

CFMEU

CONSTRUCTION

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.158 - Application to vary or revoke a modern award

Applications by Health Services Union; Transport Workers' Union of Australia; Australian Municipal, Administrative, Clerical and Services Union; The Australian Workers' Union; Shop, Distributive and Allied Employees Association; Australian Nursing and Midwifery Federation; United Workers' Union
(AM2026/10)

Application by United Firefighters' Union of Australia
(AM2026/11)

Application by United Workers' Union
(AM2026/12)

Application by "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)
(AM2026/13)

**REPLY SUBMISSION OF THE CFMEU (CONSTRUCTION & GENERAL
DIVISION)**

12th May 2026

Introduction

1. The Health Services Union (the **HSU**), Transport Workers' Union of Australia (the **TWU**), Australian Municipal, Administrative, Clerical and Services Union (the **ASU**), Australian Workers' Union (the **AWU**), Shop, Distributive and Allied Employees Association (the **SDA**), Australian Nursing and Midwifery Federation (the **ANMF**), United Workers' Union (the **UWU**), United Firefighters' Union of Australia (the **UFU**) and the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (the **AMWU**) have made various applications to vary 41 awards in regard to the vehicle allowances contained within those awards. The Applications are supported by the Australian Council of Trade Unions (the **ACTU**).
2. The applications are in substantially similar terms. Each of the applications seeks a variation in the respective award to the amount payable as an expense related allowance where an employee is required and authorised to use their own motor vehicle in the course of their duties (**Vehicle Allowance**).
3. According to the ACTU correspondence of 14th April 2026¹ the applications are brought on the basis of the need to update the award safety net to take into account the recent and very substantial increase in fuel costs associated with the Middle East conflict. The applications also seek to deal with the recent changes to how the Australian Bureau of Statistics gathers and reports consumer price index data.
4. Following a directions hearing before the President Justice Hatcher on 16th April 2026, the President issued directions on 20th April 2026² which required the applicant unions and the ACTU to file any evidence, submissions and any other documents upon which they wish to rely in support of their respective applications by 5:00 pm (AEST) on Friday, 24th April 2026, and for any interested parties to file any evidence, submissions and any other documents upon which they wish to rely in response to the applications by 5:00 pm (AEST) on Tuesday, 12th May 2026. The President also indicated that the applications would be heard by an Expert Panel for the Care and Community Sector comprising Deputy President Clancy, Deputy President Farouque and Commissioner Tran.
5. The CFMEU (Construction and General Division) (the **CFMEU**) is not an applicant in the matters before the Commission and did not file an initial submission. The CFMEU is however an

¹ <https://www.fwc.gov.au/documents/awards/variations/2026/am202610-f46-f48-actu-ors-140426.pdf>

² <https://www.fwc.gov.au/documents/awards/variations/2026/am202610-ors-dirs-200426.pdf>

interested party, as explained further below, and therefore makes this reply submission in accordance the directions issued by the President.

The CFMEU as an Interested Party

6. The CFMEU is an interested party in the following ways:
 - (a) The CFMEU has members covered by the *Manufacturing and Associated Industries and Occupations Award 2020* (the **Manufacturing Award**) and therefore has an interest in the application made by the AMWU.
 - (b) The ACTU and others³ have suggested that the Expert Panel “*should consider moving of its own motion to include consideration of all modern awards in these proceedings, or alternatively ‘flow on’ the outcome of these proceedings to all other modern awards.*”⁴ The other modern awards would include the *Building and Construction General On-site Award 2020*, the *Joinery and Building Trades Award 2020* and the *Mobile crane Hiring Award 2020* (collectively referred to as the **Construction Awards**), all of which the CFMEU has a direct interest in.
 - (c) The ACTU submission raises an issue that has wider implications for all expense related allowances in awards, that being the change in how the Australian Bureau of Statistics (the **ABS**) gathers and reports consumer price index (**CPI**) data. This directly impacts how other expense related allowances in awards are to be varied from 1st July 2026, including those in the Construction Awards.

The AMWU Application

7. The AMWU has made an application to vary the Manufacturing Award consistent with the other applications to vary the Vehicle Allowance. The CFMEU notes that the method of adjustment of this allowance in the Manufacturing Award is consistent with the method used in the other 40 awards, i.e. the Private motoring sub-group of the CPI.⁵
8. The CFMEU supports an increase in the allowance to take into account the movements in the relevant CPI particularly between the March quarter 2024 and March 2026, however we question the complexity of what is proposed.

