



*Strata and Community Title in Australia
for the 21st Century 2013 Conference*

Strengths and Weaknesses of a Modular Regulatory Framework

Coverage

1. Some background material
2. Range and complexity of projects
3. Regulatory framework spectrum (generic – project specific)
4. Problems with generic approach
5. Problems with project specific approach
6. Queensland modular system
7. Other modular options
8. Strengths of modular approach
9. Weaknesses of modular approach

Refer to the paper -

- **Historical background**
 - Horizontal and vertical subdivisions must be under the same regulatory framework
 - Australian regulatory frameworks have their origin in the United States
 - US HOA system is based on covenants – CC&R's "*covenants, conditions and restrictions*"
 - Condominiums have a "*Declaration*"
- **Australia's first legislation**
 - Prompted by housing demand in Sydney
 - Sponsored by the private sector
 - 1961 NSW Strata Act introduced new type of subdivision
 - Targeted suburban "walk-up" apartments
 - A replacement for company title
 - Very effective for its day
 - Became clear that more sophisticated laws were needed

Range and Complexity of Projects

- 1960's & 1970's – 3 storey residential “walk-ups” and mid-rise residential
- Early 1980's –
 - Higher, larger and more complex (including mixed use)
 - Horizontal subdivisions started to appear
- Legislation could not cope –
 - Paradise Centre legislation (HSP Nominees)
 - Sanctuary Cove Resort Act 1985
 - Integrated Resort Development Act 1987
 - South Bank Corporation Act 1989
 - Mixed Use Development Act 1993

Range and Complexity (continued)

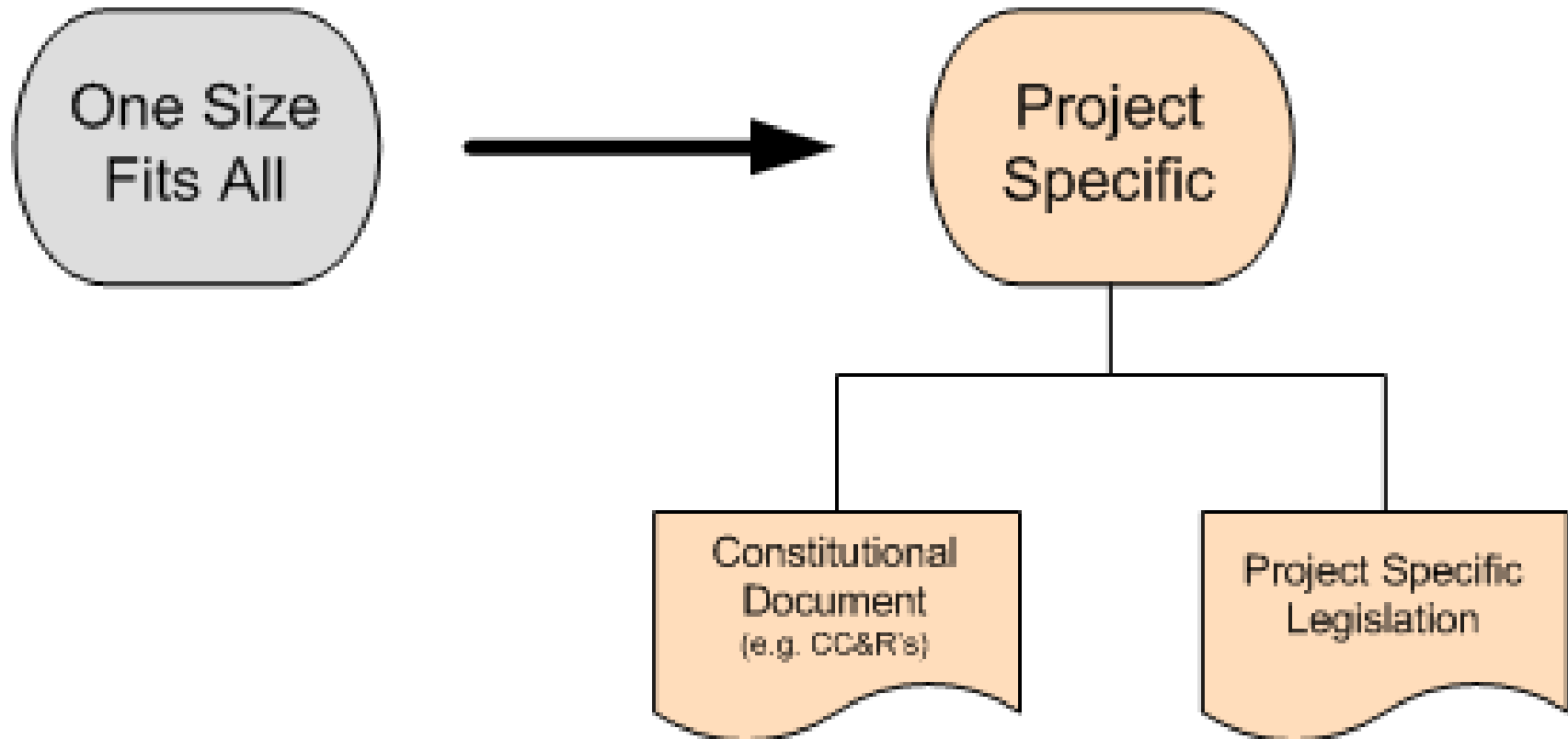
- Late 1990's & early 2000's – NSW and Vic
 - King Street Wharf, Sydney
 - Finger Wharf, Sydney
 - Southbank, Melbourne
 - Docklands, Melbourne
- 2012 – Barangaroo, Sydney



