To The Chairman
The Select Committee on
The Republic Referendum
Parliament House Canberra
ACT 2600.

Submission on the Referendum legislation, The Constitution Alteration and the Presidential Nominations Committee Bills.

It seems the ARM and both (I can now throw the Dems into both") political parties have clearly got their priorities wrong on the issue of a Republic. You see, your giving us nothing and the public will realize this and the referendum which will cost millions will amount to nothing because the questions to be asked are the wrong ones.

Your approach is wrong, and I am of the opinion that you are shaming us in front of the whole world.

In other countries people have fought over their rights and freedoms, but here it is different and we don't kill people. But that is the whole point and that fact is being taken advantage of by the status quo.

An Australian Republic should be about change and not the consolidation of the political power of the status quo.

What kind of country wont allow its people to have the word democracy included in their constitution, and what kind of country wont allow its own people to chose their own head of state.

All parties have failed in their requirement to advise the people of what their choices are, and I would add that it is a constitutional requirement to adequately inform the people and this has been upheld by the High Court.

And the High Court laid down a little test, which I shall use to prove my case.

In David Russell Lange v The ABC, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ held-

" When a law of a State or federal parliament is alleged to infringe the requirement of freedom of communication imposed by Ss 7,24,64 or 128 of the constitution two questions must be answered before the validity of the law can be determined.

1) *First does the law effectively burden the communication of government or political matters in its terms, operation or effect?*

2) *Second, if the law effectively burdens that freedom, is the law reasonably appropriate and adapted to serve a legitimate end the fulfillment of which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government and the procedure proscribed by section 128 for submitting a proposed amendment to the constitution to the*

informed choice of the people (hereafter collectively "the system of government prescribed by the constitution")".

Their Honor's stated- "*If the first question is answered yes and the second is answered no, the law is invalid "*

Does the way in which this debate is being handled effectively burden the freedom of communication required by the constitution, according to the test laid down here I shall answer in two parts.

(1) The effect of restricting the questions sought to be put to the people on November 6th 1999 to yes or no and if they want a preamble that is not allowed to be used to interpret the constitution is with holding vital information from the public.For as the now Governor General William Deane said in *Theophanous v Herald and Weekly Times*

"It would seem desirable to make specific reference to an argument which has become increasingly advanced in recent times which invokes what is said to have been the intention of the framers of the Australian Constitution.
In summary that argument is to the effect that the failure of those framers to follow the United States example of including an express catalogue or "Bill of Rights" demonstrates that it was their intention that such constitutional rights should not be implied from the terms or doctrines of the constitution but should be left to be determined by the common law as developed and altered by various legislatures in the exercise of the legislative powers which the constitution either created or preserved. That argument or some variation of it, would seem to constitute the true basis of the contention that the constitutions implication of freedom of political communication and discussion should be so confined so that it only applies to limit commonwealth legislative powers and does not extend to confer complete or partial immunity form the operation of otherwise valid state laws, -with due respect to those who would see the matter differently, the argument seems to me to be flawed at every step it takes beyond the obvious facts that our constitution does not incorporate a bill of rights [as] contained in the United States model and that the framers of our constitution had faith in the common law .
For one thing, the argument reverses ordinary principles of construction. For another it imputes to the framers of our constitution an intention, which it seems they did not have.
Most important, the argument seems to me to adopt a theory of construction of the constitution which unjustifiably deviates its provisions by effectively treating its long dead framers rather than the living people as the source of its legitimacy"

The framers did use the preamble, as did the English to bind all states to the constitution, *in one indissoluble commonwealth.* As far as the constitution is

concerned the preamble and covering clauses are meant to be binding on the constitution.

But just as I have mentioned, *Theophanous* we know to be an important part of our history, because it conferred a right of political communication on citizens of this country which governments had been trying to take away or limit for years, I must mention others in the same vein *Australian Capital Television- Nationwide News – Stephans v West Australian Newspapers – Mcginty v Western Australia.*

All of these cases upheld the right to freedom of communication and most importantly Levy *v The State of Victoria and Ors,* for there not only did the court say there was a right to political communication implied in the constitution, it was said to be protected and extend to peaceful conduct aswell, although Levy lost his case it was only on the grounds that the restrictions imposed were a legitimate aim as they applied to safety.