³ See the AWU submission at p.2

⁴ <https://www.fwc.gov.au/documents/awards/variations/2026/am202610-ors-sub-actu-240426.pdf> at paragraph 153

⁵ See clause D.2.2(b)

9. In the draft determination in Annexure A of the application⁶ there is no provision which specifies that for the duration of the Schedule the adjustment mechanism in the Schedule will apply in lieu of the automatic adjustment of the Vehicle Allowance as provided for in clause D.2.2 of the Award.
10. The time-limited monthly adjustment in XY.3.1 is problematic given that it proposes that *“from the first full pay period on or after 5 May 2026, the Vehicle Allowance will be adjusted on a monthly basis (including, but not limited to, any adjustment made at the time of an adjustment to the standard rate).”* This implies that any monthly adjustment would operate from the first pay period commencing on or after 5th day of the month. It is impractical however to have different monthly operative dates where adjustments to the standard rate and other expense related allowances are adjusted from the first pay period to commence on or after 1st July. It is suggested that the words in brackets be deleted and be replaced with the words *“provided that any increase to the Vehicle Allowance to apply in the month of July 2026 will have the same operative date as the adjustment in the standard rate and other expense related allowances”*.
11. We question the need for clause XY.4 Quarterly re-base of allowance, as the movement in the quarterly CPI between the March quarter 2024 and the December quarter 2025 for the Private Motoring group is known. In this case the March quarter 2024 index number was 100.39 and the December quarter 2025 index number was 100.57⁷, an increase of 0.18%, which is insufficient to move the allowance.
12. The CFMEU suggests that clauses XY.4, XY.5 and XY.7 could all be deleted and the title of XY.6 changed to “Initial Adjustment” and its content changed to the following:

“From the first full pay period on or after 5 May 2026, the Vehicle Allowance is ~~further~~ adjusted by applying the percentage increase in the ABS Private Motoring subgroup index (Weighted Average of Eight Capital Cities) between the monthly index for December 2025 and March 2026 (to the extent the March 2026 index number has been published by that date).

(Note: the December 2025 index figure is used as there was no substantial difference between the March 2024 quarter and the December 2025 quarter index numbers).”

⁶ <https://www.fwc.gov.au/documents/awards/variations/2026/am202613-f46-f48-amwu-160426.pdf>

⁷ See table 18 of the CPI <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/mar-2026/6401018.xlsx>

Travel Allowances in the Construction Awards

13. As noted in paragraph 6(b) above, the ACTU has suggested that the Expert Panel should ‘flow on’ the outcome of these proceedings to all other modern awards. Whilst the CFMEU has some sympathy with this approach there are a few practical issues not addressed in the ACTU submission that are relevant to the Construction Awards.
14. The ACTU submission does not recognise that the Construction Awards contain more than one travel allowance and that the allowances use different groups or subgroups from the CPI.
15. The *Building and Construction General On-site Award 2020*, in clause B.2.1, identifies the following travel related allowances contained within the award which cover situations where an employee may use their own vehicle:

Allowance	Clause	\$	Payable
Return journey— additional for daily hire employees	25.6(b)(i)	26.21	per journey
Weekend return home	25.6(e)(i)	44.41	per occasion
Fares and travel pattern allowance	26.1(a)	21.94	per day
Travelling between construction sites— employee’s own vehicle	26.2(b)(ii)	0.98	per km
Distant work— employee’s own vehicle	26.4(b)(ii)	0.59	per km

16. All of the above allowances are adjusted using the transport group index of the CPI not the private motoring subgroup (see clause B.2.2(b)).

17. Similarly in the *Joinery and Building Trades Award 2020*, clause C.2.2 sets out the relevant travel related allowances which include:

Allowance	Clause	\$	Payable
Motor vehicle allowance—glass and glazing work	21.4(f)	0.98	per km
Living away from home for a distant job—expenses	21.4(g)(iv)	26.21	per homeward journey
Living away from home for a distant job—board and lodging, return to residence	21.4(g)(xiii)	58.73	per occasion
Stonemasonry work at cemetery—vehicle allowance	21.4(h)(ii)	0.98	per km
Performing glass and glazing work away from the usual place of business—vehicle allowance	21.4(i)(ii)	0.98	per km

18. All of the above allowances are adjusted using the transport group index of the CPI not the private motoring subgroup (see clause C.2.2(b)).
19. In the *Mobile Crane Hiring Award 2020* the situation is slightly different. The fares and travel allowance in clause 18.3(c)(i) is a daily allowance paid to compensate for travel patterns and costs peculiar to the nature of employment in the mobile crane hiring industry (similar to the fares and travel allowance in the *Building and Construction General On-site Award 2020*). It is adjusted using the transport group index. The car allowance in 18.3(d)(i) is adjusted using the private motoring subgroup index.

