schedule 1 [2] and [5]** make consequential amendments to sections 25 and 26 of the Act to make it clear that the provisions of those sections are subject to the provisions of the proposed Subdivision 2.

**Schedule 1 [6]** inserts a Schedule 1A in the Act that specifies minimum interlock participation periods and disqualification compliance periods for the purposes of the proposed Subdivision 2.

## **Schedule 2 Amendment of Road Transport (Driver Licensing) Act 1998**

**Schedule 2** inserts a new Part 2A (Interlock devices) containing proposed sections 21–21D to be inserted in the *Road Transport (Driver Licensing) Act 1998*.

Proposed section 21 contains definitions for the new Part.

Proposed section 21A provides that, for the purposes of the new Part, an ***approved interlock device*** is an interlock device of a type approved by the Authority by order published in the Gazette.

Proposed section 21B provides that an ***approved interlock installer*** means a person approved by the Authority as a person who may install and remove approved interlock devices in motor vehicles for the purposes of the new Part. It also provides that an ***approved interlock service provider*** means a person approved by the Authority as a person who may carry out maintenance to ensure the proper operation of approved interlock devices, or conduct inspections of such devices, for the purposes of the new Part. A person may be both an approved interlock device installer and approved interlock service provider.

Proposed section 21C enables the regulations to provide for the installation, removal and maintenance of interlock devices on motor vehicles and for their use (whether or not for the purposes of a disqualification suspension order within the meaning of the new section 25A of the *Road Transport (General) Act 1999* to be inserted by the proposed Act).

Proposed section 21D requires the Authority to establish a scheme under which persons seeking to gain the use of approved interlock devices may obtain financial assistance from the Authority for the installation or maintenance of such devices.



New South Wales

# Road Transport Legislation Amendment (Interlock Devices) Bill 2002

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New South Wales

# Road Transport Legislation Amendment (Interlock Devices) Bill 2002

No. , 2002

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## A Bill for

An Act to amend the *Road Transport (General) Act 1999* to provide for the use of breath alcohol interlock devices as a partial alternative to licence disqualification for certain alcohol-related driving offences; to make amendments to the *Road Transport (Driver Licensing) Act 1998* relating to the issue of conditional licences restricting their holders to driving motor vehicles fitted with such devices and to the installation, removal, maintenance and use of such devices; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Road Transport Legislation Amendment (Interlock Devices) Act 2002</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Road Transport (General) Act 1999 No 18</b>	8
The <i>Road Transport (General) Act 1999</i> is amended as set out in Schedule 1.	9 10
<b>4 Amendment of Road Transport (Driver Licensing) Act 1998 No 99</b>	11
The <i>Road Transport (Driver Licensing) Act 1998</i> is amended as set out in Schedule 2.	12 13

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<b>Schedule 1</b>	<b>Amendment of Road Transport (General) Act 1999</b>	1
		2
	(Section 3)	3
<b>[1]</b>	<b>Part 3 Enforcement of road transport legislation and other legislation</b>	4
	Insert the following heading before section 24:	5
	<b>Subdivision 1 General</b>	6
<b>[2]</b>	<b>Section 25 Disqualification for certain major offences</b>	7
	Insert after section 25 (5):	8
	(6) <b>Relationship to Subdivision 2</b>	9
	This section has effect subject to the provisions of Subdivision 2.	10
		11
<b>[3]</b>	<b>Part 3, Division 3, Subdivision 2</b>	12
	Insert after section 25:	13
	<b>Subdivision 2 Use of interlock devices as alternative to disqualification</b>	14
		15
	<b>25A Interpretation</b>	16
	In this Subdivision:	17
	<i>alcohol-related major offence</i> means any of the following offences:	18
		19
	(a) an offence under section 9 (1) (a) or (b) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> ,	20
		21
	(b) an offence under section 9 (2) (a) or (b) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> ,	22
		23
	(c) an offence under section 9 (3) (a) or (b) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> ,	24
		25
	(d) an offence under section 9 (4) (a) or (b) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> ,	26
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(e)	an offence under section 12 (1) (a) or (b) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> where the offence involved driving under the influence of alcohol,	1 2 3 4
(f)	an offence under section 15 (4) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> .	5 6
	<b><i>disqualification compliance period</i></b> , in relation to a person, means the disqualification compliance period applying to the person under section 25D (a).	7 8 9
	<b><i>disqualification period</i></b> , in relation to a person, means the disqualification period applying to the person for the purposes of section 25C.	10 11 12
	<b><i>disqualification suspension order</i></b> , in relation to a person, means an order made under section 25C that, subject to certain conditions, may operate to suspend a disqualification under section 25 of the person from holding a driver licence.	13 14 15 16
	<b><i>interlock driver licence</i></b> means a conditional licence issued under the <i>Road Transport (Driver Licensing) Act 1998</i> that restricts the holder of the licence to driving a motor vehicle fitted with an approved interlock device (within the meaning of Part 2A of that Act).	17 18 19 20 21
	<b><i>interlock participation period</i></b> , in relation to a person, means the period during which the person must participate in an interlock program for the purposes of a disqualification suspension order.	22 23 24 25
<b>25B</b>	<b>Subdivision does not apply to habitual traffic offenders</b>	26
	This Subdivision does not apply in respect of a person convicted of an alcohol-related major offence who is declared to be an habitual traffic offender by operation of section 28 (whether or not as a result of the conviction).	27 28 29 30
<b>25C</b>	<b>Disqualification period may be suspended for participation in interlock program</b>	31 32
	If a court convicts a person of an alcohol-related major offence and the person is disqualified from holding a driver licence by or under section 25 (2) or (3) for a period (the <b><i>disqualification period</i></b> ), the court may order that the disqualification of the	33 34 35 36



