

## Instrument of Delegation

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Delegation of National Board functions under the Health Practitioner Regulation National Law as in force in each State and Territory and Trans-Tasman Mutual Recognition Act to Committees of the Board and the Australian Health Practitioner Regulation Agency

### Preliminary

- 1.1 The Medical Radiation Practice Board of Australia (the '**Board**'), pursuant to s 37 of the National Law, resolved to delegate its functions as specified in this instrument of delegation ('**instrument**') on May 2017.
- 1.2 This instrument is a complete record of the Board's resolutions with respect to the delegation of its functions. The Board resolved to revoke all prior delegations on May 2017.
- 1.3 The Board resolved to authorise the Chair of the Board to sign this instrument as evidence of the Board's decision to delegate its functions in compliance with Clause 29(3) to Schedule 7 of the National Law.

### Definitions

- 2.1 **National Law** means:
  - 2.1.1 the Health Practitioner Regulation National Law (Queensland) in Queensland
  - 2.1.2 the Health Practitioner Regulation National Law (ACT) in the Australian Capital Territory
  - 2.1.3 the Health Practitioner Regulation National Law (Victoria) in Victoria
  - 2.1.4 the Health Practitioner Regulation National Law (South Australia) in South Australia

- 2.1.5 the Health Practitioner Regulation National Law (NT) in the Northern Territory
- 2.1.6 the Health Practitioner Regulation National Law (Tasmania) in Tasmania
- 2.1.7 the Health Practitioner Regulation National Law (NSW) in New South Wales
- 2.1.8 the Health Practitioner Regulation National Law (Western Australia) in Western Australia.
- 2.2 **ACT Act** means the Health Practitioner Regulation National Law (ACT)
- 2.3 **NSW Act** means the *Health Practitioner Regulation National Law (NSW)*
- 2.4 **Qld Act** means the *Health Practitioner Regulation National Law (Qld)*
- 2.5 **SA Act** means the Health Practitioner Regulation National Law (South Australia)
- 2.6 **WA Act** means the *Health Practitioner Regulation National Law (Western Australia) Act 2010*
- 2.7 **Tas Act** means the *Health Practitioner Regulation National Law (Tasmania) Act 2010*
- 2.8 **Trans-Tasman Mutual Recognition Act** means the *Trans-Tasman Mutual Recognition Act 1997 (Cth)*.
- 2.9 To avoid doubt, any section cited in this instrument refers to the section in the National Law in force in each jurisdiction unless:
  - 2.9.1 the section is contained within Part 8 of the NSW Act; or
  - 2.9.2 it is otherwise indicated by this instrument that the National Law specific to a particular participating jurisdiction applies; or
  - 2.9.3 it is otherwise indicated by this instrument that the section is in the Trans-Tasman Mutual Recognition Act.
- 2.10 **AHPRA** means the Australian Health Practitioner Regulation Agency, established by section 23 of the National Law.
- 2.11 **National Board (Board)** means the Medical Radiation Practice Board of Australia, established by the section 31 of the National Law.
- 2.12 **Participating jurisdiction** has the same meaning as in section 5 of the National Law.
- 2.13 **Registration and Notifications Committee** means the committee established by the Board pursuant to Clause 11 of Schedule 4 to the National Law constituted according to its terms of reference.

- 2.14 **Immediate Action Committee** means the committee established by the Board pursuant to Clause 11 of Schedule 4 to the National Law constituted according to its terms of reference.
- 2.15 **Appellable decision** has the same meaning as in section 199 of the National Law meaning:
- 2.15.1 a decision to refuse to register the person;
  - 2.15.2 a decision to refuse to endorse the person's registration;
  - 2.15.3 a decision to refuse to renew the person's registration;
  - 2.15.4 a decision to refuse to renew the endorsement of the person's registration;
  - 2.15.5 a decision to impose or change a condition on a person's registration or the endorsement of the person's registration, other than –
    - (i) a condition relating to the person's qualification for general registration in the health profession; and
    - (ii) a condition imposed by section 112(3)(a);
  - 2.15.6 a decision to refuse to change or remove a condition imposed on the person's registration or the endorsement of the person's registration;
  - 2.15.7 a decision to refuse to change or revoke an undertaking given by the person to the Board;
  - 2.15.8 a decision to suspend the person's registration.

### Delegation of Board functions

- 3.1 Principles of delegation:
- 3.1.1 The purpose of this instrument is to allow the Board to discharge its functions as set out in s 35 of the National Law and the Trans-Tasman Mutual Recognition Act.
  - 3.1.2 To the extent that the Board's functions are capable of being delegated, the Board delegates its functions to AHPRA and the committees of the Board as set out below.
  - 3.1.3 A delegate may in the performance of a delegated function do anything that is incidental to the delegated function.

