

REVIEW OF THE DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT

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Submitted by the Victorian Equal Opportunity and Human Rights Commission

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EXECUTIVE SUMMARY

The Victorian Equal Opportunity and Human Rights Commission (The Victorian Commission) is a statutory body that has responsibilities in relation to equal opportunity and human rights.

Consistent with the Victorian Commission's responsibility to seek to reduce discrimination, and the provisions of section 162 of the *Equal Opportunity Act 1995* (EOA), we are currently undertaking research into the rights of people with a disability to equality in their access to taxi services in Victoria, and for reasonable adjustments to be made to facilitate that equality of access.

This report, which will be released later in 2007, identifies:

- aspects of the provision of taxi services which may discriminate against people with a disability (PWD); and
- possible breaches of human rights of people with a disability when accessing taxi services.

Aspects of the report which are able to be released have been incorporated into this response to the current review of the *Disability Standard for Accessible Public Transport (DSAPT)* under the *Disability Discrimination Act 1992*, which is due to report to the Australian Federal Minister for Transport and Regional Services in consultation with the Attorney General by 14 December 2007¹.

While the DSAPT imposes substantial obligations on government and transport providers such as bus, train and tram operators to have their infrastructure and vehicles more accessible for people with disabilities, the DSAPT imposes only one objective for Wheelchair Accessible taxis (WATs) to achieve before the end of 2007: that WATs have the same response time as that for other taxis².

The Victorian Commission submits that the overriding objective of the DSAPT should be to achieve effective equality by detailing reasonable adjustments to be made for PWD in the provision of taxi services. The provision of taxi services forms an important component of the overall provision of public transport for people with a disability. Given the substantial length of time (in some cases decades) given to public transport operators to meet the DSAPT in relation to buses, trams and trains,

¹ www.ddatransportreview.com.au

² Schedule 1 Part 1.2

the reliance on taxi services is in many cases the only form of public transport available to younger and older Australians. As our population ages and future demands on taxi services grow, realising equality in service provision takes on a greater urgency.

SUMMARY RECOMMENDATIONS AND FINDINGS

1. The Victorian Commission submits that on the basis of the survey undertaken in Victoria, current standards that apply to the taxi industry in the DSAPT do not clearly articulate an effective plan to achieve equality in access to taxi services. In particular, the DSAPT does not effectively outline what reasonable adjustments are required to achieve equality of access for PWD to access taxis.
2. The survey results highlight the inadequacy of existing regulatory mechanisms to monitor and enforce the DSAPT standard in relation to equal response time. Given the response time standard was to be met by December 2007, it is clear that a more effective standard is required to achieve specified response times. A new DSAPT therefore needs to also address regulatory mechanisms.
3. Further concerns relate to the use of taxis by people who utilise wheelchairs. The new DSAPT should ensure that basic safety requirements of people in wheelchairs are specified to enable wheelchair users to travel safely and confidently utilising taxis. These standards should address the issues of:
 - a) Compulsory driver education for all drivers of WAT vehicles regardless of how casual their employment status may be;
 - b) Defining minimum safety standards in securing wheelchairs and scooters;
 - c) Identifying national specifications for wheelchair accessible taxis;
 - d) The timeframe and monitoring and enforcement mechanisms for achieving these requirements.
4. The new DSAPT should identify universal standards that apply:
 - a) for taxis that are able to carry wheelchairs and scooters, and

b) for regular taxis to ensure access for all taxi commuters.

This standard should specify a timeframe that allows capital replacement and uptake of design and technological changes to accommodate the needs of PWD utilising taxi services.

5. Given the survey findings relating to response times, quality of service and safety concerns, the new DSAPT needs to specify requirements related to taxi service complaint mechanisms that reasonable accommodate PWD.

1 INTRODUCTION

1.1.1 The Victorian Commission is a statutory body that has responsibilities in the following areas:

- (i) To advocate for civil and political rights contained in the Charter of Human Rights and Responsibilities (the Charter) and for equal opportunity with a view to reducing discrimination;
- (ii) raise awareness about human right and equal opportunity with a view to developing an understanding of human rights and a reduction in discrimination in the state of Victoria;
- (iii) To report annual to the Attorney General on human rights and the operation of the Charter of Human Rights and Responsibilities;
- (iv) To provide a free and impartial alternative dispute resolution service;
- (v) To undertake additional functions under the Equal Opportunity Act (EOA), the Racial and Religious Tolerance Act (RRTA) and the Charter of Human Rights and Responsibility Act including intervention in a court or tribunal where human rights or anti discrimination rights are raised, by invitation to review a public authority in relation to the Charter.

