





# **Higher Education Support Legislation Amendment (2016 Measures No. 1) Act 2016**

**No. 74, 2016**

**An Act to amend the law relating to higher  
education and vocational education and training,  
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**No. 74, 2016**

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**An Act to amend the law relating to higher  
education and vocational education and training,  
and for related purposes**

*[Assented to 23 November 2016]*

The Parliament of Australia enacts:

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*No. 74, 2016*

*Higher Education Support Legislation Amendment (2016 Measures  
No. 1) Act 2016*

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## 1 Short title

This Act is the *Higher Education Support Legislation Amendment (2016 Measures No. 1) Act 2016*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	23 November 2016
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, Part 2, Division 1	The later of: (a) the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of Schedule 11 to the <i>Budget Savings (Omnibus) Act 2016</i> .  However, if Schedule 11 to the <i>Budget Savings (Omnibus) Act 2016</i> does not commence before or on the commencement of the provisions covered by table item 2, the provisions covered by this table item do not commence at all.	
4. Schedule 1,	At the same time as the provisions covered	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
Part 2, Division 2	by table item 2. However, if Schedule 11 to the <i>Budget Savings (Omnibus) Act 2016</i> commences before or at that time, the provisions do not commence at all.	
5. Schedule 1, Part 2, Division 3	The later of: (a) the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of Schedule 11 to the <i>Budget Savings (Omnibus) Act 2016</i> . However, the provisions covered by this table item do not commence at all if the event mentioned in paragraph (b) does not occur.	
6. Schedule 2	The day after this Act receives the Royal Assent.	24 November 2016

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Indigenous student assistance

### Part 1—Main amendments

#### *Higher Education Support Act 2003*

##### **1 After paragraph 3-5(1)(a)**

Insert:

- (aa) grants for assisting Indigenous students;

##### **2 Subsection 5-1(4)**

After “The provisions are”, insert “as follows”.

##### **3 After paragraph 5-1(4)(a)**

Insert:

- (aa) Part 2-2A (Indigenous student assistance grants);

##### **4 Section 8-1**

Omit “3 kinds” (wherever occurring), substitute “4 kinds”.

##### **5 Section 8-1**

After:

- grants under Part 2-2 (Commonwealth Grant Scheme) to certain higher education providers. These grants are paid in relation to Commonwealth supported places. Grants are made subject to conditions; and

insert:

- grants under Part 2-2A to Table A providers and Table B providers to assist Indigenous students; and

##### **6 Subparagraph 22-15(1)(a)(i)**

After “Part 2-2,”, insert “2-2A,”.

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## **7 After Part 2-2**

Insert:

### **Part 2-2A—Indigenous student assistance grants**

#### **Division 38—Indigenous student assistance grants**

##### **38-1 What this Part is about**

Grants for assisting Indigenous students are payable under this Part to Table A providers and Table B providers.
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Note: This Part does not apply to Table C providers: see section 5-1.

##### **38-5 Indigenous Student Assistance Grants Guidelines**

Grants under this Part are also dealt with in the Indigenous Student Assistance Grants Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

Note: The Indigenous Student Assistance Grants Guidelines are made by the Minister under section 238-10.

##### **38-10 Eligibility for grants under this Part**

- (1) A \*Table A provider or \*Table B provider is, subject to subsection (3), eligible for grants under this Part, in respect of the year 2017 or a later year, for the following purposes:
  - (a) assisting Indigenous students to undertake higher education;
  - (b) increasing the number of Indigenous students enrolling in, progressing in and completing courses leading to \*higher education awards.
- (2) Without limiting subsection (1), the purposes mentioned in that subsection may be achieved through the following means:
  - (a) providing scholarships;
  - (b) providing academic support, including supplementary tuition;
  - (c) providing pastoral care;

- (d) implementing strategies to:
  - (i) accelerate improvements to Indigenous student outcomes in higher education; or
  - (ii) foster culturally-safe learning environments in higher education.
- (3) If the Indigenous Student Assistance Grants Guidelines:
  - (a) provide for a grant; and
  - (b) specify extra conditions of eligibility to receive the grant; then a \*Table A provider or \*Table B provider is not eligible for the grant unless the provider complies with those extra conditions.

