

# International Comparative Legal Guides



Practical cross-border insights into sanctions law

## Sanctions 2023

**Fourth Edition**

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# Australia



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## 1 Overview

### 1.1 Describe your jurisdiction's sanctions regime.

Australia implements sanctions under the United Nations Security Council ("UNSC") sanctions regimes and under the autonomous sanctions regimes.

#### UNSC sanctions regime

As a member of the United Nations, Australia implements the UNSC sanctions. The *Charter of the United Nations Act 1945* (Cth) is an Act that approves the Charter of the United Nations and enables Australia to apply sanctions in accordance with decisions of the Security Council.

Contravention of a UN sanction enforcement law or a condition of a licence, permission, consent, authorisation or approval under a UN sanction enforcement law is an offence carrying a maximum term of imprisonment of 10 years pursuant to subsections 27(1)–(3) of the *Charter of the United Nations Act 1945* (Cth). The court may also impose a fine where the contravention involves one or more transactions, in the amount greater of the following: (i) three times the value of the transaction(s); or (ii) 2,500 penalty units. Where the contravention does not involve a transaction, a fine of 2,500 penalty units applies.

Corporations are also subject to UNSC sanctions. Conduct that contravenes a UN sanction enforcement law or a condition of a licence, permission, consent, authorisation or approval under a UN sanction enforcement law are offences of strict liability and punishable by a fine of an amount greater of the following: (i) three times the value of any transaction(s); or (ii) 10,000 penalty units. Where the contravention does not involve a transaction, a fine of 10,000 penalty unit applies.

#### Australian autonomous sanctions regimes

The Australian autonomous sanctions regimes are imposed by the Australian Government pursuant to foreign policy objectives and administered under the *Autonomous Sanctions Act 2011* (Cth) ('the **Sanctions Act**') and the *Autonomous Sanctions Regulations 2011* (Cth) ('the **Sanctions Regulations**').

Under section 10 of the *Sanctions Act*, the regulations may make provision relating to a number of prohibitions, including:

- (a) proscription of persons or entities;

- (b) restriction or prevention of uses of, dealings with, and making available of, assets;
- (c) restriction or prevention of the supply, sale or transfer of goods or services; and
- (d) restriction or prevention of the procurement of goods or services.

Sanctions regulations may be expressed to have extraterritorial effect, pursuant to section 11 of the *Sanctions Act*. Therefore, the sanctions law apply:

- (a) in Australia;
- (b) to Australian citizens living abroad and Australian-registered bodies corporates abroad;
- (c) to bodies corporates incorporated by or under a law of the Commonwealth or of a State or Territory; or
- (d) on board an Australian aircraft or Australian ship.

Australian nationals living abroad may therefore be caught by offence provisions if in contravention of the autonomous sanctions regime in Australia.

Contravention of sanctions law under the autonomous regimes or a condition of authorisation under sanctions law are criminal offences that attract maximum term of imprisonment of 10 years, a fine or both. The fine is calculated as 2,500 penalty units or where a transaction(s) is involved, the greater of three times the value of the transaction or 2,500 penalty units.

For corporations, a contravention of sanctions law under the autonomous regimes or contravention of a condition of an authorisation are offences of strict liability and attract a fine of 10,000 penalty units, or where a transaction(s) is involved, the greater of three times the value of the transaction or 10,000 penalty units.

### 1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The Department of Foreign Affairs and Trade ("DFAT") is responsible for administering and enforcing the *Charter of the United Nations Act 1945* (Cth) as well as the *Sanctions Act* and *Sanctions Regulations*.

The Minister for Foreign Affairs ('the **Minister**') is responsible for sanctions and under section 6 of the *Sanctions Act*, may by legislative instrument, specify a provision of a law of the Commonwealth as sanction law. Similarly, and for the purposes

of UNSC sanctions, the Minister, under section 2B of the *Charter of the United Nations Act 1945* (Cth), may by legislative instrument, specify a provision of a law of the Commonwealth as a UN sanction enforcement law.