1.1.2 Consistent with the Victorian Commission's responsibility to seek reduce discrimination, and the provisions of section 162 of the EOA, the Victorian Commission is currently undertaking research into the rights of people with a disability to equitably access taxi services in Victoria.

1.1.3 This report will identify:

- (i) aspects of the provision of taxi services which may discriminate against people with a disability; and
- (ii) possible breaches of human rights of people with a disability wishing to access taxi services.

- 1.1.4 This submission deals specifically with the findings of a survey of taxi users, drivers and depots on the experience of provision of taxi services for people with a disability.

2 BACKGROUND

- 2.1.1 In 2006 the Victorian Commission formed a Working Group involving Commission staff, disability advocacy groups, the taxi regulator, the Victorian Taxi Directorate (VTD - a part of the Department of Infrastructure), and industry representatives, the Victorian Taxi Association (VTA).

- 2.1.2 The Working Group aimed to “identify issues affecting quality of service provision to consumers with disabilities, including the booking and dispatch system, safely transporting taxi users, effectively communicating consumers’ needs and drivers’ attitudes and training”³. In doing so the working group hoped to “create strategies to develop taxi services that are more responsive to the needs of people with disabilities”⁴.

- 2.1.3 The VTD supported the efforts of the Victorian Commission to obtain information from the disabled community and the taxi industry about this issue, and in August 2006 Market Solutions Pty Ltd was engaged to undertake a survey to obtain further information.

3 CONTEXT

- 3.1.1 Approximately 20 per cent or one million Victorians⁵ have some form of disability, and this number is expected to increase as the population ages. Many of these people utilise public transport, and this makes the need for accessible public transport pressing. Statistics show that approximately one third of these people, or up to 300,000 people, have difficulties using public transport.⁶

- 3.1.2 A considerable proportion of these people utilise taxi services because large sections of the mass public transport system remain inaccessible to them. As the Human Rights and Equal Opportunity Commission (HREOC)

³ ‘Taxi Accessibility Working Group Project Design’, VEOHRC, 2005, p3

⁴ *ibid*

⁵ Australian Bureau of Statistics, cat. No. 4430.0 *Disability, Aging and Carers*, Table 11 ‘Persons with a disability, disability status by main health condition’ Victoria 2003

⁶ Accessible Public Transport in Victoria Action Plan 2006-2012, p 6

stated in its report *Inquiry into Wheelchair Accessible Taxis (WATs)*, “Despite the progress made in these ... transport areas, the day when most people with disabilities will be able to use bus, train or tram systems which are fully accessible is, in most cases, still many years away.”⁷

- 3.1.3 This is borne out by statistics; the Victorian Accessible Public Transport Plan Update of March 2006 states that only 23% of trams are accessible to wheelchairs, and only 4% of tram stops are on raised platforms (and therefore wheelchair accessible). In addition, only 4% of Victoria’s 30,000 bus stops are compliant with the Australian Disability Standards for Accessible Public Transport 2002 (DSAPT).
- 3.1.4 This is despite the fact that a welcome by-product of improvements to make public transport more accessible for people with disabilities are the “significant improvements in amenity, safety, travel time (and) convenience”⁸ which usually result. These benefits are enjoyed by the entire travelling public, but are of added significance to many other people with mobility issues, such as people with prams or young children, the elderly, or people with minor injuries.
- 3.1.5 Among all forms of public transport, taxis provide the most convenient and accessible form of transport for passengers with disabilities (PWDs). Taxis can potentially provide door-to-door service, operate when requested, and allow for personal attention and care by the driver if required. The importance of this for the ageing population cannot be underestimated. Despite these features, there is an identified need for improvement of service delivery for PWDs.
- 3.1.6 People with disabilities who utilise taxi services are not one homogenous group. ‘Disability’ may include difficulties with ambulation requiring a wheelchair or crutches, vision, hearing and/or speech impairment and/or a diverse range of cognitive or mental impairments, and may be heightened by the ageing process.
- 3.1.7 A significant focus of this paper is wheelchair accessible taxis, which some wheelchair users must use. Other wheelchair users (and people with other disabilities) are able to transfer into a regular taxi. While the

⁷ Report of Wheelchair Accessible Taxi Inquiry, HREOC, March 2002, p 7

⁸ Accessible Public Transport in Victoria Action Plan 2006-2012, p 6

challenges of taxi use are similar for both groups, there are specific issues that relate to WATs.