Per Brennan CJ

" Speech is the chief vehicle by which ideas about government and politics are communicated. Hence it is natural to regard the freedom of communication about government and politics implied in the constitution as freedom of speech. But actions as well as words can communicate ideas"

Per Toohey and Gummow JJ

"It must also be accepted that the constitutional freedom is not confined to verbal activity. We recognize that it may extend to that conduct where that conduct is a means of communicating a message within the scope of that freedom "

Per Gaudron J

"I am of the view that s7 and 24 of the constitution which respectively require that the senate and the house of representatives be directly chosen by the people of each state and by the people of the commonwealth be or become senators or members of the house of representatives, and section 128 which provides for the for the alteration of the constitution of the constitution by referendum defend on their efficacy on and thus impliedly require freedom of political communication and also require freedom of movement as an aspect of freedom to engage in political communication or as a subsidiary to that freedom"

Per McHugh J

" For the purpose of the constitution freedom of communication is not limited to verbal utterances, signs, symbols, gestures and images are perceived to be by all and used by many to communicate information, ideas and opinions. Indeed, in an appropriate context any form of expressive conduct is capable of communicating a political or government message to those who witness"

Per Kirby J

" A rudimentary knowledge of human behaviour teaches that people communicate ideas and opinions by means other than words spoken or written. Lifting a flag in Battle, raising a hand against advancing tanks, wearing symbols of dissent, participating in a silent vigil, public prayer or meditation, turning away from a speaker, or even boycotting a big public event clearly constitutes political communication although not a single word is uttered. The CONSTITUTIONALLY PROTECTED FREEDOM OF COMMUNICATION IN AUSTRALIA must therefore go beyond words"

What is most important about these cases is that the High court has stated the law to be that for us to have a democratic and responsible representative parliament, then we must be informed of everything that may effect our choice as electors or a choice we may make in a referendum.

What the High Court has stated would normally, if it were in reference to criminal law-mean that the criminal codes of various states must be amended to keep up to date with the common law.

The general public is not aware that the high court has discovered such rights and freedoms, further the people have not been informed that although Australia has signed up to many an international human rights agreement that they have never been fully incorporated into Australian law.

Australia has had its own very dark apartheid history, aswell as conservative governments called both labor and liberal. Both parties have jailed people for their political convictions and we even had a Prime Minister try to ban a political party.

In the absence of a bill of rights many countries have to resort to international condemnation of their governments or repressive regimes. We had our own here in Queensland for 30 years, under the Bjeilke Peterson regime thousands were bashed detained or otherwise oppressed by an odious right wing government, this government had special political police called the special branch.

How easy it is for Australians to be oppressed by their own governments.

The High Court has also tried to put a stop to governments disallowing international obligations that they have signed up to being I interpreted into Australian law, but time is fast running out for governments who would deny Australians their international rights.

In *Teoh v The Minister of Immigration* the high court held that if the Australian government had signed up to an international human rights agreement then the people had a legitimate expectation that it would be regarded as law.

How true is it that these facts have not become known, that in this country we do not have a legislative right to free speech, nor do we have the right not to be arbitrarily detained. *The universal Declaration of Human Rights* was reratified by both the senate and the reps on 10/12/98 and yet none of it is regarded as Australian law and is enforceable by the Australian people.

The *International Bill of Rights or ICCPR* was ratified by the Australian government aswell but are its rights enforceable in law.

Let us therefore examine what it is that is being denied to the Australian people. Let us begin with the preamble to the Universal Declaration, which we could use as a basis for our own preamble as it is recent and modern and it is used to interpret the whole document.

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights has resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression that human rights be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the united nations have in the charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and the equal rights of women and men and have determined to promote social progress and better standards of life in larger freedom,

Whereas member states have pledged themselves to achieve, in cooperation with the united nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the realization of this pledge,

Now, therefore, the general assembly, proclaims this universal declaration of human rights as a common standard of achievement for all peoples and all nations, to the end that every individual and very organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of member states themselves and among the peoples and territories under their jurisdiction.

