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By Email

Dear Catherine

Privileged and confidential

Metro Trains Australia: Rail Industry Worker (RIW) Program Review

We refer to Metro Trains Australia's (**MTA**) instructions in relation to the review of the RIW Program. The RIW System provided by MTA is the system used to operate the RIW Program. MTA has asked us to provide advice in respect of the RIW Program, and its ability to assist Rail Transport Operators (**RTO**), including Rolling Stock Operators (**RSO**) and Rail Infrastructure Managers (**RIM**), principal contractors / contractors in charge (**Principal Contractors**) and other contractors (together, **RIW Program Participants**) to manage their obligations under the *Rail Safety National Laws* (**RSNL**), and occupational health and safety (**OHS**) laws.

This advice provides a high level overview of the relevant obligations under both OHS laws and the RSNL which we understand the RIW Program is intended to assist in managing, as well as a summary of our understanding of some of the program's key functionalities, and our overall observations in relation to the same.

1 Our approach to this review

In preparing this advice, we have had the benefit of reviewing relevant documents and materials provided by MTA in relation to the functionality of the RIW Program. This review has been complemented by two sessions with members of MTA's RIW Program team to demonstrate and test, in a practical way, the functionality of the RIW Program and how it might assist RIW Program Participants in meeting their obligations under the RSNL and OHS laws.

Overall, having had the opportunity to review, consider, and observe the functionality of the RIW Program, the program appears to us to be user friendly, accessible and capable of providing information which we consider would be of significant benefit to an RIW Program Participant to achieve compliance with a number of rail safety and OHS obligations. We say this noting that compliance with many of the duties an RIW Program Participant owes to its rail safety workers or other non-rail workers requires it to have a dependable and robust system for tracking who has been working, and when; and ensuring competency, medical assessments, fatigue and important issues are being properly tracked.

To this end, where used appropriately and uniformly, we consider the RIW Program to be a powerful tool for ensuring compliance with those key elements of an RIW Program Participant's obligations under the RSNL, and the principles required for compliance with the general duties under OHS laws.

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2 Rail Safety Obligations

Under the RSNL, all RTOs (including RIMs and RSOs) have an obligation to ensure, so far as is reasonably practicable, the safety of the operator's railway operations¹. A similar obligation exists for employers and persons conducting a business or undertaking (**PCBU**) under state- and territory-specific OHS laws, which apply in parallel with the obligations under the RSNL. That is, under OHS laws, all RIW Program Participants have an obligation to ensure, so far as is reasonably practicable, the health and safety of:

- a. workers engaged, or caused to be engaged by that person, and
- b. workers whose activities in carrying out work are influenced or directed by the person,

while the workers are at work in the RIW Program Participant's business or undertaking (**Primary Duty**)².

Among other things, this Primary Duty requires RIW Program Participants to ensure, so far as is reasonably practicable, that safe systems for the carrying out of the operator's railway operations are developed and implemented, and that there are adequate facilities for the safety of persons at any railway premises under the control or management of the operator.

Without limiting the generality of the above, the RSNL confirms that the obligation to ensure the safety of an RTO's operations requires that, in relation to rail safety workers engaged or caused to be engaged by an RTO, each RTO ensure, so far as is reasonably practicable, that:

- a. each rail safety worker who is to perform rail safety work in relation to the operator's railway operations:
 - (1) is of sufficient good health and fitness to carry out that work safely; and
 - (2) is competent to undertake that work. This requires the competence of a rail safety worker to be assessed:
 - (A) in accordance with any qualification and units of competence recognised under the Australian Qualifications Framework applicable to that rail safety work; or
 - (B) in accordance with any qualifications or competencies prescribed by the national regulations; and
 - (C) by reference to the knowledge and skills of the worker that would enable the worker to carry out the rail safety work safely³.
 - (3) does not carry out rail safety work in relation to the operator's railway operations, and is not on duty, while impaired by alcohol or a drug; and
 - (4) does not carry out rail safety work while impaired by fatigue or if they may become so impaired⁴.

Additionally, all RTOs are required to take reasonably practicable steps to ensure the provision of:

¹ Section 52(1) RSNL.

² Section 48 of the RSNL. See also section 19 of model *Work Health and Safety Acts (Model WHS Acts)*, and section 21 of the *Occupational Health and Safety Act 2004 (Vic) (OHS Act)*.