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person be suspended if the person participates in an interlock program for:	1
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(a) the minimum interlock participation period specified in column 2 of Schedule 1A set out opposite the category of offender specified in column 1 of that Schedule to which the person belongs, or	3
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	6
(b) such greater interlock participation period as the court may order.	7
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<b>25D When person may participate in interlock program</b>	9
A person in respect of whom a disqualification suspension order is made is entitled to participate in an interlock program only if:	10
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	12
(a) the disqualification compliance period specified in column 3 of Schedule 1A set out opposite the category of offender specified in column 1 of that Schedule to which the person belongs has expired, and	13
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(b) the person is issued with an interlock driver licence by the Authority under the <i>Road Transport (Driver Licensing) Act 1998</i> .	17
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<b>25E Entitlement to apply for interlock driver licence</b>	20
(1) A convicted person in respect of whom a disqualification suspension order is made is entitled to apply for an interlock driver licence despite his or her disqualification:	21
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(a) if the application is made before the expiry of the disqualification compliance period applicable to the person—no earlier than 28 days before the expiry of that period, or	24
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(b) at any time after the expiry of the disqualification compliance period but before the expiry of the disqualification period.	28
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(2) However, nothing in this Subdivision confers a right on a person in respect of whom a disqualification suspension order is made to be issued with an interlock driver licence.	31
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<b>25F</b>	<b>When disqualification suspension order has effect</b>	1
(1)	<b>When order operates to suspend disqualification</b>	2
	A disqualification suspension order operates to suspend a disqualification while the person in respect of whom the order was made participates in an interlock program.	3 4 5
(2)	<b>Early termination of order</b>	6
	A disqualification suspension order ceases to have effect before the expiry of the interlock participation period if the person ceases to participate in an interlock program.	7 8 9
(3)	<b>Effect of early termination of order</b>	10
	If a disqualification suspension order ceases to have effect before the expiry of the interlock participation period, the person to whom the order relates is disqualified from holding a driver licence for the period equal to the difference between:	11 12 13 14
	(a) the disqualification period originally applicable to the person, and	15 16
	(b) the period of disqualification that had already been completed immediately before the disqualification suspension order operated to suspend the original disqualification.	17 18 19 20
(4)	<b>Effect of suspension of interlock driver licence on order</b>	21
	If the interlock driver licence of a person in respect of whom a disqualification suspension order is made is suspended during the interlock participation period:	22 23 24
	(a) the order does not cease to have effect only because the driver licence is suspended, and	25 26
	(b) the period of suspension is to be added to the interlock participation period applicable to the person for the purposes of determining when the interlock participation period expires.	27 28 29 30
<b>25G</b>	<b>Participation in an interlock program</b>	31
(1)	<b>Commencement of participation in interlock program and interlock participation period</b>	32 33
	A person in respect of whom a disqualification suspension order is made commences to participate in an interlock program	34 35