The question begs to be asked- what is the highest aspiration of the Australian people?

Is it to repair the wounds of a bloody century, in which many of our people were slaughtered overseas in battles that were won against the tyrants that begot the reason for the universal declaration.

Is it to repair domestic wounds which now lay open for the world to see that we, the lucky country could be just as evil to our own people as could the nazis and the Japanese of WW2.

For a government not to lay out the arguments for an inspirational leap into a peaceful future for Australia is beyond contempt.

To not educate our people about what rights our courts have fought for and won and the rights our people both indigenous and non indigenous have won, and refusing to give people the right to chose to entrench those rights and keep them forever beyond conservative legislative interference is also beyond contempt and it can be safely claimed that is effectively denying the Australian people and burdening their right to make a free and fair choice at this referendum.

The high court has also consistently stated that all representatives must be directly elected by the people and yet we are not to have a choice on whether this is effectively true or not.

Australia has signed up to the World Heritage Convention, but it has consistently refused to give any real credence or even enforce it, and as a result, not only were we taught a lesson by the English who exploded
Weapons of mass destruction in our country, that uranium can be used as the most destructive force on the planet. Not only have we been taught the lessons learned from our people being used as guinea pigs in these tests to find out what the effects are on the human body, but we have found out that the leukemia rates have risen since bomb tests have been around.

Why then have we not learnt from the lesson of not allowing our leaders to use this substance for profit or to kill. And the World Heritage legislation has therefore been held in contempt by those new tyrants, these tyrants have refused to protect our pristine areas as they ‘de rather exploit them for profit and greed the fact that in a true democracy the ecosystem must be protected by the constitution has been with held from the people also, and this is burdening the ability of Australian to make a free and fair choice at this referendum.

Australians have not been allowed to have the issue of the Australia Acts taking way the right of the English to interfere in anyway in our government debated. The question of Republic yes or no? is already answered yet the referendum will fail because you will be asking the wrong questions regardless of what submissions you receive because you don’t care, you have already been co-opted by the ARM who doesn’t care either. Millions will be spent on this referendum which the end result will be millions wasted that could have been used to improve the welfare of the Australian people.

A recent high court decision in *Sue v Hill* has put the issue of English interference beyond all reasonable doubt
The high court stated-

“The expression “ a foreign power’ in s44 does not invite attention to the quality of the relationship between Australia and to which a person is said to be under

an acknowledgment of allegiance, obedience or adherence or of which that person is a subject or a citizen entitled to the rights and privileges of a subject or a citizen. That is, the inquiry is not about whether Australia's relationships with that power being friendly or not, close or distant, or meet any other quantitative description. Rather the words invite attention to questions of international and domestic sovereignty."

Further they said –"*It may be accepted that the United Kingdom may not answer the description of a foreign power in s44 (I) of the constitution if Australian courts are, as a matter of the fundamental law of this country, immediately bound to recognize and give effect to the exercise of legislative, executive and judicial power by the institutions of the government of The United Kingdom. However what once may have been the situation with respect to the Commonwealth and the states, since at least the commencement of the Australia Act 1986(CTH) this has not been the case. The provisions of that statute make it largely unnecessary to rehearse what are now matters of history recounted in the judgements in NSW v The Commonwealth, Kirmani v Captain Cook Cruises PTY LTD [NO 1] and Nolan v The Minister for Immigration and Ethnic Affairs.*

…….It follows that, at least since 1986 with respect to the exercise of legislative power, the UK is to be classified as a foreign power.

Also-

The phrases "under the crown" in the preamble to the Constitution Act and "heirs and successors" in the sovereignty of the United Kingdom in covering clause 2 involve the expression "the crown" and cognate terms in what is the fifth sense. This identifies the term "the Queen" used in provisions of the constitution itself, to which we have referred, as the person occupying the hereditary office of the Sovereign of the UK under rules of succession established in the UK . The law of the UK in that respect may be changed by statute. But without Australian legislation, the effect of the Australia Act would be to deny the extension of the UK law to the Commonwealth, the states and the territories.