- 3.1.4 A delegation does not derogate from the power of the Board to act itself in the matter, so long as the delegate has not yet exercised the function or power.
- 3.1.5 A delegate may only exercise a function, or make a decision, subject to the limitations imposed on the delegated function. If the decision to be made is not within the limitation which applies to the delegated function, or the delegate is not sure what the decision should be, the delegate must not make the decision. The delegate may, however, make recommendations to the National Board or another delegate.
- 3.2 Powers and functions that have not been delegated by the Board are in Column C to Schedule 1.
- 3.3 The Board delegates to the Registration and Notifications Committee the following functions of the Board:
  - 3.3.1 The functions listed in Column D to Schedule 1, subject to the limitations (if any) in Column G.
  - 3.3.2 All functions delegated to AHPRA.
- 3.4 The Board delegates to the Immediate Action Committee the following functions of the Board:
  - 3.4.1 The functions listed in Column E to Schedule 1, subject to the limitations (if any) in Column G.
- 3.5 The Board delegates to AHPRA the following functions of the Board:
  - 3.5.1 The provision of notice(s), whether or not expressly provided for in this instrument and whether from the Board or a committee of the Board, to any entity or person; and,
  - 3.5.2 The publishing of information on the website, whether or not expressly provided for in this instrument
  - 3.5.3 The functions listed in Column F to the Schedule, subject to the limitations (if any) in Column G.
  - 3.5.4 The functions listed in Column B to Schedule 2, subject to the limitations (if any) in Column D to Schedule 2.
  - 3.5.5 AHPRA may not exercise any function that is an appellable decision unless specified otherwise.

## Signature

**As signed**

**Neil Hicks**

Chair, Medical Radiation Practice Board of Australia

**Date:** 5 May 2017

## Schedule 1 – National Law delegations

### Accreditation functions

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
<b>Part 6</b>						
<b>Accreditation</b>						
Div 3	Accreditation functions	47(1) 47(2) 47(6) 49(1) 49(2) 51(2)				

### Registration functions

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
<b>Part 7</b>						

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
<b>Registration</b>						
Div 1	General registration	56	54			.
Div 2	Specialist registration	61	59			
Div 3	Provisional registration	64				
Div 4	Limited registration	72				
Div 5	Non-practising registration	76				
Div 6	Application for registration		78(1) 79 80(1)(a)(i) 80(1)(a)(ii) 80(1)(b) 80(1)(c) 80(1)(d) 80(1)(e) 80(2) 81(1) 82(1)(a)		77(2) 78(1) 79 80(1)(a)(i) 80(1)(a)(ii) 80(1)(b)  80(2) 81(1) 82(1)(a) 82(1)(c)	AHPRA to seek the approval of the Chair of the Board (or a nominee of the Chair) when approving a form.  AHPRA may only register an applicant if the applicant is:  eligible, qualified, suitable and meets all requirements for registration in the applicable registration standards.  Eligible means the applicant meets all the requirements in s 52 or 57 or 62 or 65

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
			82(1)(b) 82(1)(c) 83		83 84 85	<p>or 73.</p> <p>Qualified means the applicant meets one of the requirements the requirements in s 53 or satisfies the requirements of s.303(1)(b) or (c).</p> <p>AHPRA may not grant registration to a person who is only qualified for general registration by the operation of s.303(1)(a).</p> <p>Suitable means the applicant is not an unsuitable person within the meaning of s 55,60, 63,70 or 74.</p> <p>AHPRA may only impose conditions on registration under s 83 in the following circumstances:</p> <ul style="list-style-type: none"> <li>- If the applicant has been given notice of a proposal to impose the conditions under s.81 and</li> </ul>



A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
						<ul style="list-style-type: none"> <li>- if the applicant agrees to the proposed conditions; or</li> <li>- if the applicant has graduated from an approved program of study in the 3 years preceding his or her application for registration, and the conditions relate to supervision (and AHPRA has had regard to the Board's policy on supervision when imposing the conditions).</li> </ul> <p>AHPRA may not grant limited registration.</p> <p>AHPRA is delegated the power to refuse an application for registration only in the following circumstances:</p> <ul style="list-style-type: none"> <li>- the applicant has been given notice of a proposal to refuse</li> </ul>

