



Balancing the Act

Issue 37 Winter 2015

Mabo Oration 2015

The Anti-Discrimination Commission Queensland is pleased to announce that Dr Dawn Casey PSM FAHA will deliver the 2015 Mabo Oration.



Dr Dawn Casey

The Commission has hosted the Mabo Oration in partnership with the Mabo family and the Queensland Performing Arts Centre (QPAC) every two years since 2005. The Oration celebrates the High Court of Australia's landmark Mabo decision which overturned the proposition of terra nullius, and paved the way for land rights for Australia's Indigenous peoples.

The event honours Eddie Koiki Mabo, celebrating his contribution to native title, Indigenous human rights, and associated legal and political changes in Australia.

The Mabo Oration aims to:

- inform and stimulate public thinking and discussion about the status of Aboriginal and Torres Strait Islander communities in Queensland
- promote Indigenous social, economic, civil and human rights in Queensland and Australia
- raise public awareness of ongoing and future human rights concerns for first nation peoples.

In this year's oration, Dr Casey explores whether the Mabo high court judgment was the agent for change and recognition.

Dr Dawn Casey is from the Tagalaka clan group from Crocydon, North Queensland. She has worked in a number

of key Australian Government roles, including a period in the Office of Prime Minister and Cabinet. Her career includes the establishment of the Council for Aboriginal Reconciliation, and initiation of the joint Commonwealth and State response to the Royal Commission into Aboriginal Deaths in Custody. During her time as Assistant Director General AusAID, Dr Casey's responsibilities included the United Nations, the World Health Organisation and other international programs.

Dr Casey is currently an Adjunct Professor to the University of Queensland and Griffith University and serves on a number of boards and committees. She has been awarded three Honorary Doctorates, Commonwealth Governments' Public Service Medal (PSM), Australian Government's Centenary Medal, three Australia Day Public Service Medals and is a Fellow of the Australian Academy of the Humanities.

Commentator – Dame Quentin Bryce

Providing commentary on the Mabo Oration will be Dame Quentin Bryce AD CVO. Ms Bryce has enjoyed a distinguished career as an academic, lawyer, community and human rights advocate and the Governor General of Queensland and Australia. In 2014, Prime Minister Tony Abbot announced that Ms Bryce had become a Dame in the Order of Australia.

Entertainment for the 2015 Mabo Oration will be provided by local Indigenous performer Chris Tamwoy.

Mabo Oration 2015

**Monday 10 August
6pm**

Playhouse, QPAC

Book tickets at qpac.com.au

or ph: 136 246

Commissioner's Foreword



Anti-Discrimination Commissioner,
Kevin Cocks AM

Over the past 18 months ADCQ staff have been engaging with citizens — farmers and contractors — who are concerned about exploitation of vulnerable backpackers, international students, migrants and refugees in the Lockyer Valley.

What makes these workers vulnerable?

They are mostly visitors to Australia, or new residents who are not aware of their rights as tenants and workers. Many of these people are on working holidays or student visas. This makes them vulnerable to unscrupulous contractors and landlords who require them to do a certain number of weeks work in a rural area to extend their visas. Many are led to believe that contractors are the only ones who can sign off on their work form in order for the Department of immigration to extend their visa.

Migrants, refugees and asylum seekers find it hard to get work, so they are forced into:

- accepting below award wages
- experiencing sexual harassment
- working in unsafe workplaces and
- living in substandard living conditions.

The Commission has received reports that people have been working for as little as \$3 per hour, or not receiving any pay at all. In particular, asylum seekers are extremely vulnerable to unscrupulous contractors. In other cases we have heard many stories of female workers being asked for sexual favours in exchange for a contractor signing off on their work form for their visa extension.

Farmworkers have been injured on-site and contractors tell them to get themselves to a hospital. Many workers are working without any WorkCover because they have not completed the paperwork. Contractors rent accommodation to their workers, and often overcrowding is rampant with excessively high rents charged. There is a lack of evidence about whether tenancies comply with the Residential Tenancies Authority legal procedures or the *Residential Services Act 2002*.

There are many concerned citizens and farmers in the Lockyer Valley trying to do the right thing. It is in everyone's interest to protect and respect the human rights of those vulnerable workers. At the end of the day, farmers need to get their fruit and vegetables to the market, small businesses rely on tourism,

and seasonal workers and local citizens want to live in a community that is welcoming and inclusive.