Further-

The UK has a distinct legal personality and its exercises of sovereignty for example in entering military alliances, participating in armed conflicts and acceding to international treaties such as the Treaty of Rome; themselves have no legal consequences for this country. Nor, as we have sought to demonstrate in section III, does the UK exercise any function with respect to the governmental structures of the Commonwealth or the states."

Thus the high court has stated what we all knew in the first place, that we are independent and all it would take is a simple question to answer that question by the Australian people.
But that is beside the point, if we had a bill of rights or an enforceable equivalent based on international standards, it wouldn't matter who got to wear the tiara. The government and their allies on this issue in the other parties are colluding to burden our right to a free choice based on the right information.

The second part of the test laid down in Lange-

If the law effectively burdens that freedom, is the law reasonably appropriate and adapted to serve a legitimate end the fulfillment of which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government and the procedure prescribed by s128 for submitting a proposed amendment of the constitution to the informed decision of the people?

To answer this question one has to define what is meant by an informed choice of the people and the high court applied in Lange *"because the choice given by ss7 and 24 must be a true choice with 'an opportunity to gain an appreciation of the available alternatives' as Dawson J pointed out in Australian Capital Television PTY LTD v The Commonwealth, legislative power cannot support an absolute denial of access by the people to relevant information about the functioning of government in Australia and about the policies of political parties and candidates for election"*

To be given two questions only, one about a preamble the other a simple yes or no question about becoming a republic and tying in legislation to that effect to the questions which people will not get to see before they vote, is simply not allowing an informed choice to take place.
A denial of the choice of directly electing the president and having codified powers is a denial of access to the required information to make an informed choice also. It is good enough for governments to admit the need for a national criminal code, because this is an imposition on the people. But when it comes to telling the people what they have a right to do instead of what they don't have the right to do……..

Is this denial of access to the required information for voters to make an informed choice burdening the freedom of communication for an illegitimate aim?
To answer this question one must revert to the convention debates of 1998, I will use excerpts from these debates from people who's views directly conform to my

own in respect of how the convention had been highjacked by the status quo and had been gagged by their mates in the ARM.

We shall see what their aim was through the words of some of the delegates.

Moira Raynor "*This convention has been opened by speakers who want to retain things the way things are, who have paid some lip service to those who have been traditionally excluded especially Aboriginal and Torres Strait Islander people and in some respects women- but there is no special place for the poor, the unemployed, the people who have disabilities, the children who do not vote and the alienated or cynically excluded voter who see's politicians as power grubbers"*

She continued later- "*This constitution has been a tool of administration and when the High Court has sought to fill in the gaps interpreting implied values and principles into that document the executive side of government screamed loud and long. So this is the time, I believe to talk about world best practice democracy and constitutionally"*

Moira Raynor wasn't the only person to come to realize what was at stake by not allowing the people to get what is rightfully theirs, and realize to whom and why it was dangerous to those who have always had power. Misha Shcubert, one of the youngest delegates had this to say-

" As younger Republicans our aspirations are bolder, less tempered by the reduced sense of possibility which is a common hallmark of a life time in politics. We believe that Australian people are capable of determining a new constitutional framework for their tomorrows rather than being solely reliant on the experience of yesterdays "

Further- "*The naysayers with the vested interests warn of dangers in public election. Such dangers are the product of dull minds. In these camps there is little imagination about the electoral conditions we might create.*

Yesterday's men will tell us that there is no system like the old system, today's men will tell us that we want a slightly more democratic approximation. But tomorrow's women question slothful assumptions and the dismissive view of public manipuablility.