Range and Complexity (continued)



Regulatory Framework Spectrum



Problems With Generic Approach

It is not possible to draft a single generic law and keep it up to date as circumstances change, in a way that successfully accommodates the huge diversity of current day projects.

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- Amendments adversely impact some types of projects
 - Amendments create the need for further amendments
 - Process becomes self perpetuating



Examples of problem areas -

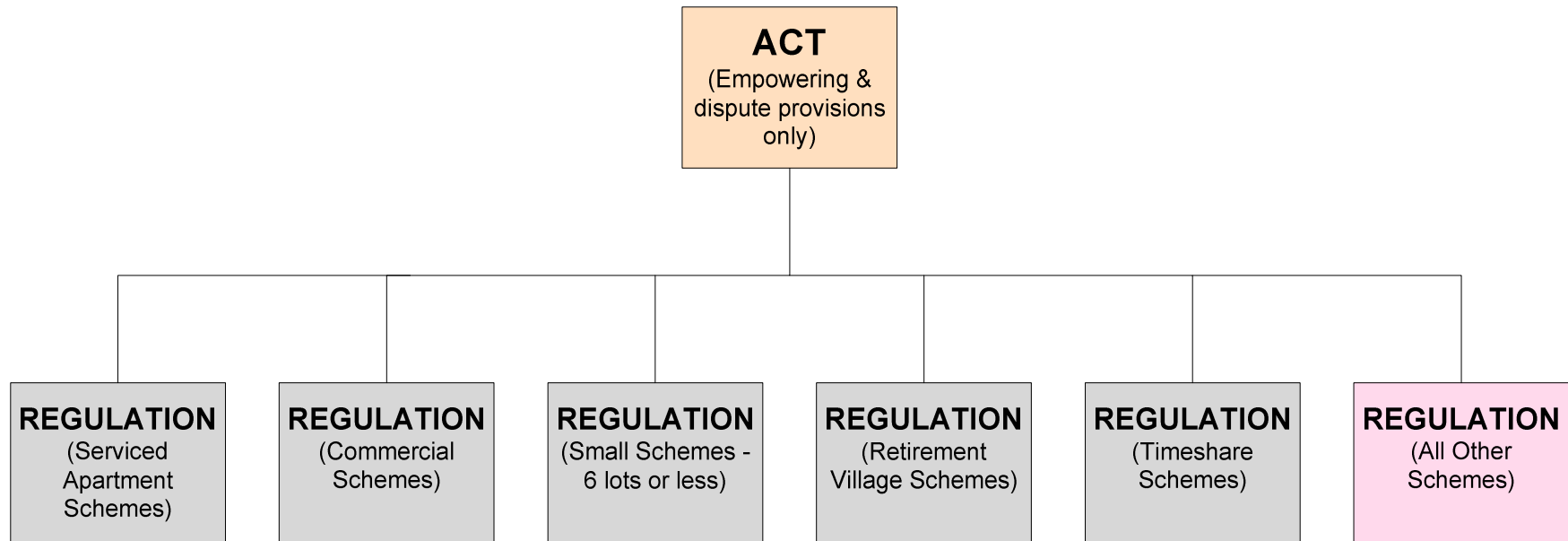
- Staged development
- Large projects with a master developer and numerous sub-developers
- Mixed tenures (e.g. freehold, leasehold & occupation licenses)
- Hotels and serviced apartments
- Large mixed use projects (e.g. residential and commercial)
- Timeshare projects
- Retirement villages



Problems With Project Specific

- 3 types of project specific –
 - Single project specific legislation
 - Multi project specific legislation
 - Single project specific documentation
- Single project specific legislation objectionable on public policy grounds
- Multi project specific legislation has not worked
- Single project specific documentation results in a proliferation of different documentation