### **38-15 Guidelines may provide for grants**

- (1) The Indigenous Student Assistance Grants Guidelines may provide for one or more grants to \*Table A providers and \*Table B providers for purposes specified in subsection 38-10(1).
- (2) If the Indigenous Student Assistance Grants Guidelines provide for one or more grants of a particular type, the guidelines may also specify all or any of the following matters for the grants:
  - (a) the grants' objectives;
  - (b) the extra conditions of eligibility to receive the grants;
  - (c) the amount, being part of the amount referred to in section 38-45 for a year, that will be spent on grants of that type in that particular year;
  - (d) the indexation of that amount for subsequent years, using the method of indexation set out in Part 5-6;
  - (e) the amounts of the grants, or the methods by which the amounts of the grants will be determined;
  - (f) the year or years in respect of which the grants are payable;
  - (g) the conditions that apply to the grants.

### **38-20 Approval of grants**

The Minister may, by notifiable instrument, approve a grant under this Part in respect of a year to a particular higher education provider that is eligible for such a grant.

### **38-25 Conditions on grants**

- (1) A grant is made on the following conditions:
  - (a) if the grant is provided for by the Indigenous Student Assistance Grants Guidelines and the guidelines specify conditions that apply to the grant:
    - (i) on the conditions provided for in the guidelines; and
    - (ii) also on the condition that the higher education provider receiving the grant must meet the \*quality and accountability requirements;
  - (b) if paragraph (a) does not apply:
    - (i) on such conditions (if any) as the Minister determines under subsection (2); and
    - (ii) also on the condition that the higher education provider receiving the grant must meet the quality and accountability requirements.
- (2) For the purposes of subparagraph (1)(b)(i), the Minister may, by notifiable instrument, determine conditions that apply to one or more grants that a particular higher education provider receives.

### **38-30 Amounts of grants**

- (1) The amount of a grant is:
  - (a) if:
    - (i) the grant is provided for by the Indigenous Student Assistance Grants Guidelines; and
    - (ii) the guidelines specify the amount of the grant, or a method by which the amount of the grant is to be determined;the specified amount, or the amount determined by the specified method; or
  - (b) if paragraph (a) does not apply—the amount determined by the Minister under subsection (2).
- (2) For the purposes of paragraph (1)(b), the Minister may, by notifiable instrument, determine the amounts of one or more grants that a particular higher education provider receives.

### **38-35 Amounts payable under this Part**

If:

- (a) a higher education provider meets, in respect of a year, the requirements of the Indigenous Student Assistance Grants Guidelines for the purposes of section 38-15 in relation to a grant; or
- (b) the Minister approves, under section 38-20, a grant to a higher education provider in respect of a year;

there is payable to the provider concerned, in respect of that year, an amount equal to the amount referred to in section 38-30 in respect of that grant.

### **38-40 Rollover of grant amounts**

(1) If:

- (a) a higher education provider to which a grant under this Part has been made in respect of a year fails to spend an amount of that grant; and
- (b) the \*Secretary determines under subsection (3) that this section is to apply to the provider in respect of that grant;

then so much of the unspent amount as the Secretary determines under that subsection is taken to be granted to the provider under this Part in respect of the next following year.

(2) The grant is taken to be made:

- (a) under the same conditions as the conditions of the original grant, except the grant is taken to be made in respect of the next following year; or
- (b) under such other conditions as the Secretary determines under subsection (4).

(3) For the purposes of subsection (1), the Secretary may, by notifiable instrument, determine:

- (a) that this section is to apply to a particular higher education provider in respect of one or more grants; and
- (b) for each grant, an amount of the unspent amount of the grant.

- (4) For the purposes of paragraph (2)(b), the Secretary may, by notifiable instrument, determine conditions that apply to one or more grants made to a particular higher education provider.

### **38-45 Maximum payments for grants under this Part**

- (1) The total payments made under this Part in respect of a year must not exceed the amount determined by the Minister under subsection (2) in respect of the year.
- (2) The Minister may, by legislative instrument, determine the total payments made under this Part in respect of a year.
- Note: A single instrument may determine amounts for multiple years.
- (3) A determination under subsection (2) for a year must be made before the start of that year.
- (4) The Minister may, by legislative instrument, at any time before the end of a year, vary a determination made under subsection (2) for the year.

### **8 Transitional provision**

Subsection 38-45(3) of the *Higher Education Support Act 2003*, as amended by this Part, does not apply to a determination for the year 2017.

### **9 Sections 51-1, 54-1 and 164-15**

After “Part 2-2,” (wherever occurring), insert “2-2A,”.

### **10 Paragraphs 180-25(5)(e) and (6)(e)**

After “Part”, insert “2-2A or”.