What is the common thread between the advocates of appointment? Fear that the sovereignty of the people might jeopardize the remote and dilute brand of representative democracy we know today, fear that the indirect mandate of Prime ministers might be open for comparison and fear of the downside that strong partisan discipline might actually face greater public scrutiny"

Phil Cleary drew a comparison with the conventions that led to federation and they way in which they drew up the constitution and 1998-he said-

"When it was all over, the righteous breathed a sigh of relief, for this was a document that said nothing about who we were or what we aspired to become as Australians, it expressly protected property- not the property of blacks, it protected the property of whites. It did not protect free speech. It alluded to the rights of Christians to worship in the temple of their choice, but never suggested that the workers who wanted to gather at Webb Dock should be protected. It paid no homage to the history of the continent before invasion"

On why we can't have a choice, Phil again-

" An Independent head of state would reinvigorate the political process, and it is clear that the people have said this again and again and again. But when the people speak, the conservatives drag out the 18th century philosophies and claim something about the tyranny of the masses, but will not quite put it in print. Get specific with about why you are scared of the masses"

Most delegates were outraged at the conduct of those who would attempt to control or stifle our destiny at the convention on day two. (I shall attach two further speeches from the convention to this submission, they are a speech made by Pat O'Shane on 3rd Feb 1998 and Christine Milne on 4th Feb. Their views on this subject are still relevant and they must be included, they must be regarded as part of this submission)

On day three Christine Milne a delegate for Greens for a Just Republic and not Just a Republic had this to say-

" Executive government in this country is so dominant and all persuasive that this critical question has already been decided. And it has been decided by the ruling elite to preserve the existing concentrations of wealth and power in Australia. Why have a constitutional convention if on its second day the options regarding the powers and therefore the election of the head of state were to be swiftly curtailed by what amounts to deals between factional leaders speaking on behalf of people who were elected to have a mind of their own?"

What is the aim of the status quo and their mates in the bipartisan ARM, on the 13th of Feb 1998 it became clear when Professor Greg Craven asked that democratic beliefs not be included in the preamble as they may be used to interpret the constitution later down the track .In short democracy was denied as it was at the turn of the century to the Australian people. The preamble must be allowed to indicate the way that the constitution must be interpreted. If this is denied in the absence of an express bill of rights then the world must look down on us with pity that we let it happen.

In a country that prides itself on saying over and over again that we have the right to free speech it will come as a shock to many that we don't actually have it,

I myself have been on the receiving end of the illegitimate use of power in stifling this invisible right.

I have been arrested for speaking in public peacefully, I have been arrested for simply asking people to sign petitions in public and I have been detained for periods of time for the exercise of peacefully doing what I had believed I had the right to do in a democratic country.

And most recently I have been prosecuted by the Townsville city council for reading out the Universal Declaration of Human Rights on a Sunday without a permit, and get this- what they claim is an offence took place 13 days after the Senate and Reps rarefied it. That's right and the deal is that I got fined $300 and ordered to pay $3035 because the council didn't think the police prosecutors where mercenary enough to win it, they hired a Barrister. And know the deal if I can't get legal aid, or the QLD Att.Gen. To appeal it, I go to jail for 110 days. Did I mention that the right to free speech is an article of the declaration, maybe someone forgot to tell you all before you stupidly ratified it without looking at it. As far as I am concerned, every single one of the conservatives in Canberra is at fault and that's including Labor right wingers.

To deny us democracy is an aim that is not in keeping with the system of representative and responsible government as prescribed by the constitution and the manner in with both parties are dealing with this referendum is a cynical abuse of power. This referendum must not go ahead in its present form. The legislation for the referendum must also be looked upon with contempt.

If the intent of those who wish this particular (Turnbull) model go ahead, is not to have any rights and freedoms that can be interpreted into the constitution or even written into the constitution, then that is an illegitimate aim, and an action should be brought immediately in the high court to have any legislation of that type declared illegal and undemocratic.

I am not going to give the legislation proposed any credence whatsoever as it should be thrown out of parliament and used as heavy duty bog roll.

It claims to be a minimalist approach and yet the Howard government has placed their political agenda for the Republic on the table in the slyest of ways.

The legislation –*Constitution Alteration Bill* does alter the constitution all right and Howard is trying to privatize by stealth by repealing s69 of the constitution. S69 vests the posts, telegraph, and navigational beacons and even the customs in the commonwealth, and if it is repealed it is only a short trip to privatization heaven.

I look at this attempt as so laughable as to be a joke being played on the Australian people by people who know they are going to get away with it and are simply sitting back and saying "well what the hell are you going to do about it".