³ Section 117 RSNL.

⁴ Section 52 RSNL.



- a. such information and instruction to, and training and supervision of, rail safety workers as is necessary to enable those workers to perform rail safety work in relation to the operator's railway operations in a way that is safe; and
- b. such information to RTOs and other persons on railway premises under the control or management of the operator as is necessary to enable those persons to ensure their safety⁵.

RTOs also have an obligation under the RSNL to ensure that rail safety workers have identification that enables a rail safety officer to check the worker's training and competency⁶.

As with general duties under OHS laws, duties under the RSNL cannot be contracted out of or transferred to another party, and must be discharged by each individual RIW Program Participant⁷.

For this reason, while the RIW Program may be considered a valuable tool to assist RIW Program Participants in complying with key obligations under the RSNL and OHS laws, those obligations will remain with each RIW Program Participant. For this reason, to the extent that an RIW Program Participant is relying on a platform or program to assist in the management or monitoring of its obligations under the RSNL or OHS laws more broadly, that reliance should at all times be subject to an assessment of the reasonableness of that reliance.

3 Duties under OHS laws

OHS laws exist in every state and territory, and operate alongside the RSNL on rail networks and projects, and create duties of care at all worksites.

OHS laws operate on a risk-based basis, and so require duty holders to understand risks associated with the way in which their work is performed by their direct employees or contractors, and require that all reasonably practicable steps be taken to manage the health and safety of those persons.

This obligation exists in the 'Primary Duty' of care under OHS laws. Much like the duties under the RSNL, the Primary Duty requires that a duty holder must ensure, so far as is reasonably practicable, the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the RIW Program Participant's business or undertaking.⁸

Meeting the general Primary Duty would also require that a duty holder understand issues relating to site attendance, worker competency and training, fatigue and the latent medical capacity of an individual – even if these duties are not expressly dealt with in those terms in the legislation.

4 Key components and objectives of RIW Program

Having reviewed the material provided by MTA, and attended demonstrations of the functionality of the RIW Program, we understand that the program is intended to operate as a national competency and safety management system for workers in the Australian rail industry.

In doing so, the RIW Program is intended to assist RTOs and RIW Program Participants more broadly in monitoring their key obligations in respect of the engagement of rail safety workers under the RSNL and OHS laws, particularly as these relate to:

- Competency management and verification;

⁵ Section 52 RSNL.

⁶ Section 118 RSNL.

⁷ Section 51 RSNL.

⁸ See for example, section 21(e) of the OHS Act and section 19(f) of the Model WHS Acts.



- Medical and drug and alcohol management;
- Identification management;
- Fatigue management; and
- Managing blocks and suspensions.

Additionally, we understand that the RIW Program is intended to provide RIW Program Participants a clear and auditable record of compliance with these key obligations under the RSNL which, in turn, will assist in achieving compliance with the more general Primary Duty under OHS laws.

4.1 Summary of RIW System

Effectively, we understand that the RIW Program consists of a system (**System**), whereby each participating rail safety worker is provided with a single electronic record of their health, education and competencies as they work across projects, move between employers and operate on different state networks.

These electronic records are linked to a worker's RIW profile (which is created within the RIW System), which is, in turn, linked to a personal RIW card issued to each rail safety worker. This card is available in digital and physical form, and can be used by workers to scan in and out of participating work sites.

The RIW System then records and retains details⁹ of each time a rail safety worker swipes in and out of a participating worksite through an established kiosk, tablet, turnstile, reader or app, with those points of entry and exit able to be configured to allow relevant rail safety operators (including network operators, employers of rail safety workers, and contractors in charge of a particular project) to monitor required competencies of workers (which may change between particular roles). The System also enables monitoring of relevant health information, drug and alcohol test results, and fatigue indicators, while also acting as a means of validating the identity of each rail safety worker. In doing so, the RIW System is able to notify relevant RIW Program Participants of prescribed events (for example, a breach of fatigue standards, or a non-negative drug test result), to allow those RIW Program Participants to apply a block on workers accessing a site as may be appropriate.