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
						<p>registration under s.81; and</p> <ul style="list-style-type: none"> <li>- the applicant has not made any submissions in response to that notice, or has indicated that he or she agrees with the proposed refusal decision.</li> </ul>
Div 7/1	Student registration	87 88(4)			88(1) 89(1)(a) 89(1)(b) 89(4)	An application must be in the form approved by the National Board
Div 7/2	Other persons				91(4)	An application must be in the form approved by the National Board
Div 7/3	General provisions re students				92(2)	An application must be in the form approved by the National Board
Div 8/1	Endorsement of registration – scheduled medicines	94				

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
Div 8/2	Endorsement for nurse practitioner	N/A	N/A	N/A	N/A	
Div 8/3	Endorsement for midwifery	N/A	N/A	N/A	N/A	
Div 8/4	Endorsement for acupuncture	N/A	N/A	N/A	N/A	
Div 8/5	Endorsement for area of practice		98(1)			
Div 8/6	Application for endorsement		100(1) 101 102 103		99(2) 100(1)(a) 100(1)(b) 100(1)(c) 102	<p>AHPRA to seek the approval of the Chair of the Board (or a nominee of the Chair) when approving a form.</p> <p>AHPRA is delegated the power to refuse an application for endorsement only in the following circumstances:</p> <ul style="list-style-type: none"> <li>- the applicant has been given notice of a proposal to refuse endorsement under s.101; and</li> <li>- the applicant has not made any submissions in</li> </ul>

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
						response to that notice, or has indicated that he or she agrees with the proposed refusal decision.
Div 9	Renewal of registration		110 (functions corresponding to 80(1)(a)(i) 80(1)(a)(ii) 80(1)(b) 80(1)(c) 80(1)(d) 80(1)(e) 80(2) 111(1) 112		107(4)(a) 110 (functions corresponding to 80(1)(a)(i) 80(1)(a)(ii) 80(1)(b) 80(1)(c) 80(2) 112(1) 112(3)	AHPRA to seek the approval of the Chair of the Board (or a nominee of the Chair) when approving a form.  AHPRA may only renew a practitioner's registration if s 111 does not apply, but this does not prevent AHPRA from imposing a condition on registration as set out below.  AHPRA is delegated the power to refuse an application for renewal of registration, or to impose a new condition on registration, only in the following circumstances:  - the applicant has been given notice

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
						<p>of a proposal to refuse renewal, or to impose a new condition, under s.111; and</p> <ul style="list-style-type: none"> <li>- the applicant has not made any submissions in response to that notice, or has indicated that he or she agrees with the proposed refusal decision or imposition of the new condition.</li> </ul> <p>AHPRA may not grant renewal of limited registration.</p>
Div 10	Title and practice protections					
Div 11/1	Certificate of registration				124	
Div 11/2	Review of conditions and undertakings		125(4) 125(5) 126(1) 126(5)	125(4) 125(5) 126(1) 126(5)	125(3) 125(4) 125(5) 125(6)	AHPRA to seek the approval of the Chair of the Board (or a nominee of the Chair) when approving a form.  Delegation of s.

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
			127	127	126(2) 127	<p>125(4) and (5) to AHPRA limited to matters where conditions were imposed in response to a breach of s. 133 (Advertising offences).</p> <p>AHPRA can only grant applications under s. 125(5) where the practitioner has:</p> <ul style="list-style-type: none"> <li>• complied with conditions on their registration regarding the breach of s. 133 (re advertising); and</li> <li>• provided material to AHPRA to demonstrate that they clearly understand the advertising requirements in the National Law.</li> </ul>

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
						<p>If advertising is assessed as continuing to be non-compliant, a decision to refuse to remove the conditions remains with the Registration and Notification Committee, and is not delegated to AHPRA.</p> <p>AHPRA may only remove conditions once they have been complied with.</p> <p>S.125(7) sets out the contents of a notice to refuse to grant an application</p>
Div 11/3	Obligations of registered health practitioners and students		129(2)		129(2) 132(1)	
Div 11/5	Boards powers to check identity and criminal history				134 135(1)	
Div 116	General				137	

### Notification functions

A	B	C	D	E	F	G
Part and Division	Description	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
<b>Part 8</b>						
<b>Notifications</b>						
Div 1	Persons formerly registered under this Law					
Div 2	Mandatory Notifications					
Div3	Voluntary notifications					
Div4	Making a Notification					
Div 5	Preliminary assessment		149(1)(a), (b) and (c) (excl Qld Act) 149(3) (excl Qld Act) 150 (excl Qld Act) 151 152 (excl Qld Act) 150(1)(a) and (b) (Qld Act) 150(3) (Qld Act)	149(1)(a), (b) and (c) (excl Qld Act)  150(1)(a) and (b) (Qld Act)	149(1)(a),(b),(c) (excl Qld Act)  149(3) (excl Qld Act) 150 (excl Qld Act) 152 (excl Qld Act) 151(1)(e) (excl Qld Act) 150(1)(a) and (b) (Qld Act) 150(3) (Qld Act)	AHPRA may not decide that a notification/referred matter does not relate to a ground for a notification  Delegation of s. 151(1)(e) to AHPRA limited to situations where the Board's delegate and the health complaints entity ('HCE') have agreed that the HCE will deal with the subject matter of the notification, under s.