The Minister also has powers to “designate” a person or entity for targeted financial sanctions and/or impose a travel ban of a declared person if satisfied of certain conditions. Pursuant to regulation 18 of the *Sanctions Regulations*, the Minister may also grant permits authorising a sanctioned activity to a person or entity when satisfied of certain matters including if satisfied it would be in the national interest to grant the permit.

Persons or entities designated by the Minister under regulation 6 of the *Sanctions Regulations* are listed in the Australian Sanctions Office (“ASO”) Consolidated List. The ASO is the Australian Government’s sanctions regulator and was established by the DFAT on 1 January 2022. The ASO sits within the DFAT’s Regulatory Legal Division in the Security, Legal and Consular Group.

The Consolidated List is managed and updated by the ASO and contains all persons and entities sanctioned under Australian sanctions law. Under the autonomous regime, the Minister is empowered to designate a person or entity depending on the conditions that must be met per sanctioned country. For example, and with respect to the autonomous sanctions against Russia, recent amendments under regulation 6(6A) of the *Sanctions Regulations* enable the Minister to designate a person or entity for targeted financial sanctions and/or impose a travel ban on a declared person if they are:

- (a) A person or entity that the Minister is satisfied is, or has been, engaging in an activity or performing a function that is of economic or strategic significance to Russia.
- (b) A current or former Minister or senior official of the Russian Government.
- (c) An immediate family member of a person mentioned in paragraphs (a) or (b).

As the sanctions regulator, the ASO:

- provides guidance to regulated entities, including government agencies, individuals, business and other organisations on Australian sanctions law;
- processes applications for, and issues, sanctions permits;
- works with individuals, business and other organisations to promote compliance and help prevent breaches of the law;
- works in partnership with other government agencies to monitor compliance with sanctions legislation; and
- supports corrective and enforcement action by law enforcement agencies in cases of suspected non-compliance.

The ASO also works with a network of federal partners, including the Department of Defence, Australian Transaction Reports and Analysis Centre, Department of Home Affairs, Australian Border Force and the Australia Federal Police, to promote compliance with Australian sanctions law and respond to possible breaches.

Prosecution of contraventions of sanctions law are undertaken by the Commonwealth Director of Public Prosecutions (“CDPP”).

### 1.3 Have there been any significant changes or developments impacting your jurisdiction’s sanctions regime over the past 12 months?

As part of its autonomous sanctions regime, Australia has imposed sanctions against Russia in response to Russia’s threat to the sovereignty and territorial integrity of Ukraine. While these sanctions were first imposed in 2014, they were extended in 2015 and further extended in 2022 following the invasion of Ukraine by Russia in February 2022.

As of May 2022, the Australian Government imposed 827 individuals and 62 entities in response to Russia’s invasion. Pursuant to a media release published on 18 May 2022 by the Minister of Foreign Affairs, these individuals and entities have been targeted for their shared responsibility for Russia’s invasion of Ukraine or hold levers of influence.

## 2 Legal Basis / Sanctions Authorities

### 2.1 What are the legal or administrative authorities for imposing sanctions?

Please refer to question 1.2 above.

The Minister is conferred powers under the *Charter of the United Nations Act 1945* (Cth) and the *Sanctions Act*, to specify a provision of a law of the Commonwealth as sanctions law.

The DFAT and the ASO regulate the administration and enforcement of sanctions.

The Department of Home Affairs is also responsible for the implementation of visa restrictions relating to sanctioned imposed travel bans.

### 2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Please refer to question 1.1.

Australia implements United Nations sanctions under the *Charter of the United Nations Act 1945* (Cth) and the *Charter of the United Nations (Dealing with Assets) Regulations* (Cth) and other regulations implementing UNSC sanctions resolutions targeting particular countries or issues. The Minister may only specify a provision of a law of the Commonwealth as a UN sanction enforcement law to the extent that it gives effect to a decision that the Security Council has made and Australia is required to carry it out pursuant to Article 25 of the *Charter of the United Nations*.

### 2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

There are presently no regional bodies that impose sanctions. Sanctions are imposed in Australia by way of domestic Australian law reflecting UNSC decisions relating to sanctions and foreign policy objectives under the autonomous regime.