Conclusion

I welcome the Fair Work Ombudsman's warning to growers, hostel owners and labour hire contractors that it will not tolerate the deliberate exploitation of backpackers and seasonal workers. The Lockyer Valley is one of many communities in Queensland that is a part of the harvest trail for seasonal workers. Additionally, a review of the current Queensland accommodation legislation may need to be undertaken to establish whether it provides sufficient protection for backpackers and seasonal workers.

Finally, if you experience sexual harassment or discrimination in the workplace, do not hesitate to contact ADCQ via our enquiry line (1300 130 670) or website www.adcq.qld.gov.au.



@KevinCocksQld

Small Business Handbook

A complaint of discrimination or sexual harassment against a business can have major negative consequences – financial, legal and reputation.

The ADCQ's new Small Business Handbook provides small business with a guide to preventing and managing discrimination and sexual harassment, and for promoting equality and diversity in areas such as recruitment, training and management. It contains brief information about Queensland anti-discrimination law as well as case studies and sample policies and procedures that businesses can adapt to suit their workplace.

The Small Business Handbook and editable policies and procedures are available for download from the ADCQ website.

An open letter to the Queensland community

Anti-Discrimination Commissioner, Kevin Cocks has co-signed an open letter to the Queensland community seeking unity and a strong stance against racial and religious vilification. The letter is an initiative of the Police Ethnic Advisory Group (PEAG) which comprises community members, service providers and Queensland police in addition to Commissioner Cocks.

The letter reads:

We, the members of the Police Ethnic Advisory Group (PEAG), are writing to the Queensland community to reaffirm our rejection to all violence, particularly that which is based on physical appearance, racial or religious discrimination.

The Police Ethnic Advisory group has, for over 20 years, brought together representatives of Queensland's diverse community, police, government and non-government agencies to address matters relating to cultural and religious diversity.

Australia has a great diversity of people, some of whom have come to Queensland fleeing persecution and seeking a better life. Australia is recognised as one of the most peaceful and stable countries in the world and it is well understood that multiculturalism has significantly contributed to making Australia the great nation it is today.

In a time when the world is facing a multitude of crises, whether they are man-made or natural, fear is often our first response. As a community we want our legislators and law enforcers to take proportionate and reasonable steps to prevent acts of violence occurring in Australia, including acts of terrorism.

It is extremely important for us to acknowledge that the overwhelming majority of our community are as horrified and appalled at the acts of terror occurring in the world. For example, Muslim community leaders have expressed deep distress that some perpetrators claim to be acting in the name of Islam.

Closer to home, are all aware of abhorrent actions, by a small minority of the Australian population against ordinary, law abiding members of our community. In some of the incidents, members of the Muslim, Sikh, Hindu, Buddhist and Orthodox and Coptic Christians are being singled out and vilified because of their appearance or religious attire.

Such acts of vilification are not only against the principles of a 'fair go', they are against the law in Queensland.

Our community has much to lose if we allow acts of intimidation, racial and/or religious hatred. Irrespective of a person's faith, race or culture we must all be able to go about our daily lives without fear of being intimidated by physical or verbal assaults. We must all stand against acts by any individual or group that unfairly discriminates against others or breaks our laws. We must not let fear or suspicion divide us. We believe that the majority of Queenslanders stand with us in this.

We encourage and support all Queenslanders to report acts of racial or religious vilification to the police and or the Anti-Discrimination Commission.

