



29th November 2024

[REDACTED]
[REDACTED]

Ref: OIA-2024/25-0447

Dear [REDACTED]

Official Information Act request relating to COVID-19 Public Health Response (Masks) Order 2022 for signing

Thank you for your Official Information Act 1982 (the Act) request received on 13 November 2024. You requested:

I request a copy of: DPMC Briefing "COVID-19 Public Health Response (Masks) Order 2022 for signing" (8 September 2022) Report number: DPMC-2022/23-175.

Information being released

Please find attached a copy of the briefing 'COVID-19 Public Health Response (Masks) Order 2022 for signing'. The relevant grounds under which information has been withheld under the Act are:

- s9(2)(a), to protect the privacy of individuals
- s9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion
- s9(2)(h), maintain legal privilege.

In making my decision, I have considered the public interest considerations in section 9(1) of the Act. No public interest has been identified that would be sufficient to outweigh the reasons for withholding that information.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response will be published on the Department of the Prime Minister and Cabinet's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely

[REDACTED]

Clare Ward
Executive Director
Strategy, Governance and Engagement



Coversheet

Briefing: COVID-19 Public Health Response (Masks) Order 2022 for signing

Date:	8/09/2022	Report No:	DPMC-2022/23-175
		Security Level	IN-CONFIDENCE UNCLASSIFIED
		Priority level:	[Priority]

	Action sought	Deadline
Hon Dr Ayesha Verrall Minister for COVID-19 Response	agree to recs	12/09/2022

Name	Position	Telephone	1 st Contact
Kay Baxter	Manager, Strategy and Policy, COVID-19 Group, DPMC	s9(2)(a)	✓
Kate Hamilton	Senior Policy Advisor, COVID-19 Group, DPMC	s9(2)(a)	

Departments/agencies consulted on Briefing
Manatū Hauora, Crown Law Office

Minister's Office

Status:

Signed

Withdrawn

Comment for agency

Attachments: Yes/No

Briefing

COVID-19 Public Health Response (Masks) Order 2022 for signing

To: Hon Dr Ayesha Verrall
Minister for COVID-19 Response

Date

8/09/2022

Security Level

IN-CONFIDENCE UNCLASSIFIED

Purpose

1. This briefing supports your proposal to shift away from the COVID-19 Protection Framework (the CPF) to a new approach, as endorsed by Cabinet [CAB-22-MIN-0365]. To implement mask requirements under the new approach, we recommend that you agree to revoke the COVID-19 Public Health Response (Protection Framework) Order 2021 (the CPF Order), and sign the proposed new mask order – COVID-19 Public Health Response (Masks) Order 2022 (the Mask Order).
2. Orders to give effect to your decisions are due to you on Monday 12 September 2022.
3. This briefing summarises the effect of the amendments and confirms that the necessary procedural requirements for the making of COVID-19 Orders have been complied with.

Executive Summary

4. On 5 September 2022, you consulted Cabinet on the proposal to revoke the COVID-19 Public Health Response (Protection Framework) Order 2021 (the CPF Order) and move to the new approach of baseline and reserve measures. Cabinet agreed to retain some mandatory public health measures at this time, subject to confirmation on 12 September. These measures are mandatory mask use for visitors in healthcare settings, seven-day isolation periods for cases, and contact tracing requirements for air border arrivals. Other public health measures will be given effect to through guidance, as baseline measures.
5. The Department of the Prime Minister and Cabinet is responsible for administering the CPF Order. To give effect to Cabinet agreements regarding the CPF Order and mask settings we recommend that you:
 - a) agree to revoke the CPF Order;
 - b) sign the COVID-19 Public Health Response (Masks) Order 2022 to give effect to ongoing mask requirements (given current mask requirements are currently in the CPF Order).
6. If you agree, we will issue drafting instructions to PCO and will provide you with relevant orders to sign on 12 September 2022, prior to them commencing at 11.59pm that day. Manatū Hauora is providing you with a separate briefing (HR20221395 refers) to give effect to Cabinet's other agreements.