### 2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Please refer question 1.2.

The ASO maintains a Consolidated List of designated entities and persons. Under regulation 10 of the *Sanctions Regulations*, the Minister has powers to revoke the designation of a person or entity by legislative instrument and may do so on the Minister’s own initiative.

Pursuant to regulation 11 of the *Sanctions Regulations*, applications can also be made for the revocation of designations. These include by a designated person or entity to revoke the designation of the person or entity and by the owner of a sanctioned vessel to revoke the designation of the vessel.



The application must be in writing and set out the circumstances relied upon to justify the application.

For the purposes of the UNSC sanctions regime, the DFAT will provide a listed person or entity with a statement of reasons for the listing upon written request by the person or entity.

## 2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

Designated persons or entities can make a request to be removed from a sanctioned list. To whom the request should be made is dependant on the person or entity who was designated.

For UNSC listings, requests should be made to the Focal Point for De-listing or through the country of citizenship or residence.

For UNSC listings related to ISIL (Da'esh) and Al-Qaida, requests for removal should be made to the UN Office of the Ombudsperson or through the person or entities country of citizenship or residence.

For listings under the counter-terrorism (UNSCR 1373) sanctions regime or Australian autonomous sanctions, requests should be made through the DFAT sanctions contact page online at: <https://dfat.gov.au/international-relations/security/sanctions/Pages/contacts-and-links>.

## 2.6 How does the public access those lists?

The Consolidated List can be accessed online through the DFAT website at: <https://dfat.gov.au/international-relations/security/sanctions/consolidated-list>. The Consolidated List was most recently updated on 22 July 2022.

## 2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

The UNSC sanctions currently implemented under Australian sanctions law are imposed on the following countries: Central African Republic; Democratic Republic of the Congo; Guinea-Bissau; Iraq; Lebanon; Mali; Somalia; South Sudan; Sudan; and Yemen. Australia also implements UNSC sanctions against Counter Terrorism, ISIL (Da'esh), Al-Qaida, and the Taliban.

Under the autonomous sanctions regime, Australia has further implemented sanctions against countries including: Myanmar; the Former Federal Republic of Yugoslavia; Ukraine; and Zimbabwe.

Australia has imposed sanctions autonomously and through the UNSC on the following countries: DPRK; Iran; Libya; and Syria.

## 2.8 Does your jurisdiction maintain any other sanctions?

Please refer to question 1.2 above.

## 2.9 What is the process for lifting sanctions?

Please refer to questions 2.4 and 2.5 above.

## 2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Australia maintains an export control regime distinct from sanctions that is comprehensive and in place to ensure the control

of goods imported and exported to and from Australia and are carried out consistent with Australia's national interest and international obligations.

Australia's export control system is primarily implemented by Defence Export Controls ('DEC'), a unit within the Department of Defence. The agency is responsible for controlling the export of Australian goods, software and technologies and is accountable to the Minister of Defence. There are a number of federal legislation and regulations that collectively form Australia's export control system including:

- (a) *Customs Act 1901* (Cth) and *Customs (Prohibited Exports) Regulations 1958* (Cth), which primarily deal with controls for export of tangible defence and dual-use goods and technologies;
- (b) *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (Cth), an Act to control goods and technologies that are believed or suspected to be used in the weapons of mass destruction programme; and
- (c) *Defence Trade Controls Act 2012* (Cth), an Act that controls the transfer of defence and strategic goods technologies.

## 2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

No. There are presently no blocking statutes or other restrictions prohibiting adherence to other jurisdictions' sanctions or embargoes.

## 2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

Australia does not presently impose secondary sanctions. As referred to in question 1.1 above, sanctions regulations have extra-territorial effect. Therefore, sanctions law apply in Australia, to Australian citizens and Australian-registered bodies corporates abroad or on board an Australian aircraft or vessel. There are primary offences for the contravention of sanctions for individuals and corporations.

# 3 Implementation of Sanctions Laws and Regulations

## 3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Please refer to question 1.1 above.

## 3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

A person or entity that holds the asset has the responsibility of freezing an asset subject to targeted financial sanctions, for example, the financial institution that holds the funds of a designated person or entity.