3.1.8 Passengers with disabilities have also encountered problems are carriage of hearing or seeing eye dogs. While these passengers can access regular taxis, drivers are hesitant to take them. The recent experiences of the HREOC Disability Commissioner who is sight impaired and uses a guide dog, and was refused carriage by two taxi drivers, highlighted this problem.⁹ Mr Innes noted that the problem was becoming more widespread, and that taxis had driven off from taxi ranks in Melbourne and Sydney upon seeing his guide dog.¹⁰

3.2 Complaints about taxi services - the Victorian Commission

3.2.1 A number of complaints have been lodged by PWDs, with the Victorian Commission alleging discrimination by taxi service providers.

3.2.2 It is important to note that while the Victorian Commission has received few complaints about this issue, members of the Victorian Commission-convened taxi working group report that complaints are often lodged with them by their members. These organisations have advised the Victorian Commission that they are in regular contact with the VTD about these complaints. Similarly, the VTD receives complaints.

3.2.3 Of the five relevant complaints lodged with Victorian Commission since 2003, one was referred to conciliation, two were withdrawn by the complainants before a finding was made, and two were found to be lacking in substance and/or misconceived.

3.2.4 Several complaints arose from incidents where the complainant was left waiting for a WAT for several hours. Another complaint involved an incident in which a regular taxi driver refused to pick up a wheelchair user, insisting that only a WAT could provide carriage. A further incident arose from circumstances of animosity between a WAT driver and a

⁹ See HREOC Media Release 'It's a guide dog mate', 6 March 2007

¹⁰ While some drivers may be concerned about the perceived risk that a dog may soil their vehicle, drivers are required by law and the terms of their licence to pick up passengers and their guide dogs. When this issue arose in London it became clear that a number of drivers were refusing to pick up dogs because of Islamic law, which considers dogs as unclean. The Sharia Council of Britain subsequently put out a ruling stating that guide dogs must be picked up according to the law and that failure to do breached Islamic law. It is not clear if this is a reason for Australian drivers not picking up guide dogs and their owners, but it is obvious that drivers prefer not to take them.

passenger with a disability, where the driver refused to ever carry the passenger.

- 3.2.5 Where a depot was a party to a complaint over driver conduct (such as not picking up wheelchair users), they relied on the defence raised in the Federal Magistrates Court case of *Ball v SilverTop Taxi Service Ltd*¹¹ and accepted by the court, that the depot is not a party to the relationship between the driver and passenger and as such does not bear any liability for what occurs between them. It should be noted that this case involved a complaint under the federal Disability Discrimination Act, which differs to the EOA in its authorising and assisting provisions in that it does not allow for joint and several liability.

3.3 Complaints made directly to the Victorian Taxi Directorate

- 3.3.1 The Victorian Commission is advised that the formality of the complaint handling process of the Victorian Taxi Directorate often mitigates against pursuing complaints. Complaints are to be made in writing and the complexities of the structure of the taxi industry often mitigates against clearly identifying the respondent to a complaint. For many people with a disability, the formality of this structure poses a real impediment to the lodgement of a complaint with the VTD.

3.4 Conclusions from complaints

- 3.4.1 The response times are an issue of concern for many passengers with disabilities. However, it is worthwhile to note the comments of the HREOC:

[The problem of poor response times] does not appear readily able to be dealt by the use of complaint mechanisms established by taxi regulators, since it appears to involve more systemic issues of booking systems, proportions of accessible vehicles in fleets, and the economics of providing service to passengers requiring WAT service.¹²

- 3.4.2 The complex nature of the taxi industry may result in the lodgement of complaints incorrectly, which means they are declined as misconceived. For a person with a disability to correctly identify a respondent who is responsible for discriminatory behaviour may not be an simple endeavour

¹¹ [2004] FMCA 967

¹² 'Report of Wheelchair Accessible Taxi Inquiry', HREOC, March 2002, p 10

given the complex business structure of the taxi industry and the specific role of the taxi regulator.