A	B	C	D	E	F	G
Part and Division	Description	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
						150(3).
Div 6	Other matters		153 154(2)	153 154(2)		
Div 7	Immediate action		156 157(3) 158(1)(b) 159(2)(b) & (c)	156 157(3) 158(1)(b) 159(2)(b) & (c)	157(1) 158(1)(a)	
Div 8	Investigations		160 161(4)	160 161(4)	160(1) 160(2) 161(1),(2),(3) & (4)  81(1) (SA Act)	Delegation of s.160(1) to AHPRA limited to situations where: <ul style="list-style-type: none"> <li>- s.150(4) applies to require an investigation; or</li> <li>- where a notification is made to AHPRA or the Board without patient consent to obtain records relevant to the notification.</li> </ul>
Div 8	Investigators				163, 164(1)	

A	B	C	D	E	F	G
Part and Division	Description	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
Div 8	Procedure after investigation		167 167(1) (ACT)		166(3) (ACT) 167(1) (ACT) 167(3) (ACT)	
Div 9	Health and performance assessments		169 170 171 172 176(1)(b) 176(3) 177 (note: in Qld Act, s.177 applies subject to Div 12, Subdiv 1 of Part 8)	169 170	175(2) (ACT) 177(1) (ACT) 177(2) (ACT) 177(4) (ACT)	
					171(1) 172(1) 176(1)(a), 176(3)	AHPRA may only provide a copy of the report once the relevant committee or State Board has determined whether s 176(1)(b) applies.
Div 10	Action by National Board		178		178(2)(c)	AHPRA is limited to deciding to propose action to impose

A	B	C	D	E	F	G
Part and Division	Description	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
			179		178(4) (ACT) 179(1) 179(2)(a) 180(1)	<p>conditions that relate to an apparent breach of s. 133 (advertising offences).</p> <p>AHPRA is limited to proposing standard conditions in relation to apparent breaches of s. 133 (advertising offences).</p> <p>AHPRA may only decide to take no further action under s. 179(2)(a) in relation to apparent breaches of s. 133 (advertising offences).</p>
Div 11	Panels	183	181 182 192		181(1) 182(1) 184(3) (ACT) 192(2) 192(2) 192(3A) (ACT)	<p>AHPRA may only select persons to be on the panel and may not establish the panel.</p> <p>AHPRA limited to maintaining the list of approved persons. AHPRA does not have power to approve people.</p> <p>AHPRA to give notice at the direction of panel members</p>

A	B	C	D	E	F	G
Part and Division	Description	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
						AHPRA to give notice to reflect the Panel's decision
Div 12	Referring matter to tribunal		193 (excl Qld Act) 193 (Qld Act) 193A(1),(2) and (4) (Qld Act) 193B(1), (2) and (3) (Qld Act)		193(2)(b) (excl Qld Act)	
Div 13	Appeals					
Div 14	Miscellaneous				205, 206 206A(2) (Qld Act) 206B(3) (Qld Act)	
Div 14B (NSW Act)	Health, performance and conduct (Miscellaneous)				176B (NSW Act)	
<b>Part 10</b>						
Div 2	Disclosure of information and confidentiality		220		217, 220	
Div 3	Registers (registered health practitioners)		226 (2) & (3)	226(2) & (3)	222 223 225	

A	B	C	D	E	F	G
Part and Division	Description	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
					226 227,	
Div 4	Registers (students)				229 , 230	
Div 5	Other records				231, 232	
Div 6	Unique identifier				233	
<b>Part 11</b>						
Div 2	Inspectors				239 81(2) (SA Act) 240	
<b>Part 12</b>						
Div 13	Complaints, notifications, disciplinary proceedings		289, 291, 17(WA Act) 18 (Tas Act)		289, 291, 17(WA Act) 18 (Tas Act)	AHPRA may only give notice under this division.
<b>Part 13 (Qld Act)</b>						
N/A	Transitional (Qld)				310(1) and (2) (Qld Act)	