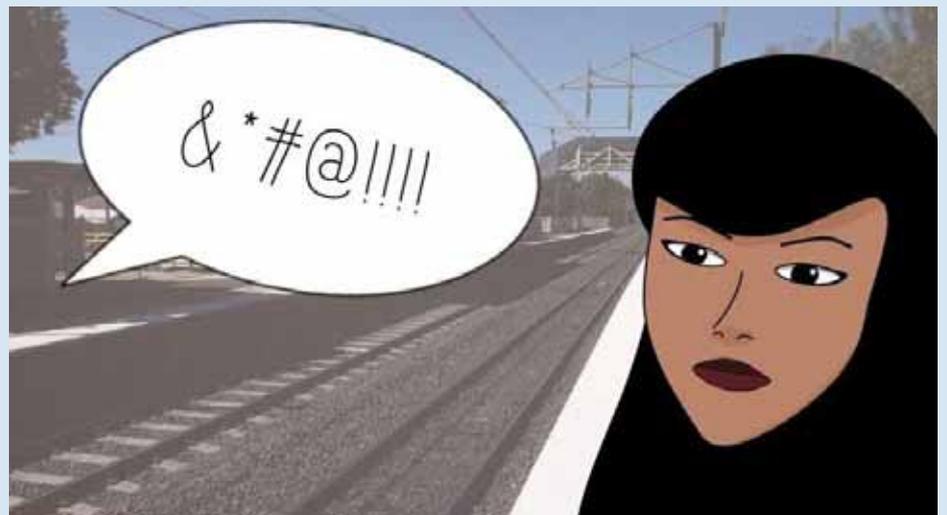
Let us retain the principle of treating others in the way we would like to be treated. It is this generosity of spirit we must continue to draw upon in these times, standing united as friends, neighbours and community.

Members of the PEAG.

What is vilification?

The Queensland *Anti-Discrimination Act 1991* contains prohibitions that are designed to protect people from vilification because of their race, religion, sexuality or gender identity. The legislation seeks to balance the right to freedom of speech with the right to be free from discrimination, harassment and harm.

It is unlawful to incite hatred towards, serious contempt for, or severe ridicule of a person because of their race, religion, sexuality or gender identity, by a public act. This is known as unlawful vilification.



A person who believes they have been subjected to unlawful vilification can make a complaint to the Anti-Discrimination Commission Queensland seeking compensation or other

remedies. This is a type of 'civil' claim. It is a criminal offence if the unlawful vilification includes a threat of harm to a person or their property. This is called serious vilification and is a police matter.

IWD 2015 - Celebrating the Strength and Resilience of Women

The ADCQ partnered with the North Queensland Women's Legal Service to host a very successful International Women's Day event this year in Townsville. Deputy Commissioner Neroli Holmes joined with over one hundred people to celebrate the strength and resilience of women.



Three inspirational, local women bravely shared their personal stories, describing the challenges they have faced in their lives — such as domestic violence — how they have struggled, and eventually triumphed.

A community café event gave everyone the chance to discuss the challenges faced by women, and to share their tips for building strength and resilience, both personally and collectively, as women.



Everyone enjoyed the entertainment, with performances given by the fabulous Northern Shimmy Sisters, a local belly dancing troupe, and the Seniors for Creating Change group who performed their rousing rendition of 'I am Woman'.

Vale Nick Xynias AO BEM

Mr Nick Xynias AO BEM, was a great man who dedicated nearly 60 years of living in Australia to ensure that individuals from diverse backgrounds have equal access to goods and services, and are able to fully participate in our community.

He co-founded the Ethnic Communities Council of Queensland (ECCQ) and was the chair of the Federation of Ethnic Community Councils of Australia (FECCA). He provided a strong voice to ensure that government policies that led to the provision of services at both government and non-government levels, were sensitive to the needs of Queenslanders and Australians from different cultural groups.

He provided great leadership when representing ethnic communities in Queensland at a state and national level, and was well respected by politicians and community leaders across the spectrum. He also joined with leaders of other disadvantaged groups in our community to advocate for a fair go for all people.

His love of life, sense of humour, beautiful smile and unwavering pursuit of justice will be sorely missed. However like all great leaders he has left behind him a legacy that will provide future leaders with guidance when pursuing the pathways to deliver a fair and just society.

The team at ADCQ expresses their condolences to Nick's family and to his colleagues and many friends.



[@Fair_Inclusive](https://twitter.com/Fair_Inclusive)



Online application asked for unnecessary information

Mr Willmott saw a job advertised online for a console operator at a local Woolworths petrol outlet.

When he started to fill in the form, he became concerned when required to give his date of birth and gender, and to upload personal documents in order to prove his right to work in Australia, so he did not proceed with the application.

He made a complaint to the Commission on the ground that Woolworths asked him to supply information (about his age, sex and race) on which unlawful discrimination might be based.

Woolworths argued that the information was needed:

- to determine entitlements, and whether applicants are able to work at 18+ jobs
- to collect gender statistics for gender equality targets
- to comply with Commonwealth legislation (the Migration Act 1958).