Through this System, we understand that a wide range of site access controls can be configured through a kiosk, reader or smart device, which can be set to include network, project, site and/or zone specific prerequisites (such as minimum competencies and fatigue standards) which must be demonstrated through a worker's RIW profile before an authority to work is granted.

Additionally, having all relevant information linked to a worker's RIW profile (as accessible through their RIW card), allows worksite representatives (such as an appointed access controller) to review relevant details of each rail safety worker at the points of entry, or during a shift by way of a spot check, and verify their identity, as well as any competencies required, and any medical, fatigue or drug and alcohol notifications relevant to the worker's ability to perform their role safely.

We set out below our understanding of how the RIW Program is intended to assist RIW Program Participants in monitoring and discharging key obligations under the RSNL in respect of the engagement of workers which, in turn, assist in achieving compliance with the more general Primary Duty owed under OHS laws.

⁹ We understand that all personal information collected under the RIW Program and System in respect of rail safety workers is stored securely, and in accordance with a privacy acknowledgment given by the workers at the time that a worker profile is first created.



4.2 Competency management and verification

As outlined above, we understand that one of the key compliance areas under the RSNL that the RIW Program is intended to assist with monitoring is competency of rail safety workers engaged by an RIW Program Participant.

To this end, we are instructed that part of the functionality included within the RIW System allows Registered Training Organisations, RIW employers (i.e. via Employer Administrators) and the RIW Service Desk to upload various competencies and accreditations against a worker's profile. This includes, for example, education, high risk licenses, certificates, and other qualifications held by the rail safety workers.

Under the RIW System, these competencies are categorised as:

- **National** – a competency that is nationally recognised, such as TLIF10001A Follow Occupational Health & Safety Procedures, which can be uploaded to the RIW System by an Employer Administrator, Registered Training Organisation or the RIW Service Desk.
- **Employer** – a competency that is specific to an Employer, such as John Holland Examine Track Infrastructure, which can be uploaded to the RIW System by an Employer Administrator, Registered Training Organisation or the RIW Service Desk.
- **Network-Based** – a competency that is specific to a Network, such as Queensland Rail Safely Access the Rail Corridor or ARTC National Contractor Induction, which can be uploaded to the RIW System by an Employer Administrator, Registered Training Organisation or the RIW Service Desk.
- **Project-Based** – a competency that is specific to a Project, such as Face to Face Induction (Project Level). Project based competencies can only be awarded by a Project Administrator, an Access Controller, Employer Administrator or by the RIW Service Desk to individuals swiping in at a Project.
- **Site-Based** – a competency, such as a toolbox talk or induction, which can be awarded by an Access Controller or Site Based Administrator to individuals swiping in at site or by the RIW Service Desk.
- **Zone-Based** – similar to a site-based competency but specific to a zone, it can be awarded by an Access Controller or Site Based Administrator to individuals swiping in to a zone.

We understand that the competencies which a particular rail safety worker needs to demonstrate might vary depending on their particular role on any given project. As a consequence, an RIW Program Participant's obligation to ensure the competency of workers engaged, or caused to be engaged, requires ongoing assessment, consideration and verification.

To support this, we understand that, before a new competency can be recorded against a rail safety worker's profile, evidence of that competency in the required form (for example, as determined by the Australian Qualifications Framework), must be uploaded to the RIW System and if it is not uploaded directly by a Registered Training Organisation it must be verified by a specialist team engaged by MTA for that purpose. Some Principal Contractors or employers may also designate their own employer based competencies which they can verify, and RIW assessors nominated by an RIW Program Participant can assess competencies and job roles for the relevant RIW Program Participant.

Once a new competency is uploaded directly by the Registered Training Organisation or evidence of a new competency is verified, it will be recorded against the worker's profile, along with any details associated with the expiry or renewal requirements of that competency (for example, if a competency is required to be reviewed/reassessed periodically, that will be recorded against the worker's profile, with a notification sent to relevant parties when the expiry of that competency is approaching).



We understand that, using this functionality, RIW Program Participants and other parties with control and management over a worksite can configure the worksite to ensure in real time that any workers attending site have any required competencies, job role and medicals for the role which they are performing on that day, with the RIW kiosk, tablet, turnstile, reader or app able to be configured to provide an alert to nominated persons (for example, a worker's employer and a nominated site representative) for any requirements that have been configured at the relevant worksite if a worker is attempting to access a site without having a required, and verified, competency recorded against their profile.