### **11 Subsection 238-5(1)**

Omit “41-45 or section”, substitute “38-45, 41-45 or”.

### **12 Subsection 238-10(1) (after table item 6)**

Insert:

6A	Indigenous Student Assistance Grants Guidelines	Part 2-2A
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## ***Social Security Act 1991***

### **13 Before subparagraph 8(8)(zja)(i)**

Insert:

- (ia) a scholarship provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants) and specified by the Secretary under subsection (8AAA) of this section.

### **14 After subsection 8(8)**

Insert:

- (8AAA) The Secretary may, by legislative instrument, specify a scholarship for the purposes of subparagraph (8)(zja)(ia).

### **15 Subsection 23(1)**

Insert:

***disqualifying accommodation scholarship*** means:

- (a) a scholarship:
  - (i) provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and
  - (ii) specified by the Secretary under subsection (24) of this section for the purposes of this subparagraph; or
- (b) a Commonwealth Accommodation Scholarship.

***disqualifying education costs scholarship*** means:

- (a) a scholarship:
  - (i) provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and
  - (ii) specified by the Secretary under subsection (24) of this section for the purposes of this subparagraph; or
- (b) a Commonwealth Education Costs Scholarship.

### **16 At the end of section 23**

Add:

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*Indigenous student assistance scholarships*

- (24) The Secretary may, by legislative instrument, specify a scholarship for the purposes of:
- (a) subparagraph (a)(ii) of the definition of *disqualifying accommodation scholarship* in subsection (1); or
  - (b) subparagraph (a)(ii) of the definition of *disqualifying education costs scholarship* in subsection (1).

**17 Paragraphs 592F(1)(e) and (2)(e) and 592G(2)(e) and (f)**

Omit “Commonwealth Education Costs Scholarship”, substitute “disqualifying education costs scholarship”.

**18 Paragraphs 592J(f) and 592K(2)(e) and (f)**

Omit “Commonwealth Accommodation Scholarship”, substitute “disqualifying accommodation scholarship”.

**19 Subparagraph 592K(5)(b)(v)**

Omit “Commonwealth Accommodation Scholarship”, substitute “disqualifying accommodation scholarship”.

**20 Subsection 592L(7) (paragraph (e) of the definition of *student relocation payment*)**

Omit “Commonwealth Accommodation Scholarship”, substitute “disqualifying accommodation scholarship”.

**21 Paragraphs 1061ZVBB(1)(b) and (2)(b)**

Omit “Commonwealth Education Costs Scholarship”, substitute “disqualifying education costs scholarship”.

***Social Security (Administration) Act 1999***

**22 At the end of subparagraphs 195(2)(i)(i) to (xvii)**

Add “and”.

**23 Subparagraph 195(2)(i)(xviii)**

Omit “Commonwealth Education Costs Scholarship, or of a Commonwealth Accommodation Scholarship,” substitute “disqualifying accommodation scholarship or disqualifying education costs scholarship”.

**24 After paragraph 202(1)(d)**

Insert:

- (da) administering scholarships:
  - (i) provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and
  - (ii) specified by the Secretary under subsection (2DA) of this section for the purposes of this subparagraph; or

**25 After paragraph 202(2)(da)**

Insert:

- (daaa) for the purposes of the administration of scholarships:
  - (i) provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and
  - (ii) specified by the Secretary under subsection (2DA) of this section for the purposes of this subparagraph; or

**26 After subsection 202(2D)**

Insert:

(2DA) The Secretary may, by legislative instrument, specify a scholarship for the purposes of subparagraph (1)(da)(ii) or (2)(daaa)(ii).

***Student Assistance Act 1973***

**27 Subsection 3(1)**

Insert:

***disqualifying education costs scholarship*** has the same meaning as in the *Social Security Act 1991*.

**28 Paragraph 7C(1)(b)**

Omit “Commonwealth Education Costs Scholarship”, substitute “disqualifying education costs scholarship”.

***Veterans’ Entitlements Act 1986***

**29 After paragraph 5H(8)(hab)**

Insert:

- (hac) the amount or value of a scholarship:
- (i) provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and
  - (ii) specified under subsection 8(8AAA) of the *Social Security Act 1991*;

## **Part 2—Contingent amendments**

### **Division 1—Amendments commencing if the Budget Savings (Omnibus) Act 2016 commences before Part 1 of this Schedule**

#### *Social Security Act 1991*

##### **30 Subparagraphs 1061ZVBC(b)(iii) and (iv)**

Omit “Commonwealth Education Costs Scholarship”, substitute “disqualifying education costs scholarship”.