The Australian Government can also seek to freeze the assets of a party that is alleged to hold or deal with an asset controlled or owned by a designated person or entity. The Minister may also 'freeze' certain funds or other assets, the consequence of

which is that persons and entities are prohibited from dealing with it, as doing so would constitute an offence.

### 3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

In some circumstances, it may be possible to obtain a sanctions permit to allow an activity related to a person or entity on the Consolidated List that would otherwise be prohibited by an Australian sanctions law.

The Minister may grant a sanctions permit provided the activity meets specific criteria. The criteria for a permit will depend on the specific regime. Permits under UNSC sanctions require approval from the UNSC.

### 3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Under section 19 of the *Sanctions Act*, a designated CEO may require a person to give information or documents for the purpose of determining whether a sanction law has been or is being complied with.

The person must provide the information or documents by the time and in any manner or form as specified in the CEO's notice. The time specified in the notice must be reasonable.

The CEO may require the information to be verified by, or given on, oath or affirmation that the information is true.

It is not possible to use the privilege of self-incrimination to justify not providing information or documents. However, neither the information given, nor the giving of the document is admissible in evidence against the individual in any criminal proceedings, or in any proceedings that would expose the individual to a penalty, other than proceedings for an offence against:

- section 17 (false or misleading information given in connection with a sanction law); or
- section 21 (failure to comply with requirement to give information or document).

Failing to comply with the requirement is a criminal offence with a penalty of up to 12 months' imprisonment.

### 3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

Australian businesses and individuals are required to conduct due diligence to ensure that they do not deal with sanctioned persons or entities. Beyond this, there is no explicit reporting requirement for a sanctions compliance programme for entities.

## 4 Enforcement

### 4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Please refer to question 1.1 above.

The violation of economic sanction laws and regulations attract serious criminal offences with strict liability.

Other offences under the *Sanctions Act* include:

- (a) Giving false or misleading information given in connection with a sanction law.

- (b) Giving information to a second person who then provides false or misleading information in connection with a UN sanction enforcement law.
- (c) Failure to comply with notice to give information by CEO of a Commonwealth entity.

These offences are expressed in a similar language under the UN Act, in sections 28 and 29.

### 4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

Please refer to questions 1.2 and 2.1 above.

### 4.3 Is there both corporate and personal criminal liability?

Yes, an individual or a body corporate can be criminally liable for breaching sanction laws.

The *Criminal Code Act 1995* (Cth) at Part 2.5 sets out the methods by which criminal offences can be attributed to corporations. Under section 12.2, the physical element of an offence may be attributed to a corporation using traditional agency principles, with physical acts of "*an employee, agent or officer acting within his or her actual or apparent authority*" attributable to a corporation.

Section 12.3 of the Code provides that when an offence requires fault elements of intention, knowledge or recklessness, this state of mind is imputed to a corporation if it "*expressly, tacitly or impliedly authorised or permitted the commission of the offence*".

### 4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

Please refer to questions 1.1 and 4.1 above.

### 4.5 Are there other potential consequences from a criminal law perspective?

An individual or body corporate may face a variety of consequences from a criminal law perspective; the consequences of which will depend on the sanctions regime that has been breached. A breach of sanctions law may open an individual or body corporate to offences in breach of terrorism financing laws, anti-money laundering or anti-fraud laws, customs law or other offences set out in the *Criminal Code*.

### 4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

No, there are currently no civil penalties for violating economic sanctions laws.

### 4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

Please refer to questions 1.2 and 2.1 above.

### 4.8 Is there both corporate and personal civil liability?

Yes, please refer to questions 1.1 and 4.3 above.

#### 4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

Please refer to questions 1.1 and 4.1 above.

#### 4.10 Are there other potential consequences from a civil law perspective?

There are limited civil consequences beyond director duties and officer duty principles.

#### 4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

There is no civil enforcement process of sanctions in Australia, there is only a criminal enforcement process.

The criminal enforcement process involves the DFAT, the Australian Federal Police ('AFP') and the Commonwealth Department of Public Prosecutions. The AFP and DFAT are involved in investigation and will refer matters to the CDPP for prosecution.