Additionally, the RIW System supports organisations managing entire workforce competency management to meet both OHS and RSNL requirements, including retention of training records through to Australian Data Privacy obligations.

4.3 Medical and drug and alcohol management

In addition to capturing and recording competency based information, the RIW System can also store medical and drug and alcohol data in relation to rail safety workers, which can then be used to assist RIW Program Participants in monitoring their obligations to ensure that workers are of sufficient good health to carry out rail safety work, and do not work while impaired, or potentially impaired, from drugs or alcohol.

Specifically, with regard to medical information, we understand that a worker's RIW Profile can record information in relation to work related medical screenings, such as pre-employment medical testing, periodic medical testing, show cause medical testing, age related medical testing and any additional medical information (e.g. silica exposure testing and medical condition surveillance). Any medical restrictions are then able to be recorded against the worker's profile (for example, if a worker must wear prescription glasses, or is unable to work from heights for medical reasons, this can be recorded against their RIW Profile).

The key outcomes of all medicals as per the National Standard for Health Assessment of Rail Safety Workers are then visible to the worker's employer, any organisation that the worker is associated with in the RIW System and authorised health professionals by viewing their RIW Profile in the System as soon as the data is uploaded by an authorised health professional, the RIW Service Desk or an RTO or Principal Contractor who has an authorised health professional administration login. This visibility can support RIW Program Participants in ensuring workers are fit for work, and that any medical restrictions which might apply to the works are observed.

Similarly to the competency functionality described above, job roles within the RIW System can then be configured to be dependent on a valid health assessment, and to provide notifications and alerts to workers and their employer in relation to upcoming expiration of medical clearances.

If a rail safety worker is deemed unfit for duty by reason of a medical screening, the worker's employer will be emailed with the medical update upon the results being loaded into the RIW System.

This functionality extends to drug and alcohol screening, with the results of random, pre-employment, and post incident drug and alcohol testing recorded against a worker's RIW Profile¹⁰. Where a non-negative drug or alcohol test result is registered on a site breathalyser or other method, the designated site contacts will be notified and an automatic site block will be placed on that worker's RIW profile until such time that it is removed by the relevant site. Where a non-negative result is registered on a worker's RIW profile by an authorised health professional, an alert is provided to their employer and an automatic network block is placed on that worker's RIW profile for all the networks in the RIW System. It is up to each RTO whether or not they subsequently remove the block.

¹⁰ We understand that RIW Kiosks can also be affixed with breathalysers which, where available, can screen all workers, or a selection of workers, at the point of entry.



4.4 Identification management

As touched on above, we understand that, as part of the RIW Program, RIW workers are issued with an RIW card (either physical, or digital through an app), which can be used as a form of identification. While linking to the worker's RIW Profile, the card also contains a photo of the worker that can be used to verify their identity by a site access controller at the point of access, or through spot checks during the course of a shift.

RIWs' identities are also verified against the Australian Government's Document Verification Service (DVS) as part of the onboarding process into the RIW System.

Of course, as with any identification management system, any RIW Program Participant adopting the RIW system should be conscious of the potential for workers to attempt to fraudulently engage with the system (for example, by scanning in using another worker's RIW Card). For this reason, we expect that an access controller, or spot checker, will continue to play an important role in verifying a worker's identity against their RIW card.

4.5 Fatigue management

In addition to the above components, we understand that the RIW Program is intended to provide RIW Program Participants with a tool to assist in monitoring fatigue management for workers attending a worksite. This is principally through the functionality described above, whereby the consistent use of a RIW card to swipe on and off a site provides an auditable trail of worker swipe activity, which can be used to determine the time between and breaks during shifts (provided that workers are also swiping in and off on their breaks).

In principle, this allows employers and nominated RIW Program Participants to view a log of the worker's swipe activity and determine whether they have met the minimum rest requirements both during and between shifts, to comply with defined fatigue standards for a site or project.

Similar to other functionalities described above, we understand that fatigue rules can be configured at a site level to define minimum rest time between shifts, and kiosks, tablets, turnstiles, readers or the app can be used for RIWs to swipe and provide an alert to nominated persons, or otherwise deny access, to a worker who has not observed the minimum rest period between shifts¹¹. This also results in nominated persons (such as the worker's employer, and nominated site or project contacts) receiving a notification of a breach of the fatigue standards that have been set, with that notification then being recorded against the worker's RIW Profile.