#### *Student Assistance Act 1973*

##### **31 Subparagraphs 7D(b)(iii) and (iv)**

Omit “Commonwealth Education Costs Scholarship”, substitute “disqualifying education costs scholarship”.

### **Division 2—Amendments commencing if the Budget Savings (Omnibus) Act 2016 does not commence before Part 1 of this Schedule**

#### *Social Security Act 1991*

##### **32 Subparagraphs 1061ZVBC(1)(b)(iii) and (iv)**

Omit “Commonwealth Education Costs Scholarship”, substitute “disqualifying education costs scholarship”.

#### *Student Assistance Act 1973*

##### **33 Subparagraphs 7D(1)(b)(iii) and (iv)**

Omit “Commonwealth Education Costs Scholarship”, substitute “disqualifying education costs scholarship”.

**Division 3—Other amendments**

*Student Assistance Act 1973*

**34 Subsection 3(1) (definition of *Commonwealth Education Costs Scholarship*)**

Repeal the definition.

## Schedule 2—HELP information management

### Part 1—Amendments

#### *Higher Education Support Act 2003*

##### **1 At the end of paragraph 180-5(d)**

Add “or for the purposes referred to in subsection 180-28(5)”.

##### **2 After section 180-25**

Insert:

##### **180-28 Disclosure and use of information for the HELP program**

###### *Disclosure of information*

- (1) A \*HELP program Commonwealth officer may disclose \*Higher Education Support Act information (other than a person’s \*tax file number) to another HELP program Commonwealth officer for the purposes referred to in subsection (5).
- (2) The \*Secretary may disclose a person’s \*tax file number to the \*Commissioner for the purposes referred to in subsection (5).

###### *Use of information*

- (3) A \*HELP program Commonwealth officer may use \*Higher Education Support Act information (other than a person’s \*tax file number) for the purposes referred to in subsection (5).
- (4) If a person’s \*tax file number is disclosed under subsection (2), the \*Commissioner may use that tax file number for the purposes referred to in subsection (5).

###### *Purposes of disclosure or use*

- (5) The purposes are to assist in the development of the \*HELP program, or the administration or future administration of the HELP program, including by:
  - (a) policy formation; and

- (b) financial planning and projection; and
- (c) program design; and
- (d) conducting research.

*Definitions*

- (6) The **HELP program** means the program consisting of:
  - (a) grants to higher education providers under Part 2-2; and
  - (b) assistance provided to students under Chapter 3 or Schedule 1A; and
  - (c) repayment of debts under Chapter 4 incurred in relation to that assistance.
- (7) **HELP program Commonwealth officer** means:
  - (a) the \*Secretary; or
  - (b) the \*Commissioner; or
  - (c) a \*Commonwealth officer specified to be a HELP program Commonwealth officer under subsection (8).
- (8) The Minister may, by legislative instrument, specify that a \*Commonwealth officer, or a Commonwealth officer in a specified class, is a \*HELP program Commonwealth officer for the purposes of paragraph (7)(c).

**3 Section 184-1**

Omit:

The Commissioner may notify higher education providers, or where appropriate Open Universities Australia, of matters relating to tax file numbers.

substitute:

The Commissioner may notify higher education providers, the Secretary, or where appropriate Open Universities Australia, of matters relating to tax file numbers.

#### **4 Paragraphs 187-5(1)(a) and (2)(a)**

Omit “notifies”, substitute “must notify”.

#### **5 Clause 79 of Schedule 1A**

Omit:

The Commissioner may notify VET providers of matters relating to tax file numbers.

substitute:

The Commissioner may notify VET providers or the Secretary of matters relating to tax file numbers.

#### **6 Paragraph 80(1)(a) of Schedule 1A**

Repeal the paragraph, substitute:

- (a) the student notifies his or her \*tax file number to:
  - (i) an \*appropriate officer of the provider; and
  - (ii) the \*Secretary;and the provider is satisfied (in accordance with subclause (4)) that this number is a valid tax file number; or

#### **7 Paragraph 82(a) of Schedule 1A**

Repeal the paragraph, substitute:

- (a) the student must notify his or her \*tax file number to:
  - (i) an \*appropriate officer of the \*VET provider; and
  - (ii) the \*Secretary;within 21 days from the day on which the \*Commissioner issues the tax file number to the student; and

#### **8 Subdivision 15-C of Schedule 1A (heading)**

Repeal the heading, substitute:

**Subdivision 15-C—Who can the Commissioner notify of tax file number matters?**

**9 Clause 83 of Schedule 1A**

Before “written notice”, insert “, and to the \*Secretary,”.