The complaint was not resolved at conciliation, and was decided by the Queensland Civil and Administrative Tribunal.

Was the information genuinely needed?

If Woolworths need to know if an applicant is over 18 years, the tribunal suggested that the application form include the question 'Are you over 18?' and explain why the information is needed (eg for work in a liquor outlet).

The requirement for gender data is not relevant to job applicants, only to employees.

The tribunal acknowledged that Woolworths has an obligation under the Migration Act to ensure its employees have the right to work in Australia (that is, that they are not 'unlawful non-citizens'). However, it is not necessary to require proof at the application stage.

In summing up, the tribunal said 'It may well suit Woolworths' administrative processes to gather the information at an early time, but it cannot be said to be reasonably necessary at the time of completing the application.'

Damages

The tribunal awarded Mr Willmott compensation of \$5,000 for his embarrassment, humiliation and the loss of a chance to be employed.

Note: Woolworths has changed the online application form and the questions complained of are no longer asked in the application form.

Willmott v Woolworths Ltd [2014] QCAT 601 (11 November 2014).

Employer didn't know about union activity

A long-term casual worker alleged discrimination on the ground of trade union activity. He claimed that he was left off the fortnightly work roster after he was elected as a union delegate. At the time, enterprise bargaining negotiations were taking place in the workplace.

The matter was not resolved at conciliation and was decided at a hearing in the Queensland Civil and Administrative Tribunal.

The tribunal found that there was no evidence that the employer knew that the worker was a union delegate when the roster was drawn up. In fact, the evidence showed that the worker attended his first union meeting after the roster came out.

At the hearing, the worker couldn't prove that there was a link between his role as a union delegate, and being taken off the roster.

The complaint was dismissed.

Ward v Stradbroke Ferries Pty Ltd [2014] QCAT 637 (21 November 2014)

**DISCRIMINATION
LAWS
PROTECT
YOUR RIGHTS**

New – Leading Authorities resource

The Commission has developed a new resource to assist complaint parties and advocates, by identifying cases that contribute to the interpretation and application of the Queensland Anti-Discrimination Act 1991.

The Leading Authorities resource comprises tables of cases with brief notes about each case, and is arranged by topics. Topics include: burden of proof, direct and indirect discrimination, genuine occupational requirements, unjustifiable hardship and assessment of damages.

The Leading Authorities tables are available on the Commission's website from the Legal Information page under the Resources tab.

No meal for couple with hearing dog

A man and his girlfriend went to a restaurant for a meal. The man is Deaf and was accompanied by his accredited hearing dog.

At the restaurant the couple was told that they could eat outside, but could not bring the dog in. The man showed the official identification card that proves that his dog is a genuine hearing dog, and pointed out that the dog was wearing a highly visible orange jacket and lead. He also gave printed information about hearing dogs to the staff member.

The couple and the dog were still refused, with the staff member saying that customers had complained about the presence of dogs in the past. The couple was admitted without issue at another nearby restaurant.

The man made a complaint of impairment discrimination to the Commission, and his girlfriend made a complaint of discrimination based on association with a person with an impairment.

The matter was resolved at conciliation, and the restaurant gave a written apology to the man and his girlfriend. They also agreed to advise customers that guide, hearing and assistance dogs are welcome at their restaurant, by making a post on their Facebook page, displaying a notice on the front door to this effect, and updating the staff training manual.

Financial compensation was also made to both the man and his girlfriend, as well as a donation to a hearing dog training organisation.

The restaurant thanked the couple for making the complaint, and acknowledged that it had been an educational experience for them.

Long-running sexuality vilification case ends with apology

A final decision in the long-running sexuality vilification complaint of *Owen v Menzies & Ors* was handed down by QCAT on 17 December 2014. The complaint related to events that occurred in 2005.

QCAT ordered Mr Owen to make a genuine, private apology and retraction to the two women who pursued the complaint through to the final decision.

Read the full history of this complaint in the Legal Notes section of our website

Rejected because of being related to a child with an impairment

A teacher applied to attend a conference for educators of children with impairments. Her application was rejected because she is related to a child with an impairment.

The conference organisers offered her a place in the session for parents, but as she is not the parent of a child with an impairment, she refused the offer. The teacher lodged a complaint with the Commission alleging discrimination in the provision of goods or services, on the basis of 'association with or relation to' a person with an impairment.