Briefing: Required changes to mask settings to support the shift to the new approach

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Recommendations


We recommend you:

1. **note** that Cabinet agreed in principle, to make changes to a suite of COVID-19 mandates and restrictions, pending final agreements on 12 September 2022 [CAB-22-MIN-0365]
2. **note** that the requirements for the making of COVID-19 Orders have been complied with, in particular the consideration of:
 - 2.1 purpose of the COVID-19 Public Health Response Act 2020
 - 2.2 purpose of the amendment
 - 2.3 public health advice
 - 2.4 New Zealand Bill of Rights Act 1990
 - 2.5 Ministerial consultation
 - 2.6 The 48-hour notification period
3. **note** that decisions to retain, amend or make a new order, under section 11 of the COVID-19 Public Health Response Act 2020, are subject to the availability of the appropriate legislative prerequisites through either the renewal of the Epidemic Notice or a Prime Minister's Authorisation
4. **note** that the COVID-19 Public Health Response Act 2020 requires orders to be made by the Minister for COVID-19 Response (once all the statutory prerequisites have been considered) even when Cabinet considers proposals in detail or agrees policy changes
5. **agree** to revoke the COVID-19 Public Health Response (Protection Framework) Order 2021 (YES) NO
6. **confirm** your position, following consultation with Cabinet, to retain mask requirements for visitors to healthcare settings only excluding in counselling and mental health and addiction services (YES) NO
7. **sign**, on 12 September 2022, the COVID-19 Public Health Response (Masks) Order 2022 (the Mask Order), for on-going mask requirements in healthcare settings with the revocation of the CPF (YES) NO
8. **note** that mask guidance will be provided by Manatū Hauora for the public and for healthcare workers by the time these changes take effect

9. **agree** to proactively release this report, subject to any appropriate withholding of information that would be justified under the Official Information Act 1982.

YES / NO


Kay Baxter
Policy Manager
COVID-19 Group, DPMC
.....8../...9../...2022.....


Hon Dr Ayesha Verrall
Minister for COVID-19 Response
8.9.22

Released under the Official Information Act 1982

Background

Cabinet agreed to revoke the CPF and move to a new approach for managing COVID-19

7. On 5 September, Cabinet considered a paper on the future of our COVID-19 Response. Cabinet agreed that, as New Zealand's COVID-19 outbreak wanes, with reducing case numbers, hospitalisations, and deaths, it was the right time to revoke the CPF Order to shift to a new approach for managing COVID-19 using baseline and reserve measures [CAB-22-MIN-0365].
8. Cabinet will confirm on 12 September which mandated public health measures and restrictions will remain at this time. These are expected to include:
 - a) Masks in healthcare settings for visitors only (workers and patients are exempt);
 - b) Case isolation for 7 days;
 - c) Requirements for arrivals to New Zealand by air to provide contact tracing information in the New Zealand Traveller Health Declaration; and
 - d) the regulation of point-of-care tests.
9. Even when Cabinet considers proposals in detail or agrees policy changes, the Act requires orders to be made by the Minister for COVID-19 Response once they have considered the relevant statutory prerequisites. This means that Cabinet cannot directly authorise order changes and your agreement to the changes recommended in this report is therefore required.

COVID-19 order changes are needed by to underpin the new approach

10. Of the eight orders made under section 11 of the Act and currently still in force, the Department of the Prime Minister and Cabinet only administers the CPF Order. All other orders are administered by Manatū Hauora (see the companion Health Report 20221395 detailing changes to these orders to support the new approach).

Summary of the Amendments

Revoking the CPF Order to move to the new approach

11. The CPF Order contains mask settings and indoor gathering limits that underpin the Green, Orange, and Red colour settings.
12. On 13 April 2022, New Zealand moved from the Red to the Orange setting in the CPF, and we have remained at Orange since. With the evolution of the COVID-19 outbreak over recent months, the CPF has increasingly posed challenges to providing an effective response. During the recent BA.5 outbreak, public health advice was that a move to the Red setting would not result in enough of an impact on cases or hospitalisations to justify the higher restrictions and reducing gathering limits to the level where they might be effective would not be proportionate. This resulted in public health advice that the CPF was now of limited utility and should be replaced by the new approach and renewed mask mandates.
13. As agreed by Cabinet, we recommend that you revoke the CPF Order, so that New Zealand can instead shift to the new approach.