**10 Subclause 84(1) of Schedule 1A**

Before “written notice”, insert “, and to the \*Secretary,”.

**11 At the end of subclause 84(2) of Schedule 1A**

Add “and to the \*Secretary”.

**12 Paragraph 85(1)(a) of Schedule 1A**

After “\*VET provider”, insert “or the \*Secretary (or both)”.

**13 Subclause 85(1) of Schedule 1A**

After “the provider”, insert “and the Secretary”.

**14 At the end of subclause 85(2) of Schedule 1A**

Add “and to the \*Secretary”.

**15 Paragraph 86(1)(a) of Schedule 1A**

After “\*VET provider”, insert “or the \*Secretary (or both)”.

**16 Subclause 86(1) of Schedule 1A**

Omit “a written notice informing the provider”, substitute “and the Secretary a written notice informing the provider and the Secretary”.

**17 Subclause 87(1) of Schedule 1A**

Omit “a written notice informing the provider”, substitute “, and to the \*Secretary, a written notice informing the provider and the Secretary”.

**18 Subclause 1(1) of Schedule 1**

Insert:

***HELP program*** has the meaning given by subsection 180-28(6).

*HELP program Commonwealth officer* has the meaning given by subsection 180-28(7).

***Income Tax Assessment Act 1936***

**19 Paragraph 202(c)**

After “higher education”, insert “or vocational education and training”.

## **Part 2—Application and transitional provisions**

### **20 Application of amendments**

The amendments made by this Schedule to Subdivisions 15-A and 15-B of Schedule 1A to the *Higher Education Support Act 2003* do not apply in relation to a student and a VET course of study if, immediately before the commencement of this Schedule, the student met the tax file number requirements for assistance under Part 2 of Schedule 1A to that Act in relation to the course of study.

### **21 Transitional provision—tax file numbers of students of VET courses**

- (1) This item applies in relation to a student who, immediately before the commencement of this Schedule, met the tax file number requirements for assistance under Part 2 of Schedule 1A to the *Higher Education Support Act 2003* in relation to a VET course of study.
- (2) The Secretary may require the Commissioner to provide a Commonwealth officer with the student's tax file number for the purposes of:
  - (a) Division 5A of Part 1, or Part 2, of Schedule 1A to that Act; or
  - (b) Chapter 4 of that Act, to the extent that it relates to Schedule 1A to that Act.

Note: When obtained by the Commonwealth officer, the student's tax file number becomes VET personal information (see clause 72 of Schedule 1A to that Act).

- (3) The Commissioner has the general administration of this item.

Note: One effect of this is that this item is a taxation law for the purposes of the *Taxation Administration Act 1953*.

- (4) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence against an Act of which the Commissioner has the general administration, the defendant does not bear an evidential burden in relation to whether this item applies to a communication of VET personal information.

## 22 Transitional provision—tax file numbers of students of higher education courses

(1) This item applies in relation to a student who, immediately before the commencement of Schedule 3 to the *Education Legislation Amendment (Overseas Debt Recovery) Act 2015*, met the tax file number requirements for assistance under Chapter 3 of the *Higher Education Support Act 2003* in relation to a course of study.

(2) The Secretary may require the Commissioner to provide a Commonwealth officer with the student's tax file number for the purposes of Chapter 2, or Chapters 3 and 4, of the *Higher Education Support Act 2003*.

Note: When obtained by the Commonwealth officer, the student's tax file number becomes personal information (see section 179-5 of that Act).

(3) The Commissioner has the general administration of this item.

Note: One effect of this is that this item is a taxation law for the purposes of the *Taxation Administration Act 1953*.

(4) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence against an Act of which the Commissioner has the general administration, the defendant does not bear an evidential burden in relation to whether this item applies to a communication of personal information.

## 23 Delegation

(1) The Secretary may, in writing, delegate to an APS employee all or any of the powers of the Secretary under item 21 or 22.

(2) In exercising powers under the delegation, the delegate must comply with any directions of the Secretary.

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[Minister's second reading speech made in—  
House of Representatives on 15 September 2016  
Senate on 9 November 2016]

(132/16)

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