The RIW System is also being updated to enable alerts to be sent to designated site contacts where workers are approaching fatigue thresholds.

Of course, given the known reality of rail safety workers working across multiple projects and sites at any given time, RIW Program Participants should be cautious of wholesale reliance on swipe data as a means of ensuring that workers are not performing rail safety work while affected by fatigue. We expect that this information will form a useful data point for this purpose, but that utility will, to a large degree, depend on the universal and consistent use of the RIW System across all sites that a worker may be attending. That is, if a worker is working on one site that applies the RIW System consistently and requires workers to swipe in and out on every occasion, as well as another site which does not use the System, or uses the System inconsistently, the reliability of the swipe data in determining monitoring fatigue standards will be significantly reduced.

Ultimately, while there is obvious utility in this functionality, and time between shifts and breaks should be considered a useful tool in monitoring fatigue, RTOs should remain conscious that their obligation under the RSNL is to ensure that workers do not carry out rail safety work while impaired by fatigue or if they may become so impaired. This obligation should also be considered by RIW Program Participants more broadly as a key

¹¹ We understand that, in practice, if a worker attempts to enter site within the defined fatigue standard period for that site, an access controller can override the alert and allow access if they are satisfied that the worker is not affected by fatigue. This might require the administration of a short cognitive test before a worker is allowed to enter the site and perform work.



aspect of complying with the Primary Duty under OHS laws. In practice, this requires a consideration of all circumstances that might result in fatigue, and such caution should be applied in relying solely on the swipe in and out data (when available and applied consistently) as a fatigue indicator.

4.6 Blocks and suspensions

As briefly touched on above, we understand that the functionality of the RIW System allows for blocks or suspensions to be placed on a rail safety worker's profile at various levels in the event that a relevant standard is breached, or site access requirement is not met. For example, a suspension or block could be placed as a result of an incident (including an incident that is being investigated) or fraudulent activity.

Similarly, in the event that a worker registers a non-negative drug or alcohol test result on a site breathalyser or other method, the designated site contacts will be notified and an automatic site block will be put on their RIW profile until such time as it is removed by the relevant site. If a worker has a confirmed non-negative drug or alcohol record applied to their RIW profile by an authorised health professional, then an alert is provided to their employer and an automatic network block is placed on their RIW profile for all the networks in the RIW System. It is up to each RTO whether or not they subsequently remove the block. We understand that there are some mechanisms for blocks to display at the point that the worker attempts to swipe onto a participating site, and for other more detailed information to be available to user administrators. This real-time information can assist in further ensuring that, when the RIW swipe system is applied consistently, it provides information on material issues that ought to prevent the worker accessing the site.

While a level of vigilance should continue to be applied (as with all other aspects of the RIW System), we consider the suspension/block functionality of the RIW System is a useful tool to assist RIW Program Participants in ensuring that workers are not attending site in an unqualified, or otherwise unsafe, manner.

5 Other observations and endorsement

Overall, and in light of the observations above, we would endorse any RIW Program Participant incorporating the RIW program into their Rail Safety or Occupational Health and Safety Management System.

In our view, the RIW System provides a bespoke and sophisticated approach to managing a range of compliance obligations by any RTO (including RIMs and RSOs) under the RSNL in particular, as well providing a means by which compliance could be achieved with the more general obligations of RIW Program Participants under OHS laws.

It is in our view a sophisticated mechanism through which a range of legal duties or responsibilities can be monitored or achieved. Given this product is available at a cost which we understand is not grossly disproportionate to the benefit it offers (i.e. an analysis which would conclude that the cost is not unreasonably high compared with the overall benefit), it seems to us that adoption of a worker registration process such as the RIW Program is a reasonably practicable (and therefore necessary) step for any RIW Program Participant.