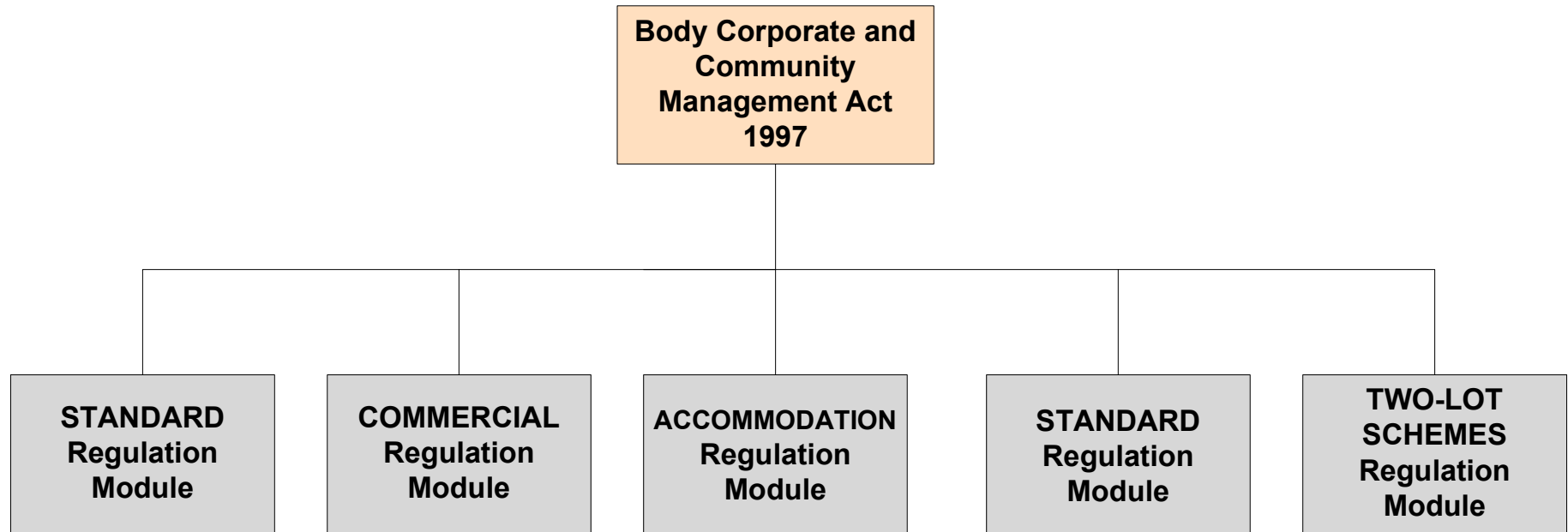
Original Qld Modular Design



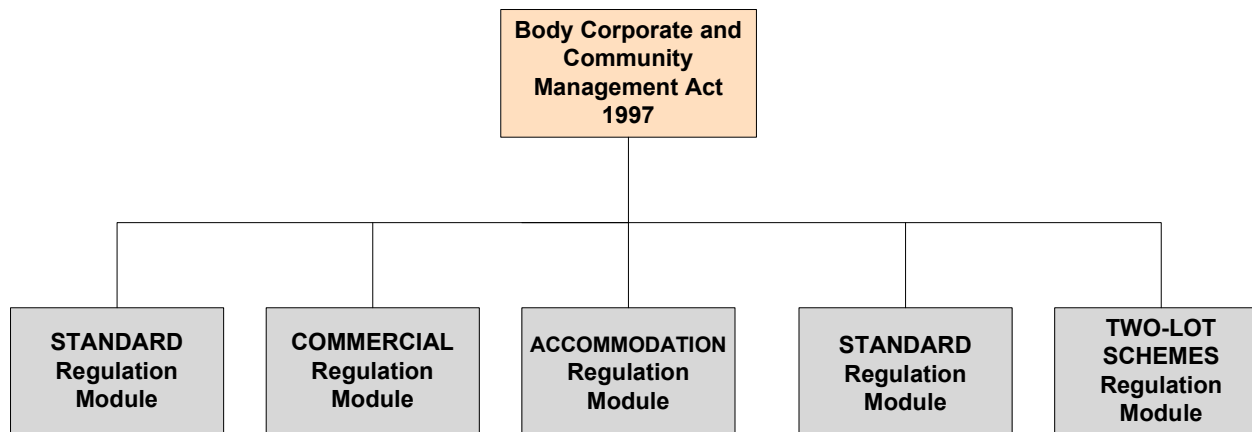
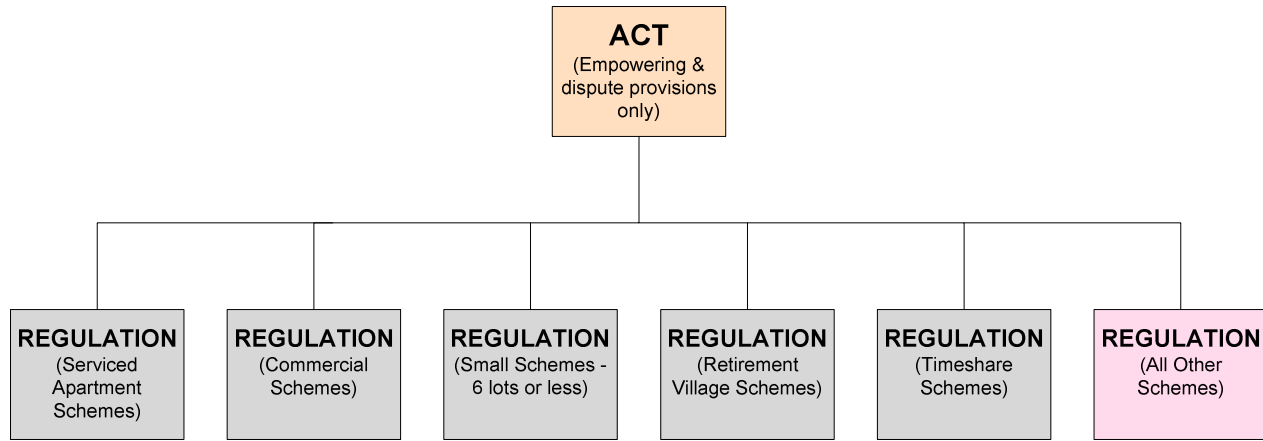
Plus provision for –

- **Tiered management structures**
- **Airspace subdivisions and Building Management Statements**

Current Qld Modular System



Comparison

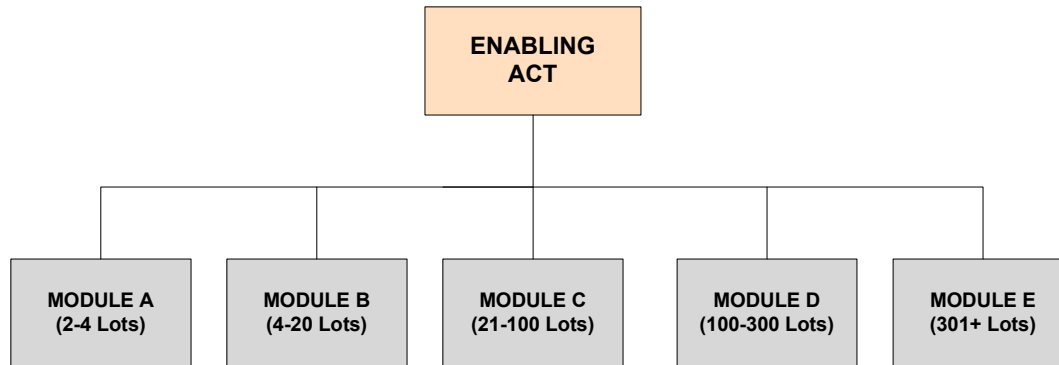