A new mask order is needed to retain mask requirements

14. Because current mask requirements are implemented through the CPF Order, we need a new order to underpin on-going mask requirements. We recommend that you agree to make a new order – the COVID-19 Public Health Response (Masks) Order 2022 (the Mask Order).
15. Based on your consultation with Cabinet, we ask that you confirm mask requirements. You proposed that mask requirements in healthcare settings for visitors only are retained, but not staff, healthcare workers, or patients. You further proposed three options for masks on public transport to Cabinet:
 - i. Option 1: retain mask requirements on public transport (as recommended by the Director-General of Health) until public health advice recommends their removal;
 - ii. Option 2: retain mask requirements on public transport for four to six weeks only;
 - iii. Option 3: no mask requirements on public transport.
16. We ask that you confirm your decision to remove the requirement to wear masks on public transport (Option 3).

The Mask Order will specify mask requirements in healthcare settings

17. The Mask Order is intended to require a person to wear a mask when on the premises of a health service. This means that mask requirements will continue to apply to visitors in the following areas: primary care, urgent care, hospitals, pharmacies while in public areas, aged residential care (ARC) and disability-related residential care, and other treatment and social rehabilitation services.
18. This is not a definitive list – to ensure a broad range of healthcare settings are captured, we recommend that the requirement applies to all health services under section 5(1) of the Health Practitioners Competence Assurance Act 2003, treatment or social rehabilitation provided under the Accident Compensation Act 2001, and disability support services within the meaning of section 6(1) of the New Zealand Public Health and Disability Act 2000.
19. Exclusions should apply, such that a person does not need to wear mask in certain scenarios including:
 - a) if the person is under the age of 12 years; or has a physical or mental illness or condition or disability that makes wearing a face covering unsuitable; or
 - b) in counselling, mental health and addiction services;
 - c) when outdoors;
 - d) when eating or drinking or taking medicine;
 - e) when communicating with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication;
 - f) when asked to remove the face covering to ascertain the person's identity; or
 - g) if wearing a face covering is not safe in all of the circumstances or in an emergency;
 - h) when exercising or playing sport;
 - i) when at a voting place to vote in an election;
 - j) when they are performing as an entertainer or presenting to an audience
 - k) when removal of, or not wearing, the mask is otherwise required or authorised by law; or

l) if the person has an exemption pass issued.

20. To avoid doubt, the following examples outline what is intended by the Mask Order:

- a) Cafes and other food outlets within a healthcare setting (e.g. a hospital cafeteria or a cafe in an ARC) will be included in the mask requirements. Visitors will be required to wear their masks until they are seated to eat or drink. Workers will be subject to any mask requirements imposed by the health service.
- b) Non-healthcare workers that are visiting the premises (as opposed to employees in these roles), for example to deliver packages or undertake maintenance, will be required to wear masks – that is, they will be treated as visitors.
- c) Residents in ARCs who are not unwell or “patients” in any respect but live in a retirement village are intended to be exempt from wearing masks under the Mask Order – that is, there will therefore be no difference in the treatment of a resident in their home and a patient receiving healthcare.
- d) Visitors entering a patient’s private room (e.g. in an ARC) will be required to continue to wear their mask (except when eating and drinking, etc).

21. Under the CPF Order, failure to comply with mask requirements constitutes a medium risk infringement offence under the Act. We recommend that under the Mask Order, this is retained. A medium risk infringement offence has a prescribed fee of \$1000 (with a maximum fee of \$4000) for an individual.

22. The Director-General of Health will continue to have powers to issue face mask exemption passes to people that apply.