As we've set out in this paper, the obligations of an RTO in respect of its rail workers require that it has a credible and reliable system for ensuring a worker's competence, health and fitness, and indeed their specific personal identification, are monitored on-site. It is also appropriate that an RTO has a sophisticated approach to the oversight of fatigue, in compliance with any site or project specific fatigue requirements, together with mechanisms for ensuring that individuals who have been subject to an adverse drug and alcohol test are prohibited from re-entering the site until the necessary preconditions have been met. While expressed in more general terms, regard should be had to these matters by all RIW Program Participants when considering compliance with the Primary Duty owed under OHS laws.



These requirements could be achieved through a number of mechanisms, but in our view it is appropriate to ensure that the method for meeting this duty comprise an electronic system which is reliable, searchable and ideally gathers information across multiple employers and worksites. This tends to suggest that it is appropriate to adopt a uniform standard worker identification and registration process, rather than seeking to develop one at an individual enterprise level. It is also necessary that any system has sufficient IT integrity, together with all necessary mechanisms for ensuring compliance with a range of ancillary obligations including privacy and other legislation.

Based on our induction into the RIW Program, in our view, the program affords RIW Program Participants the ability to incorporate a system which meets these objectives.

We also consider it essential that RIW Program Participants be able to actively, and with a degree of instant impact, implement arrangements such as suspensions of a worker from a particular rail network, project or site or to take steps to be able to understand the number of workers at a workplace at any given time.

We also see it as essential that any rail worker oversight system be able to provide an RIW Program Participant with evidence of the workers who are onsite at any given time, their competency and management of specific site obligations like fatigue or drugs and alcohol. While there may be mechanisms for doing this in situ on a particular day, a key aspect of the ability to later prove legal compliance will depend on the accessibility of data and the integrity of that data over a period of time relevant to any investigation or inquiry.

5.1 Some limits on ‘full reliance’ on the system to meet legal duties

There are necessary limits on the support and reliability offered by the various functions of the RIW Program which it is important to acknowledge.

First, in order to obtain the fullest degree of legal compliance afforded by the incorporation of the RIW Program, it will be necessary for an RIW Program Participant to implement a thorough supervised practice of ensuring all workers “swipe on” at the commencement of any shift and “swipe off” at its conclusion. For the information and data to be relevant and accessible to the RIW Program Participant, it will be important that the data is not affected by any concerns about its overall integrity or the holistic nature of the information recorded. This means that in addition to the incorporation of the RIW Program into the health and safety management system of any RIW Program Participant, RIW Program Participants will also need to take steps to ensure that the consistent use of that system is properly supervised by its workers or contractors out onsite.

Similarly, we note that the engagement of RIWs across, for example, infrastructure projects, may mean individuals are working across a number of projects concurrently. In this important context, the ability of some aspects of the RIW Program to function effectively, for example in relation to overall fatigue management, requires a presumption that many other RIW Program Participants are similarly adopting and appropriately enforcing the RIW process at their sites. If, for example, it was a mandatory requirement that all sites use the same RIW Program, this would mean that a particular RIW Program Participant would have a high degree of confidence that information relating to the fatigue levels or hours of work of a particular rail industry worker would be accurate, irrespective of whether that worker had operated on their site or other sites in the immediately preceding period. This is a real opportunity for the RIW Program, but would require its universal adoption, and likely, a change in industry practice.

Finally, to the extent that the RIW Program provides a degree of comfort to an RIW Program Participant about the level of qualification of a particular worker at a particular site, this does, to some extent, require confidence that there is not some level of fraud or misinformation at the entry point. We note, and endorse, the steps which the RIW Program takes to seek to validate information provided by a particular worker in relation to an asserted qualification, but we note that this is not of itself foolproof. We raise this simply by way of observing there are natural limitations to the RIW Program overall, and to some extent it requires a degree of universal adoption at a particular project or worksite, and would benefit from increased adoption across industry and continued



support on the steps that MTA and the ARA are taking to ensure integrity of the data in the RIW System.

5.2 Conclusion

Notwithstanding the observations above, we can see that the RIW Program appears to us to be user friendly, accessible and providing information which we consider would be of significant benefit to an RIW Program Participant in the event that it needed to demonstrate compliance with its obligations, particularly under the RSNL, but also more broadly under OHS laws.

Any decision by an RIW Program Participant to adopt the RIW Program should of course take into account their specific requirements and any particular needs each RIW Program Participant may have or circumstances which give rise to unique aspects of their operations.

Yours sincerely

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