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on the date on which the person is issued with an interlock driver licence. The interlock participation period applicable to the person also commences on that date.	1 2 3
<b>(2) Early cessation of participation</b>	4
A person in respect of whom a disqualification suspension order is made ceases to participate in an interlock program if and when:	5 6 7
(a) the person is convicted by a court of a major offence during the interlock participation period and the court does not order that the disqualification suspension order continue in effect despite the conviction, or	8 9 10 11
(b) the person ceases to hold an interlock driver licence before the expiry of the interlock participation period (whether by reason of cancellation of the licence or otherwise).	12 13 14 15
<b>25H Effect of successful participation in interlock program</b>	16
If a disqualification suspension order does not cease to have effect before the expiry of the interlock participation period:	17 18
(a) the order ceases to have effect on the expiry of that period, and	19 20
(b) the disqualification period in respect of which the order was originally made is taken to have expired on the expiry of the interlock participation period.	21 22 23
<b>[4] Part 3, Division 3, Subdivision 3</b>	24
Insert before section 26:	25
<b>Subdivision 3 Effect of disqualification</b>	26
<b>[5] Section 26 Effect of disqualification</b>	27
Omit “A person” from section 26 (4).	28
Insert instead “Subject to the provisions of Subdivision 2, a person”.	29

**[6] Schedule 1A** 1

Insert after Schedule 1: 2

**Schedule 1A Interlock participation and  
disqualification compliance periods** 3  
4

(Sections 25C (a) and 25D (a)) 5

Column 1	Column 2	Column 3	6
Category of offender	Minimum interlock participation period	Disqualification compliance period	7
1. A person convicted of an offence under section 9 (3) (a) or (b), (4) (a) or (b), 12 (1) (a) or (b) or 15 (4) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is not or has not been convicted of any other alcohol-related major offence (whether of the same or a different kind).	24 months	6 months	8 9 10 11 12 13 14 15 16 17
2. A person convicted of an offence under section 9 (4) (a) or (b), 12 (1) (a) or (b) or 15 (4) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).	48 months	12 months	18 19 20 21 22 23 24 25 26 27
3. A person convicted of an offence under section 9 (3) (a) or (b) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).	24 months	6 months	28 29 30 31 32 33 34 35 36

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
<b>Category of offender</b>	<b>Minimum interlock participation period</b>	<b>Disqualification compliance period</b>	
4. A person convicted of an offence under section 9 (1) (a) or (b) or (2) (a) or (b) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).	12 months	3 months	1 2 3 4 5 6 7 8 9

<b>Schedule 2</b>	<b>Amendment of Road Transport (Driver Licensing) Act 1998</b>	1
		2
	(Section 4)	3
<b>Part 2A</b>		4
Insert after Part 2:		5
<b>Part 2A</b>	<b>Interlock devices</b>	6
<b>21</b>	<b>Definitions</b>	7
	In this Part:	8
	<i>approved interlock device</i> —see section 21A	9
	<i>approved interlock installer</i> —see section 21B (1).	10
	<i>approved interlock service provider</i> —see section 21B (2).	11
	<i>interlock device</i> means a device designed to:	12
	(a) analyse a breath sample for the presence of alcohol, and	13
	(b) prevent a motor vehicle from being started if it detects more than a certain concentration of alcohol.	14 15
	<i>interlock driver licence</i> —see section 21C (2) (a).	16
	<i>maintenance</i> , in relation to an interlock device, includes (but is not limited to) the following:	17 18
	(a) the retrieval of any information that is stored electronically by or with the device,	19 20
	(b) any work that improves or augments the functionality of the device.	21 22
<b>21A</b>	<b>Approved interlock devices</b>	23
	In this Part, an <i>approved interlock device</i> is an interlock device of a type approved by the Authority by order published in the Gazette.	24 25 26
	<b>Note.</b> The Authority may amend or repeal an order made under this section. See section 43 of the <i>Interpretation Act 1987</i> .	27 28

<b>21B</b>	<b>Approved interlock installers and service providers</b>	1
(1)	In this Part, an <i>approved interlock installer</i> means a person approved in writing by the Authority as a person who may install and remove approved interlock devices in motor vehicles for the purposes of this Part.	2 3 4 5
(2)	In this Part, an <i>approved interlock service provider</i> means a person approved in writing by the Authority as a person who may carry out maintenance to ensure the proper operation of approved interlock devices, or conduct inspections of such devices, for the purposes of this Part.	6 7 8 9 10
(3)	A person may be both an approved interlock installer and approved interlock service provider for the purposes of this Part.	11 12 13
(4)	The Authority may revoke any approval given to a person under this section by written notice given to the person.	14 15
	<b>Note.</b> Section 44 of the <i>Road Transport (General) Act 1999</i> provides for the service and giving of documents to persons under the road transport legislation, which includes this Act.	16 17 18
(5)	The Authority is not liable in civil proceedings (whether for negligence or otherwise) for anything done or omitted to be done by an approved interlock installer or approved interlock service provider in exercising (or purportedly exercising) any function under this Act or the regulations. In particular, the Authority is not vicariously liable for any such act or omission.	19 20 21 22 23 24
<b>21C</b>	<b>Regulations may provide for installation, maintenance and use of interlock devices</b>	25 26
(1)	Without limiting section 20, the regulations may make provision for or with respect to the installation, removal and maintenance of interlock devices on motor vehicles and the use of such devices (whether or not for the purposes of a disqualification suspension order within the meaning of section 25A of the <i>Road Transport (General) Act 1999</i> ).	27 28 29 30 31 32
(2)	Without limiting the scope of the regulations under subsection (1), the regulations may:	33 34
(a)	provide for the issue of conditional licences ( <i>interlock driver licences</i> ) that restrict the holders of such licences to driving motor vehicles fitted with approved interlock devices by approved interlock installers, and	35 36 37 38