#### 4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

The appeal process for an individual or company convicted for a sanctions offence accords with the general criminal appeals process. The individual or corporation will be required to lodge the appeal against the conviction or sentence to the relevant court within a specific timeframe.

An appeal can be submitted to the Federal Court of Australia or the relevant State's Court of Appeal if the original trial was held in a state court (exercising Commonwealth jurisdiction). Appellate proceedings are governed by the relevant Rules of Court applicable to the State or Federal Court.

#### 4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Australia's sanction laws and offences are legislated at a national level, and therefore, enforced only at the national level by the AFP and CDPP.

#### 4.14 What is the statute of limitations for economic sanctions violations?

There is no statute of limitation for economic sanctions violations.

## 5 General

#### 5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

The Australian Government is currently not considering the implementation of new economic sanctions regimes. Any new economic sanctions-related measures are likely to be related to the current Russian and Ukraine sanctions regimes.

#### 5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

- DFAT Website – 'Australia and sanctions' at: <https://dfat.gov.au/>.
- DFAT Consolidated List at: <https://dfat.gov.au/international-relations/security/sanctions/consolidated-list>.
- Central African Republic and Democratic Republic of the Congo sanctions regimes at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/central-african-republic-and-democratic-republic-congo-sanctions-regimes-sanctions-regime>.
- Counter-Terrorism (UNSC 1373) sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/counter-terrorism-uns-c-1373-sanctions-regime>.
- Specified Ukraine regions sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/specified-ukraine-regions-sanctions-regime#:~:text=These%20sanctions%20measures%20target%20exports,Ukraine%20from%2028%20March%202022>.
- Democratic People's Republic of Korea (North Korea) sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/democratic-peoples-republic-korea-sanctions-regime>.
- Former Federal Republic of Yugoslavia sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/former-federal-republic-yugoslavia-sanctions-regime>.
- Guinea-Bissau sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/former-federal-republic-yugoslavia-sanctions-regime>.
- Iran sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/iran-sanctions-regime>.
- Iraq sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/iraq-sanctions-regime>.
- ISIL (Da'esh) and Al-Qaida sanctions regimes at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/isil-daesh-and-al-qaida-sanctions-regime>.
- Lebanon sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/lebanon-sanctions-regime>.
- Libya sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/libya-sanctions-regime>.
- Mali sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/mali-sanctions-regime>.
- Myanmar sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/myanmar-sanctions-regime>.
- Russia sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/russia-sanctions-regime>.
- Serious corruption sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/serious-corruption-sanctions-regime>.
- Serious violation or serious abuses of human rights sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/serious-violations-or-serious-abuses-human-rights-sanctions-regime>.

- Significant cyber incidents sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/significant-cyber-incidents-sanctions-regime>.
  - Somalia sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/somalia.aspx>.
  - Sudan and South Sudan sanctions regimes at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/sudan-and-south-sudan-sanctions-regime>.
  - Syria sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/syria.aspx>.
  - The Taliban sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/the-taliban.aspx>.
  - Ukraine sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/yemen.aspx>.
  - Yemen sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/zimbabwe.aspx>.
  - Zimbabwe sanctions regime at: <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/zimbabwe.aspx>.
- Legislation:
- *Charter of the United Nations Act 1945* at: <https://legislation.gov.au/Details/C2021C00518> – Link to Regulations at: <https://legislation.gov.au/Series/C1945A00032/Enables>.
  - *Autonomous Sanctions Act 2011* at: <https://legislation.gov.au/Details/C2021C00581>.
  - *Autonomous Sanctions Regulations 2011* at: <https://legislation.gov.au/Details/F2022C00330>.
  - *Criminal Code Act 1995* at: <https://legislation.gov.au/Details/C2022C00156>.
  - Customs (Prohibited Exports) Regulations 1958 at: <https://legislation.gov.au/Details/F2022C00312>.
  - Customs (Prohibited Imports) Regulations 1956 at: <https://legislation.gov.au/Details/F2022C00511>.





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