The organisation that ran the conference was a registered charity, and claimed that because of its not-for-profit status it was exempt from the *Anti-Discrimination Act*. This exemption excuses not-for-profit organisations from discriminating when providing goods or services.

At conciliation the teacher said she was concerned about a lack of transparency and accountability, and that organisations could hide behind exemptions. The organisation explained that it offered the same sessions to both parents and educators, and that they were segregated because of participant feedback.

The organisation agreed to amend the registration form, and gave an undertaking to review the way the conferences are delivered.

Note

The Queensland Anti-Discrimination Act prohibits discrimination against a person because of their 'association with, or relation to' a person identified on the basis of a prohibited attribute (for example: race, impairment, sexuality, religious belief etc).

Save the date

2015 Robert Jones Oration

**Thursday 6 August
Parliament House**

**Oration delivered by
Maha Sinnathamby**

More details at adcq.qld.gov.au

Equity Contact Officers – support for employees and employers

Equity Contact Officers (ECOs) are an important part of any workplace anti-discrimination strategy. They provide assistance to employees subjected to discrimination and harassment, and support management in the prevention and elimination of such behaviour in the workplace.

An employer can show that they take discrimination and harassment seriously by appointing and supporting an ECO. It also assists them to discharge their responsibilities under the vicarious liability provisions of the *Anti-Discrimination Act*. To avoid liability for discrimination or sexual harassment by their workers, employers must take reasonable steps to prevent discrimination and harassment from occurring in the workplace.

Employers have an obligation to protect the health and safety of their staff, and having an ECO gives staff someone to consult about discrimination and harassment in a safe and confidential manner.

The *Anti-Discrimination Act* does not define the role of ECOs.



ECOs are a first contact for staff to discuss issues, get information and consider options available to them. They can also identify emerging issues, which will help to protect staff and prevent issues from escalating.

Some organisations use a different title for the ECO position, but the job is essentially the same. Common titles are Contact Officer, Discrimination and Harassment Contact Officer, Equity and Diversity Officer. Employers can define the role of ECOs to suit their own workplace needs, and a sample role description is available in the ADCQ Employer's toolkit.

ECOs:

- raise staff awareness about discrimination and harassment issues
- educate staff about options available
- resolve incidents of discrimination and harassment before they escalate

- provide a safe environment for staff to discuss concerns in a confidential manner
- make recommendations to management about ways to prevent further incidents
- help promote a workplace free from discrimination and harassment.

ADCQ offers training for new and existing Equity Contact Officers to assist them to understand and perform this vital role. Large and small organisations can benefit from having contact officers. Further information is available on our website at adcq.qld.gov.au/training.

New resource about gender transitioning at work

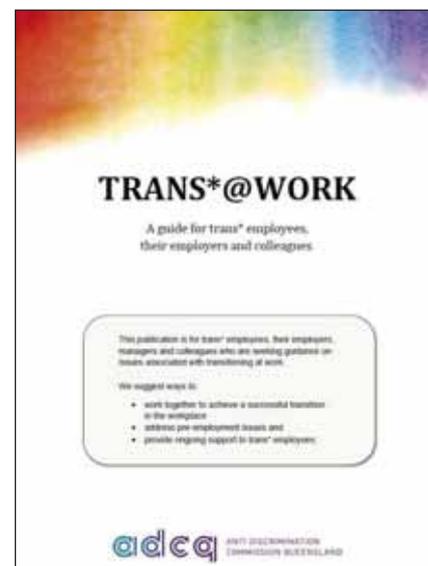
Gender identity is a protected attribute under the *Anti-Discrimination Act 1991* (Qld) and employers must not directly or indirectly discriminate against an employee because of their gender identity.

But in many cases, how to manage a transition at work provides challenges for employers and colleagues, as well as the person who is transitioning.

ADCQ has developed a guide for trans* employees, their employers, managers and colleagues who are seeking guidance on trans* issues in the workplace. *Trans*@Work* gives information and practical strategies to assist a successful transition at work.

Trans@Work* is available for download from our website (adcq.qld.gov.au). We can also provide face-to-face training in workplaces where a staff member is gender transitioning. For more information contact our training team on 1300 130 670 or email training@adcq.qld.gov.au.