Reasons for Variation

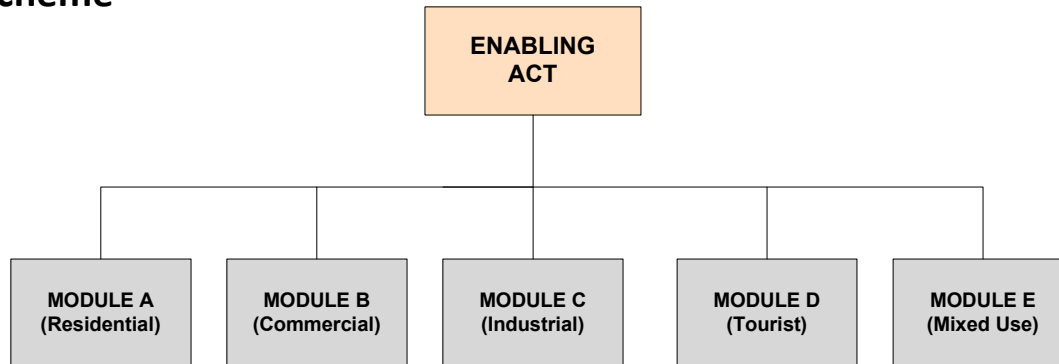
- Objections and vested interests
- Goss Government's own policy objectives
- Defeat of Goss Government
- New policy objectives of Borbidge minority Government
- Requirements of independent MP – Ms Liz Cunningham
- Minister for retirement villages wanted to do his own thing
- Timeshare option – too hard