- (b) require (or authorise the Authority to require) applicants for interlock driver licences to submit to medical consultations before such applicants can be issued with such licences or at any time during which such licences are in force, and
- (c) prescribe additional conditions (or authorise the Authority to impose conditions) that holders of interlock driver licences must observe, including (but not limited to) the following:
  - (i) conditions relating to the maximum concentration of alcohol that may be present in the blood of holders of such licences when they drive motor vehicles,
  - (ii) conditions relating to the installation, maintenance and removal of interlock devices (including the payment of costs relating to such installation, maintenance or removal),
  - (iii) conditions relating to the inspection of interlock devices (or motor vehicles fitted with such devices) and the provision of information relating to such inspections to the Authority,
  - (iv) conditions relating to the provision of any data or other information collected by an interlock device (including the payment of any costs relating to the provision of such data or other information),
  - (v) any other conditions relating to the use of interlock devices, and
- (d) provide for certain motor vehicles (or classes of motor vehicles) not to be driven by holders of interlock driver licences,
- (e) provide for the Authority to inspect motor vehicles fitted with interlock devices (or require such motor vehicles to be inspected by other persons), and
- (f) specify procedures (or authorise the Authority to specify procedures) for approved interlock installers and approved interlock service providers to observe when installing, removing, inspecting or carrying out maintenance on approved interlock devices, and



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- (g) provide for applications by persons to be approved by the Authority as approved interlock installers or approved interlock service providers and for fees payable in respect of such applications, and 1  
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- (h) authorise a police officer: 5
- (i) to stop and inspect motor vehicles that the officer reasonably suspects may be fitted with an interlock device, and 6  
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- (ii) to seize any such motor vehicles or devices where the device is fitted to a motor vehicle driven by the holder of an interlock driver licence and the officer reasonably suspects that the device has been used in contravention of this Act or the regulations, and 9  
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- (i) provide for offences relating to the following: 15
- (i) the use of approved interlock devices, or the use of devices that are not approved interlock devices, by holders of interlock driver licences, 16  
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- (ii) tampering or other interference with approved interlock devices fitted to motor vehicles driven (or to be driven) by holders of interlock driver licences, or with breath samples provided for such devices, 19  
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- (iii) the installation, maintenance or removal of interlock devices that are used (or may be used) by holders of interlock driver licences, 24  
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- (iv) the provision of data or information concerning interlock devices that are used (or may be used) by holders of interlock driver licences, 27  
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- (v) any other acts or omissions that may assist the holder of an interlock driver licence in contravening any conditions of the licence or committing an offence against this Act or the regulations. 30  
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- 21D Financial assistance for use of approved interlock devices** 35
- (1) The Authority must establish a scheme under which persons seeking to gain the use of, or who are using, approved interlock devices may obtain financial assistance for the installation, removal or maintenance of such devices. 36  
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Road Transport Legislation Amendment (Interlock Devices) Bill 2002

Schedule 2      Amendment of Road Transport (Driver Licensing) Act 1998

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- (2) The Authority may approve the provision of financial assistance under this section subject to any means tests and conditions as may be determined by the Authority from time to time. 1  
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- (3) If it is a condition of the provision of any financial assistance provided under this section that all or part of it be repaid in specified circumstances, the amount of financial assistance that becomes repayable on the occurrence of those circumstances is a debt due to the Crown recoverable in a court of competent jurisdiction. 5  
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- (4) For the purposes of subsection (3), a certificate issued by the Authority that certifies that it was a condition of the provision of financial assistance that all or part of it be repaid in specified circumstances is prima facie evidence that the assistance was provided on that condition. 11  
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- (5) Payments of financial assistance are to be paid from the Roads and Traffic Authority Fund established by section 77 of the *Transport Administration Act 1988*. 16  
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