Note: *Trans** is an umbrella term that includes all identities within the gender identity spectrum.



Public education calendar July-December 2015

| Date | Session | Time | Location |
|--------|---|-------------|-------------|
| 16 Jul | Contact Officer | 9-4 | Brisbane |
| 31 Jul | Understanding Discrimination Law for Community Organisations | 9-1 | Brisbane |
| 3 Aug | Introduction to the Anti-Discrimination Act for Community Organisations | 10:30-12:30 | Rockhampton |
| 4 Aug | Recruitment & Selection | 9:30-1:30 | Rockhampton |
| 4 Aug | Introduction to the Anti-Discrimination Act for Community Organisations | 9-11 | Townsville |
| 18 Aug | Managing Complaints | 9-4 | Rockhampton |
| 18 Aug | Introduction to the Anti-Discrimination Act for Managers | 9-1 | Brisbane |
| 20 Aug | Introduction to the Anti-Discrimination Act for Managers | 9:30-1:30 | Rockhampton |
| 3 Sep | Contact Officer: Refresher | 9-4 | Brisbane |
| 8 Sep | Contact Officer: Refresher | 9-1 | Mackay |
| 9 Sep | Introduction to the Anti-Discrimination Act for Managers | 8:30-12:30 | Mackay |
| 9 Sep | Introduction to the Anti-Discrimination Act for Community Organisations | 1:30-3:30 | Mackay |
| 15 Sep | Contact Officer | 9-4 | Brisbane |
| 14 Oct | Understanding Discrimination Law | 9-1 | Brisbane |
| 20 Oct | Contact Officer | 9-4 | Townsville |
| 21 Oct | Introduction to the Anti-Discrimination Act for Managers | 9-1 | Townsville |
| 21 Oct | Introduction to the Anti-Discrimination Act | 2-4 | Townsville |
| 22 Oct | Contact Officer: Refresher | 9-1 | Townsville |
| 27 Oct | Recruitment & Selection | 10-2 | Gladstone |
| 28 Oct | Introduction to the Anti-Discrimination Act for Managers | 10-2 | Gladstone |
| 28 Oct | Introduction to the Anti-Discrimination Act for Managers | 9-1 | Brisbane |
| 2 Nov | Introduction to the Anti-Discrimination Act for Community Organisations | 3-5 | Bundaberg |
| 3 Nov | Recruitment & Selection | 9-1 | Bundaberg |
| 3 Nov | Introduction to the Anti-Discrimination Act for Community Organisations | 9-11 | Townsville |
| 4 Nov | Introduction to the Act for Managers | 8-12 | Bundaberg |
| 11 Nov | Contact Officer | 9-4 | Brisbane |

Proactive councils educate employees

Over four hundred local government council workers are now more aware of their rights and responsibilities under the Queensland *Anti-Discrimination Act 1991* (the Act). The ADCQ's North Queensland team travelled widely in the region to conduct expert training for Flinders Shire Council in Hughenden, and for the Whitsunday Regional Council at their sites in Proserpine, Bowen and Collinsville.

These local government authorities have taken their legal obligations under the Act seriously, and been proactive in promoting fair, inclusive and respectful workplaces. Both councils committed their entire workforce to ADCQ training. General employees attended the Introduction to the Anti-Discrimination Act sessions, and all supervisory staff participated in the specialist course for managers and supervisors.

Whitsunday Regional Council HR manager Shanna Southern said, 'Council understands the role that organisations have in ensuring that their workplaces are free from discrimination and sexual harassment.'

What's happening at your place?

As the Queensland body responsible for resolving complaints of discrimination and sexual harassment, we see on a daily basis the consequences of non-inclusive practices, poor policies and inappropriate behaviour that is not addressed.

However, we also know that there are individuals, groups and workplaces that are doing the right thing. We'd like to be able to share these examples of good practice with others to show that inclusion, respect and equitable practices are possible and have enormous benefits to workplaces and communities.

We'd love to hear your stories about communities and workplaces where diversity and inclusion initiatives are happening. Have you welcomed a new member from a different culture? Do you have recruitment strategies targeting minority groups? Is there an LGBTI support network within your organisation? Have you made reasonable adjustments to accommodate someone with impairment?

Send your stories to: letusknow@adcq.qld.gov.au.

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