Guidance for the general public

23. Manatū Hauora is developing guidance to supersede current mask guidance for non-healthcare settings. This guidance will make clear other scenarios that a person should voluntarily wear a mask, including personal factors such as being a household contact, and specific settings such as public transport.

24. Manatū Hauora and the Ministry of Education will consider mask guidance in education settings in October 2022, ahead of the next school term, to decide whether to retain or reduce current mask guidance in education settings.

25. Workplaces will still have options to recommend or require staff or customers to wear masks. A person conducting a business or undertaking (PCBU) has legal options to require masks – they can undertake a work health and safety risk assessment under the Health and Safety at Work Act 2015, put requirements into employment contracts under the Employment Relation Act 2000, or make it a condition of entry for customers. For PCBUs that want to continue to mandate masks for staff, these processes would take some time to put into place, and PCBUs would likely need to rely on internal guidance in the first few weeks.

Guidance for healthcare workers

26. Healthcare workers have never been legally required to wear masks (with the exception of pharmacists when they are in the public areas of pharmacies). The Manatū Hauora provides IPC guidance on recommended PPE in different healthcare settings. IPC guidance informs access to publicly funded PPE. There is nothing in this change that affects current IPC Guidance, or expectations regarding its use.

Requirements for a COVID-19 Order

27. This proposed Mask Order creates a COVID-19 Order, which you can do pursuant to sections 11 of the COVID-19 Public Health Response Act 2020 (the Act).
28. Section 11 of the Act requires that the order can only be made if the requirement to wear masks contribute or be likely to contribute to either or both of the following:
- preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19
 - avoiding, mitigating, or remedying the actual or potential adverse public health effects of the outbreak of COVID-19 (whether direct or indirect).
29. The proposed Mask Order will meet the purpose in (a) by limiting the spread of COVID-19 in settings, such as hospitals and ARCs, where people vulnerable to COVID-19 will be.
30. In addition, the Act imposes certain requirements for the form, publication and making of COVID-19 Orders. You must be sure that these requirements have been complied with before making a COVID-19 Order.
31. Section 9 of the Act requires you to undertake the following actions to make a COVID-19 order under section 11:
- have had regard to advice from the Director-General of Health about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures (whether voluntary or enforceable) that are appropriate to address those risks; and
 - have had regard to any decision by the Government on the level of public health measures appropriate to respond to those risks and avoid, mitigate, or remedy the effects of the outbreak or spread of COVID-19 (which decision may have taken into account any social, economic, or other factors); and
 - be satisfied that the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990; and
 - have consulted the Prime Minister, the Minister of Justice, and the Minister of Health, and any other Minister that you deem relevant; and
 - be satisfied that the order is appropriate to achieve the purpose of this Act.
32. Section 9 requirements are addressed below.
33. Decisions to retain, amend or make orders under section 11 of the Act rely on an appropriate legislative authority being in place. You have also received advice on the renewal of the Epidemic Preparedness (COVID-19) Notice 2020 (the Epidemic Notice) which expires on 16 September 2022 (HR20221306 refers), which we recommend you consider in parallel to this briefing.
34. If the Epidemic Notice is not renewed, mandatory public health measures would need to be retained under a different basis or removed in full. ^{s9(2)(g)(i)}

Purpose of the amendment

35. The Act also provides that you may make a COVID-19 order for one or more of the purposes set out in section 11 of the Act (which are appended to this briefing). The Mask Order is for

that purpose in section 11(a) because it requires persons to comply with specified measures likely to contribute to limiting the risk of the spread of COVID-19.

Public Health Advice

36. The Act requires that before making a COVID-19 order, you must have had regard to advice from the Director-General of Health about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures (whether voluntary or enforceable) that are appropriate to address those risks. The proposals in this paper are based on a public health risk assessment (PHRA) Manatū Hauora conducted on 17 August 2022.
37. The Director-General of Health recommended that mask requirements are retained on public transport, as well as in healthcare settings. However, the Director-General of Health also noted that recommending, rather than requiring, masks would have value in responding to mask fatigue. Retaining mask requirements now could increase mask fatigue and mean that if the COVID-19 risk increases and we need to increase mask use, people will be less likely to wear a mask when we most need them to.
38. Based on this information, Cabinet preferred that masks on public transport be recommended and not required.