3.4.3 In relation to the complaints process with the Victorian Taxi Directorate, there are barriers that are inherent with the formal requirements of the complaints process developed by that directorate, and more accessible complaint handling functions could be entertained. The model of accessibility demonstrated through the work of the Public Transport Ombudsman Victoria¹³ may provide a basis where complainants are facilitated by the receipt of complaints in varied formats beyond written complaints, to accommodate the different abilities of people to meet formal requirements.

4 THE EXPERIENCE OF TAXI SERVICES FOR PASSENGERS WITH DISABILITIES - THE SURVEY

4.1.1 In 2006 the Victorian Commission, with the assistance of the Department of Infrastructure, commissioned a survey of industry and consumer stakeholders to better understand the issues affecting the provision of taxi services for passengers with disabilities. Market Solutions Pty Ltd conducted a number of in-depth interviews and administered a survey of passengers, drivers and depot representatives and operators during October 2006. The report, entitled 'Quality of Taxi Services for Passengers with Disabilities' ("the report"), was presented to the Victorian Commission and VTD on 29 November 2006.¹⁴

4.1.2 While the report contains a useful analysis of the taxi industry, it should be noted that the objective of the study (and subsequent report) was not to establish if there was any discrimination against PWDs in the taxi industry, but rather to 'Provide a rounded view of the quality of taxi services for passengers with a disability'¹⁵ through interviews with stakeholders, and 'Identify areas of deficiency and proficiency to

¹³ http://www.ptovic.com.au/content/complaintpto_making.html

¹⁴ It should be noted that the manner in which the survey of passengers was conducted, namely distributing a questionnaire via community groups and the internet, may have skewed the results. While 47% of passengers who responded to the survey disclosed an intellectual disability, this compares with the 16% of the total population which reports having a disability. This reflects the distribution methodology via peak disability and aged organisations and their capacity to generate responses.

¹⁵ Quality of Taxi Services For Passengers with Disabilities, p 1

establish whether reform is required and if so, which are the main areas for attention.’¹⁶

4.2 Passenger Surveys

4.2.1 440 passengers were surveyed. Most of the respondents (57%) use taxis at least three to five times per week. People with disabilities living in rural and regional areas are more likely to be frequent users (more than five times per week) of taxi services.¹⁷ It was also found that there was an almost even split between passengers with a physical disability (51%) and mental impairment (47%).¹⁸ In addition, almost one-third (30%) of all passengers who responded had a vision or hearing impairment.¹⁹

4.2.2 It is a notable omission of the survey that a distinction was not made between those respondents with a disability who have a relationship with an identified driver and a private booking arrangement and those who have no relationship with an identified driver and book through the normal booking system. There is significant anecdotal evidence this can affect the experience of taxi service quality, and may impact on the survey reflections on quality of service.

4.2.3 Large numbers of passengers surveyed reported a number of difficulties in using taxi services.²⁰ It should be noted that their responses do not differentiate between difficulties they may face as a result of their disability as opposed to difficulties they may face as a result of lack of reasonable adjustments to the provision of taxi services. These difficulties included:

- (i) hailing a taxi on the street (53%),
- (ii) the length of time spent waiting for taxis (47%),
- (iii) communicating with the driver (47%) (which was particularly difficult for those with communication impairments),
- (iv) using automated booking services (40%),

¹⁶ *ibid*

¹⁷ Quality of Taxi Services For Passengers with Disabilities, p 6

¹⁸ Quality of Taxi Services For Passengers with Disabilities, p 4

¹⁹ *ibid*

²⁰ Op cit report p 9

- (v) over 30% of passengers identified getting in and out of a taxi as a problem,
- (vi) a slightly lower percentage (27%) noted difficulties transferring from a wheelchair or scooter to a seat in the taxi,
- (vii) almost 30% of passengers reported difficulties handling payment or signing their name as part of payment.