## Schedule 2 – Trans-Tasman Mutual Recognition Act delegations

A	B	C	D
Part and Division	AHPRA	Description of section	Limits on delegation
<u>Part 3 Division 2 – Occupations – Entitlement to registration</u>	s.18(1)	Receive lodgement of written notice seeking registration.	
	s.18(6)	Discretion to allow amendment to registration application	
	s.19(2)	Grant of registration in equivalent occupation	
	s.19(5)	Imposition of conditions on registration	<p>Section 19(5) limits conditions that may be imposed.</p> <p>Section 39(1) provides that the power to impose conditions must be used to promote the Trans-Tasman mutual recognition principle.</p>
	s.20(3)	Postponement of registration	<p>Circumstances in which National Board may postpone registration set out in s.21(1).</p> <p>Time limit on postponement under s.21(3).</p>
	s.20(3)	Refusal of registration	<p>Circumstances in which National Board may refuse registration set out in s.22(1)</p> <p>Subsection 22(2) regulates when a refusal to register (on ground not an equivalent occupation) takes effect.</p>
	s.20(4)	Automatic registration where National Board has not granted, refused or postponed registration within 1 month of	

A	B	C	D
Part and Division	AHPRA	Description of section	Limits on delegation
		application lodgement	
	s.23	Issuing notice of decision to grant, refuse or postpone registration	Section 33(3) requires that notice of decision must include information about right to apply to Australian Tribunal for review.
Part 3 Division 3 – Interim arrangements	s.25(5)	Cancellation of deemed registration (on application of registered person)	
	s.26(4) and s.32(2)	Waiver of condition imposed under NZ law, or undertaking to NZ local registration authority.	
	s.26(5)	Imposition of conditions on deemed registration	Section 26(5) limits conditions that may be imposed.  Section 39(1) provides that the power to impose conditions must be used to promote the Trans-Tasman mutual recognition principle.
Part 3 Division 4 – Equivalent occupations	s.28(2)	Imposition of conditions on registration to achieve equivalence between occupations in different participating jurisdictions.	Section 19(5) limits conditions that may be imposed.  Section 39(1) provides that the power to impose conditions must be used to promote the Trans-Tasman mutual recognition principle.
	s.30(5)	Giving effect to decisions on review (by Australian Tribunal)	
	s.31(4)	Giving effect to declaration by Minister	
Part 3 Division 5 – General provisions	s.32(2)	Reinstatement of cancelled or suspended registration	

A	B	C	D
Part and Division	AHPRA	Description of section	Limits on delegation
	s.37(1) (Obligation is subject to s.37(2)).	Providing information required by local registration authority of another participating jurisdiction.	
	s.39(2)	Duty to prepare and make available guidelines and information regarding operation of this part in relation to the occupations for which it is responsible.	Section 39(3) - guidelines to be made available within 6 months of commencement of s 39.
	s.40(1)	Power to impose fees for substantive or deemed registration under Part 3 of TTMR Act	
	s 40(3)	Power to impose a condition that registration under Part 3 of the TTMR Act does not take effect till fee or other payment paid.	



## Change table

Part and Division	Description	Change	Date change made
Part 7, Div 11/2	Review of conditions and undertakings	<p>Insert the delegation of s. 125(4) and 125(5) to AHPRA.</p> <p>Insert the following limitation:</p> <p>Delegation of s. 125(4) and (5) to AHPRA limited to matters where conditions were imposed in response to a breach of s. 133 (Advertising offences).</p> <p>AHPRA can only grant applications under s. 125(5) where the practitioner has:</p> <ul style="list-style-type: none"> <li>• complied with the conditions on their registration regarding the breach of s. 133 (re advertising); and</li> <li>• provided material to AHPRA to demonstrate that they clearly understand the advertising requirements in the National Law.</li> </ul> <p>If advertising is assessed as continuing to be non-compliant, a decision to refuse to remove the condition remains with the Registration and Notification Committee, and is not delegated to AHPRA.</p>	May 2017
Part 8, Div 10	Action by National Boards	<p>Insert the delegation of s. 178(2)(c) to AHPRA.</p> <p>Insert the following limitations:</p> <p>AHPRA is limited to deciding to propose action to impose conditions that relate to an apparent breach of s. 133 (advertising offences).</p>	May 2017

		<p>AHPRA is limited to proposing standard conditions in relation to apparent breaches of s. 133 (advertising offences).</p> <p>Insert the delegation of s. 179(2)(a) to AHPRA.</p> <p>Insert the following limitation:</p> <p>AHPRA may only decide to take no further action under s. 179(2)(a) in relation to apparent breaches of s. 133 (advertising offences).</p>	
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