Modular Options

Number of lots in a Scheme

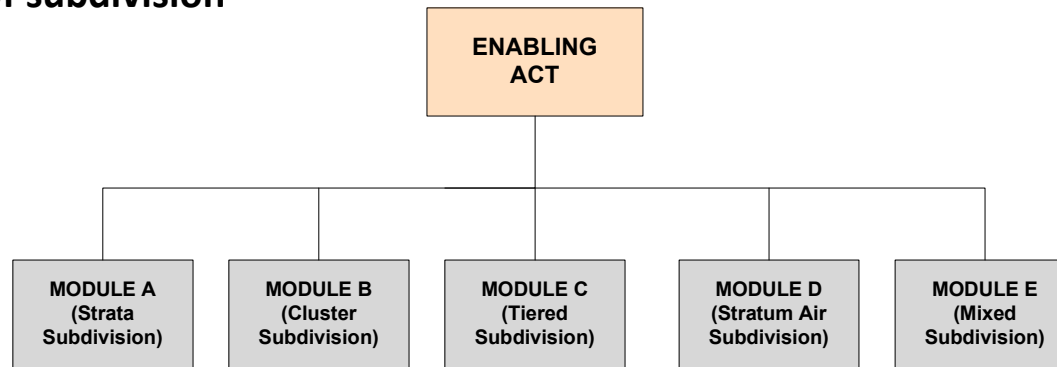


Type of Scheme

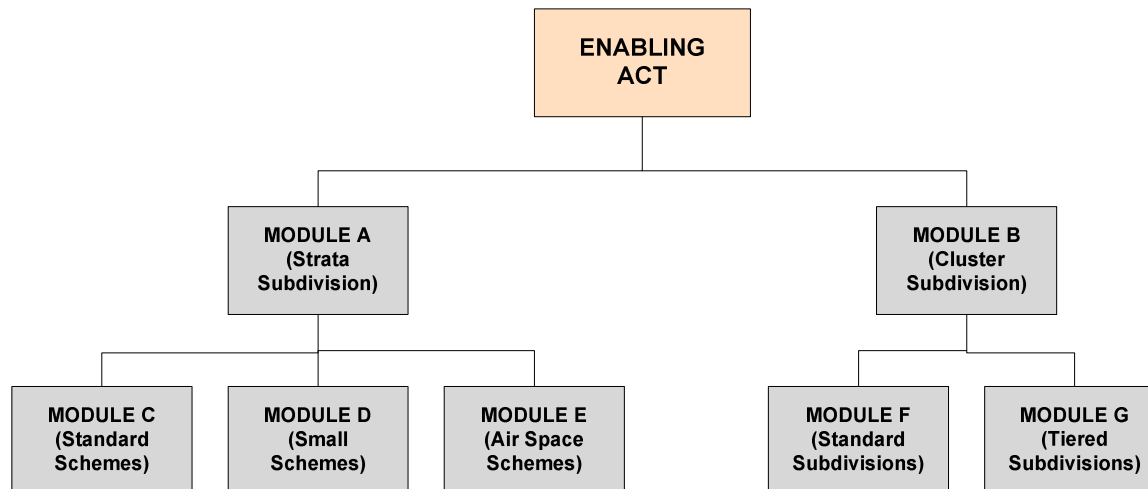


Modular Options (continued)

Type of subdivision



Mixture of options



Strengths of the Modular Approach

- Governance and management can vary from module to module
- A project can be placed in the most appropriate regulatory environment
- Amendments to the Act can be minimised
- Problem solving can be targeted to minimise the risk of “knock-on” effect

Strengths of the Modular Approach

(continued)

- Avoids need for separate legislation for such things as timeshare, retirement villages and mobile home parks
- New modules can be added for new project types
- Modules can be changed outside the normal Parliamentary process
- Can be combined with statutory instruments to increase flexibility

Weaknesses of the Modular Approach

- Departure from “purist” legislative policy
- Need to refer to multiple sets of regulations
- Size and repetitive nature of the final package
- Complexities of public administration, particularly where multiple Government Departments are involved

Conclusions

- Projects are too large, complex and diverse for single generic legislation
- Quick and targeted “adjustment” is essential
- Strengths of modular system outweigh weaknesses
- Current Queensland model is not a good model because Module content is common
- Statutory instruments also have a role, particularly if combined with Modules



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