On another point I am not a believer in a non-existent god so why should it be thrust down my throat, god is a luxury, it is not a necessity to government like the ABC. It could be provided by somebody else apart from government. It is an insult to all of a different religion that it is the official god of the Australian people

And considering that their must be a separation of powers between the church and state then there is only one option left and that is PRIVATISE GOD get the bastard out of my constitution, I refuse to have my taxes used to print

constitutions with extra god words in them it is a complete waste of money and it is lying as there is no god or gods there is only political systems that brainwash their people by different means and they are called religions, bugger god.

There must be a plebiscite of the Australian people asking various questions before we consider any change.

1. Do you want to remove the Queen as our head of state, meaning that we become a republic?
2. Do you wish to see a directly elected head of state, i.e. a president or equivalent, and

a) do you wish to see the powers of the president and the parliament codified
b) should the post of head of state just be ceremonial

3) Should the head of state be elected by 2/3 majority of the parliament?
4) Should we have a bill of rights
5) Should the ecosystem be protected by the constitution
6) Do you agree that (1)should happen immediately and that we continue as normal but have a further 3 month constitutional convention immediately to consider wider issues that should go to the referendum
7) Should we have democracy in the constitution
8) Should we recognize native title in the constitution
9) Should the preamble include all of our aspirations as a socially and ecologically democratic Republic
10) Do you agree that all of the above must be discussed in order to give electors an informed choice

This must occur before any referendum that will waste hundreds of millions of dollars, and then after the plebiscite we should hold the conventions knowing full well what the terms of reference are, we then should go to a referendum.
On conclusion, we are already independent and all know it, the high court has proved it, so the question on whether we will become a Republic is a foregone conclusion.

We must therefore rethink what this is all about, I am of the opinion that- AN AUSTRALIAN HEAD OF STATE MIGHT = A REPUBLIC, BUT CONSTITUTIONAL CHANGE PUSHED PEACEFULLY BY THE PEOPLE = A REVOLUTION, That means there is a more at stake than the simpleton model which is being put forward as the be all and end all.

The world is watching us and for that reason we should have as Moira Raynor says “Worlds best practice democracy,” The referendum in its current form must not go ahead, if it does it will not be in the interests of the welfare of the Australian people that all that money is to be wasted on a referendum that we all no must fail because of its stupidity and the way the status quo are holding the Australian people in utter contempt.

In closing I would like to add that I believe in a democratic republic with all my heart but I will vote no so as not to give you lot any more unfettered power than

you already have, by the way here's a little poem I had published in the Townsville Independent last year.

Last night I dreamt
And the whole night I spent
Laughing in my slumber,
Anyway its pretty bent
But this is how my dream went
It could even be a musical number,

I awoke in the morn
And stifled a yawn
I went about getting the daily paper,
And there it was
On the very front page
Queen dies of old age
The end
The monarchy gone.
The end, why how you say
Surely there'd be an heir today
But no!
It seems she said
On her death bed
That-
My husband and I have seen to many Rasputins
And the truth we have to face
Is that the masses have lost their faith
In those they've placed their trust
In short and bluntly
Namely us!
And I laughed –oh ha he
Now where would ye monarchists be?
Without those bluebloods from o'er the sea
To grant, ye sirs, ye earls dukes and dames
All sorts of other fancy names
Now no more tapping of swords on shoulders there'll be,
And I guffawed, as a cynical socialist such I might quip
There goes the revolution
There's always a bloody hitch
Cos'
Those bastard poms
They've beaten us to the republic!

It may be the case that we don't get a republic until the next century, but I will make sure that if the word democracy appears anywhere near the preamble or in the constitution, that I will make sure that my life's mission will be to get the high court to make it so that it means exactly what it says.
And on the final count, I should add that many of us have more than half century left to go on our life span so if it means that we have to wait for the monarchists to die off or otherwise one by one choke on their vomit at the front bar of their local RSL then so be it. Your generation has had its chance so know it is time to get the hell out of the way and let the new one through only then will we fix what has always been broken.

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