4.2.4 Of particular concern, approximately one third of all passengers surveyed identified having their wheelchair secured properly in the taxi as a problem, and not surprisingly, a similar percentage reported not feeling safe during a journey.

4.2.5 In response to questions about their satisfaction with taxi service, approximately one quarter of passengers surveyed (23%) reported that they had never received poor service. Indeed, drivers were given a rating of 'good to very good/excellent' by most passengers for their responses to the needs of passengers. Passengers seemed to place a great deal of importance on the pleasantness of drivers; drivers received high ratings for treating passengers with respect, patience and politeness, and specific examples of good service centred around examples of such conduct. This corresponds with sentiments expressed by drivers and operators, who recognise that passengers with disabilities require 'positive discrimination'²¹, in that they require extra attention and effort that goes beyond that required to transport a regular passenger.

4.2.6 It was not possible from the survey to identify whether this positive result was a consequence of the private arrangements that regular passengers with a disability made with specific drivers with whom they have a relationship, or from drivers who had taken bookings off the network. These different arrangements will elicit different levels of satisfaction as by definition, as these private arrangements are built on a good relationship with the driver.

4.2.7 Despite this commitment, many PWDs have expressed concerns over waiting times to catch a taxi, especially WATs. While the report states 'it is important to note here that 53% (of passengers) do not experience

²¹ Report p 60

difficulty with waiting times ... for many it is not an overwhelming issue'²², this masks the experience of some passengers with disabilities. Some respondents to the survey who are in wheelchairs have reported multiple experiences of taxis bypassing them and/or long waiting times. One such passenger expressed his frustration as follows:

“I have experienced extensive delays ... I have sat at taxi ranks and watched the queue of standard taxis stretch as far as I could see, and waited over an hour while an accessible taxi made its way to me.”²³

4.3 Taxi Operators and Depots

- 4.3.1 Taxi depots and operators surveyed stated that delays were the most common difficulty in providing services to people with disabilities. This was partly due to delays which affected the entire fleet, such as during peak times, as well as general reticence by drivers to pick up PWDS. These factors affect both WATs and regular taxis, but are of particular concern considering the requirement for WATs to prioritise PWD pick-ups. Maxi taxi-WAT drivers often prefer to pick up large groups of passengers (for whom they received a higher fee).
- 4.3.2 Operators also report that a major difficulty is recruiting and maintaining drivers. The main reasons for the un-viability of WATs were the fact that WAT fares did not cover the high cost of operation, extended time spent during the hire, and the limited offset of the extra costs. There was also recognition of the fact that the current broadcasting of WAT bookings 20 minutes before the scheduled pickup was not an effective method of service delivery due to the smaller number of WATs. They also reported a need for different, more flexible types of WAT vehicles, rather than the required van which can hold two wheelchair passengers.
- 4.3.3 Depots and operators reported seeing themselves as being more than just transport providers; carriage of passengers with disabilities often involved specific care for a passenger in getting them ready on time, or helping them in and out of the taxi. They saw themselves as ‘innately providing a service above and beyond that of a “driver”’²⁴. The translation of this attitude to drivers seems to be variable.

²² Ibid p 12

²³ Quote of M. Bagshaw in Report of Wheelchair Taxi Inquiry, HREOC, March 2002, p. 11

²⁴ Quality of Taxi Services for Passengers with Disabilities, p iii

4.4 Drivers

- 4.4.1 89% of drivers surveyed were regular taxi drivers and 11% were WAT drivers.
- 4.4.2 Only 20% of drivers reported receiving any disability-specific training. This is despite the fact that other research indicates that approximately one third of drivers in Melbourne have received a substantial amount of training on the special requirements involved in transporting passengers with disabilities²⁵, and DOI changes of March 2006 requiring every WAT driver to have undergone such training before the end of 2007. However that training is only required for WAT drivers - regular taxi drivers, the bulk of the fleet (and 89% of those surveyed)²⁶, are not required to undergo such training.
- 4.4.3 Almost two thirds of drivers surveyed (59%) thought that there is a need to improve taxi services for passengers with disabilities.
- 4.4.4 Approximately half (48%) of all drivers were not aware of a passenger's disability before picking them up.
- 4.4.5 35% of drivers cited communication with PWDs as an area of difficulty, indicating that they had trouble understanding the instructions from the passenger. 9% of drivers reported encountering a problem obtaining payment from a passenger.