New Zealand Bill of Rights Act 1990

39. The Act also requires that you are satisfied that an order under section 11 of the Act does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA).

40. [Legally privileged] s9(2)(h)

Ministerial Consultation

41. The Act requires that before making a COVID-19 order, you must consult with the Prime Minister, the Minister of Justice and the Minister of Health. You may also consult with any other Minister you think fit. Cabinet's consideration of these proposed changes substantively fulfils your requirement to consult the Prime Minister, the Minister of Justice, the Minister of Health, and any other Ministers you consider fit, for making orders under the COVID-19 Public Health Response Act 2020.

48-hour Notification Period

42. The Act requires that a COVID-19 Order must be published and gazetted at least 48 hours before it comes into force. However, this notice period is not required to be observed where you are satisfied that the Order should come into force urgently to prevent or contain the outbreak or spread of COVID-19 or where the effect of the Order is only to remove or reduce requirements imposed by a COVID-19 Order.
43. Because the effect of revoking the CPF Order and implementing the new Mask Order is only to reduce mask requirements, this period does not need to be complied with.

Next steps

44. If you agree to the above and pending the resolution of the legislative authority matters, the Department of the Prime Minister and Cabinet will issue drafting instructions to PCO to give effect to the decisions in this briefing. Once these orders have been drafted, you will be invited

to sign the orders to bring these changes into effect from 11.59pm on 12 September 2022.

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Briefing: Required changes to mask settings to support the shift to the new approach

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Attachments:	Title	Security classification
Attachment A:	Orders that can be made under the COVID-19 Public Health Response Act	Unclassified

Attachment A: Orders that can be made under the COVID-19 Public Health Response Act

Section 11 of the COVID-19 Public Health Response Act states that the following Orders can be made under the Act.

- (1) The Minister or the Director-General may, in accordance with section 9 or 10 (as the case may be), make an order under this section for 1 or more of the following purposes:
- (a) to require persons to refrain from taking any specified actions or to take any specified actions, or comply with any specified measures, so as to contribute or be likely to contribute to either or both of the following:
 - (i) preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19:
 - (ii) avoiding, mitigating, or remedying the actual or potential adverse public health effects of the outbreak of COVID-19 (whether direct or indirect):
 - (b) by way of example under paragraph (a), requiring persons to do any of the following:
 - (i) stay in any specified area, place, or premises or refrain from going to any specified area, place, or premises (including in specified circumstances or unless in compliance with specified measures):
 - (ia) permit entry to any specified areas, places, or premises only in specified circumstances or in compliance with specified measures:
 - (ii) refrain from associating with specified persons:
 - (iii) stay physically distant from any persons in any specified way:
 - (iv) refrain from travelling to or from any specified area or place, or refrain from travelling to or from any specified area or place in specified circumstances or unless in compliance with specified measures (for example, refrain from leaving an area unless the person has a COVID-19 vaccination certificate):
 - (v) refrain from carrying out specified activities (for example, business activities involving close personal contact) or carry out specified activities only in any specified way or in compliance with specified measures:
 - (vi) be isolated or quarantined in any specified place or in any specified way:
 - (vii) refrain from participating in gatherings of any specified kind, in any specified place, or in specified circumstances:
 - (viii) report for and undergo a medical examination or testing of any kind, and at any place or time, specified and in any specified way or specified circumstances:
 - (ix) provide, in specified circumstances or in any specified way, any information necessary for the purpose of contact tracing:

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(x) satisfy any specified criteria before entering New Zealand from a place outside New Zealand, which may include being registered to enter an MIQF on arrival in New Zealand:

(c) in relation to an MIQF, other place of isolation or quarantine, or a place of self-isolation or quarantine, to require specified actions to be taken, or require compliance with any specified measures, for the purpose of managing the movement of people to, from, and within the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine, including (without limitation) any of the following:

(i) giving directions that relate to the movement of people to, from, and within the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine:

(ii) imposing restrictions and conditions that relate to the movement of people to, from, and within the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine:

(iii) permitting people to leave their rooms in the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine in accordance with any requirements or conditions specified in the order:

(d) in relation to any places, premises, craft, vehicles, or other things, to require specified actions to be taken, require compliance with any specified measures, or impose specified prohibitions, so as to contribute or be likely to contribute to either or both of the following:

(i) preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19:

(ii) avoiding, mitigating, or remedying the actual or potential adverse public health effects of the outbreak of COVID-19 (whether direct or indirect):

(e) by way of example under paragraph (d), doing any of the following:

(i) requiring any places, premises, craft, vehicles, or other things to be closed or only open if specified measures are complied with:

(ii) prohibiting any craft, vehicles, or other things from entering any port or place, or permitting the entry of any craft, vehicles, or other things into any port or place only if specified measures are complied with:

(iii) prohibiting gatherings of any specified kind in any specified places or premises, or in any specified circumstances:

(iv) requiring any places, premises, craft, vehicles, or other things to be isolated, quarantined, or disinfected in any specified way or specified circumstances:

(v) requiring the testing of any places, premises, craft, vehicles, or other things in any specified way or specified circumstances:

(f) in relation to laboratories that undertake COVID-19 testing, by—

(i) setting quality control measures and minimum standards:

(ii) requiring COVID-19 test results to be reported to the Director-General's public health national testing repository:

(iii) managing the supply of testing consumables (such as reagents and swabs) used by the laboratories:

(iv) providing differently for different classes of testing laboratories (for example, different provisions for laboratories depending on whether they are funded publicly or privately):

(g) requiring the owner or any person in charge of a specified laboratory that undertakes COVID-19 testing to—

(i) deliver or use, in accordance with directions given under the order, specified quantities of COVID-19 testing consumables that the Minister considers necessary for the purposes of the public health response to COVID-19:

(ii) undertake COVID-19 testing solely for the purposes of the public health response to COVID-19 while subject to the order, whether or not the laboratory is contracted by the Crown for that purpose:

(h) requiring persons to permit individuals to enter a place or receive a service whether or not those individuals are vaccinated, have a COVID-19 vaccination certificate, or are otherwise able to produce evidence of their vaccination status:

(i) specifying the evidence that may be required to be produced, and the person to whom the evidence may be required to be produced to, to demonstrate compliance with a specified measure (for example, specifying that a COVID-19 vaccination certificate is required to be produced to enter certain premises) and providing for any prohibitions or duties that apply in respect of the use or production of that evidence:

(j) specifying, for the purposes of a COVID-19 vaccination, the required doses for each COVID-19 vaccine or combination of COVID-19 vaccines:

(k) in relation to COVID-19 vaccination certificates,—

(i) specifying who is eligible to be issued with a COVID-19 vaccination certificate:

(ii) specifying how an application for a COVID-19 vaccination certificate must be made, and the information required to accompany that application:

(iii) providing for the issue, renewal, and extension of COVID-19 vaccination certificates by the Director-General or by the use of automated electronic systems (which certificates are to be treated as if they were issued, renewed, or extended by the Director-General):

(iv) providing for the form and content of COVID-19 vaccination certificates to be determined by the Director-General:

(v) specifying the period for which COVID-19 vaccination certificates are valid, or the conditions under which COVID-19 vaccination certificates may expire.

(2) An order made by the Minister may specify which breaches of an order made by the Minister or the Director-General are infringement offences for the purposes of section 26(3), and may specify that a breach of an order is a particular class of infringement offence (with the corresponding penalties) for the purposes of regulations made under section 33(1)(b).

(3) For the purposes of this section and section 12, things includes animals, goods, businesses, records, equipment, and supplies.

(4) All goods prohibited from import under a COVID-19 order are deemed to be included among goods prohibited from import under section 96 of the Customs and Excise Act 2018, and the provisions of that Act apply to those goods accordingly.

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