5 LEGAL PROTECTIONS FOR PEOPLE WITH A DISABILITY UTILISING TAXI SERVICES

5.1 The Commonwealth Disability Standards for Accessible Public Transport

- 5.1.1 Both the State and Federal Governments have recognised the importance of 'ensuring that all members of the community can access public transport services and facilities.'²⁷

²⁵ Report, p 8

²⁶ Quality of Taxi Services for Passengers with Disabilities, p 40

²⁷ Public Transport Division of the Department of Infrastructure website, <http://www.taxi.vic.gov.au/DOI/Internet/transport.nsf/AllDocs/8A3773815437B0F64A25686C0008B211?OpenDocument#access>

- 5.1.2 In 2002 the Commonwealth introduced the Disability Standards for Accessible Public Transport (DSAPT). The DSAPT (as amended) are a form of delegated legislation, authorised under sections 31-34 of the Commonwealth Disability Discrimination Act 1992 (DDA) for the purpose of removing discrimination ‘as far as possible against people with disabilities’. Section 31(1)(d) specifically provides for the Minister to formulate disability standards in relation to the provision of public transportation services and facilities by government or any other person.
- 5.1.3 The DSAPT provides a series of milestones at five year intervals aimed at public transport infrastructure being fully accessible for PWDs by 2022. While section 32 makes it unlawful for a person to contravene a disability standard, acting in accordance with the Standard is a complete defence to an allegation of discrimination.
- 5.1.4 While the DSAPT imposes substantial obligations on government and transport providers such as bus, train and tram operators to have their infrastructure and vehicles more accessible for people with disabilities, the DSAPT imposes only one objective for WATs to achieve before the end of 2007: that WATs have the same response time as that for other taxis²⁸. Unfortunately, even that objective is unlikely to be achieved.
- 5.1.5 The DSAPT require compliance from the taxi industry in a number of areas, both for vehicles and infrastructure. These include addressing the following:
- (i) Manoeuvring areas for both infrastructure and vehicles
 - (ii) Passing areas for infrastructure
 - (iii) Boarding (includes the provision of boarding devices)
 - (iv) Allocated space (sufficient space to fit a single wheelchair or similar mobility aid)
 - (v) Surfaces
 - (vi) Doorways and doors to have an unobstructed vertical height when opened to fit a person sitting in a mobility aid

²⁸ Schedule 1 Part 1.2

- (vii) Signs - raised taxi registration numbers to be placed on the exterior of all vehicles
- (viii) Tactile ground surface indicators
- (ix) Street furniture
- (x) Payment of fares
- (xi) Provision of information
- (xii) Equal response time.

6. SUMMARY RECOMMENDATIONS AND FINDINGS

- 6.1 The survey results highlight the inadequacy of existing regulatory mechanisms to monitor and enforce the DSAPT standard in relation to equal response time. Given the response time standard was to be met by December 2007, it is clear that a more effective standard is required to achieve specified response times. A new DSAPT therefore needs to also address regulatory mechanisms.
- 6.2 Further concerns relate to the use of taxis by people who utilise wheelchairs. The new DSAPT should ensure that basic safety requirements of people in wheelchairs are specified to enable wheelchair users to travel safely and confidently utilising taxis. These standards should address the issues of:
- 6.2.1 Compulsory driver education for all drivers of WAT vehicles regardless of how casual their employment status may be;
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- 6.3 The new DSAPT should identify universal standards that apply:

6.3.1 for taxis that are able to carry wheelchairs and scooters, and

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This standard should specify a timeframe that allows capital replacement and uptake of design and technological changes to accommodate the needs of PWD utilising taxi services.

6.4 Given the survey findings relating to response times, quality of service and safety concerns, the new DSAPT needs to specify requirements related to taxi service complaint mechanisms that reasonable accommodate PWD.

APPENDIX A - REFERENCES

- Accessible Public Transport in Victoria Action Plan 2006-2012
- Australian Bureau of Statistics, cat. No. 4430.0 Disability, Aging and Carers, Table 11 'Persons with a disability, disability status by main health condition' Victoria 2003
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