20. The CFMEU supports increasing the travel payments in the Construction Awards as soon as possible to take into account the recent spike in fuel costs arising from the conflict in the Middle East. Therefore we would support the travel allowances in the Construction Awards being varied at the same time as other awards, but with the appropriate CPI group or subgroup being used for each relevant allowance.

ABS Changes to the CPI

21. As noted in the ACTU submission (see paragraphs 38 to 45) the ABS has made significant changes to the way in which it measures and reports on the CPI. These changes include a re-referencing of the monthly index numbers to September 2025, the new quarterly figures being calculated based on the average of the three months of data collected using the current methodology, rather than a single index number being published for an entire quarter, and monthly figures becoming Australia's primary measure of headline inflation.
22. As demonstrated by these proceedings these changes have major implications for the way in which all expense related allowances are to be adjusted in the future and most critically from 1st July 2026. The Fair Work Commission (FWC) needs to decide how it is going to approach adjustments for all expense related allowances from 1st July 2026, and in future years, to meet the requirements of the automatic adjustment provisions in modern awards.
23. Most if not all awards contain the following provision on how expense related allowances are to be adjusted:

"At the time of any adjustment to the standard rate, each expense-related allowance must be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted." (Underlining added)

24. On 12th May 2010, the then President of Fair Work Australia, Justice Giudice, published a Statement⁸ setting out the intended approach to varying expense related allowances in modern awards:

"[4] Pursuant to s.286(1) of the Fair Work Act 2009 a determination varying modern award minimum wages that is made in an annual wage review comes into operation on 1 July in the next financial year. Should minimum wages in modern awards be varied in the current annual wage review, and assuming there are no exceptional

⁸ [2010] FWA 3857

circumstances, the variation will come into operation on 1 July 2010. This will trigger an increase in expense-related allowances from the same date.

[5] The standard clause provides that each expense-related allowance is to be increased by the percentage movement in the applicable index figure published by the Australian Bureau of Statistics since the allowance was last adjusted. The last general adjustment in allowances in federal awards was in August 2008 when the AIRC varied a large number of awards with effect from 1 October 2008. In August 2008 the most recent Consumer Price Index (CPI) publication was for the preceding June quarter. In the majority of cases, therefore, we would expect that expense-related allowances should be increased by the percentage movement in the applicable index figure between the June quarter 2008 and the March quarter 2010.

[6] In order to give interested parties adequate time to consider the position, arrangements have been made for the publication of draft variations to all expense-related allowances in modern awards. The drafts will be prepared on the basis that the CPI for the June quarter 2008 is the default starting point for the increase in the applicable index figure. The increase will therefore be calculated on the basis of the change in the applicable index between June 2008 and March 2010. It will be open to any interested party to make a submission supporting an increase based on a different time period or to raise any other relevant matter.”

25. In 2020, the FWC published an Information Note on the Method for adjusting expense-related allowances for the Annual Wage Review 2019–20. The Annual Wage Review 2019-20 Decision complicated the issue because of the different operative dates for increases in the standard rates in different awards. A copy of the Information Note is attached to this submission at Appendix 1. Importantly this Information Note identifies that allowances do not decrease if the CPI change is negative:

“As noted in the standard clause above, expense-related allowances are adjusted by the percentage increase in the applicable CPI figure between its most recent figure and its figure at the time the allowance was last adjusted. The allowance otherwise remains the same if the applicable CPI figure falls, remains constant or if the increase was not large to change the allowance dollar value after rounding.”

26. To date the Commission has used the movements in the quarterly index figures published by the ABS. Apart from 2010, the latest index figures have been those published for the March quarter in each year.

27. The adjustment of the expense related allowances in 2026 however is complicated by the following factors:

- the change from the quarterly index to a monthly index,
- the monthly index only providing index numbers from April 2024,
- the quarterly index figures issued prior to 26 November 2025 no longer aligning with the quarterly figures published post 26 November 2025 requiring the use of conversion factors⁹ to make any alignment,
- some award allowances not having moved since 2024 (e.g. vehicle and travel allowances) and some not since 2023 (e.g. the living away from home allowances in the *Building and Construction General On-site Award 2020* which uses the Domestic holiday travel and accommodation sub-group), and
- ABS releasing the April monthly figures on 27th May 2026 and the May monthly figures on 24th June 2026.¹⁰

28. The CFMEU submits that it is in the interest of all parties for the Commission to provide information as soon as possible as to how it intends dealing with expense related allowances generally in 2026, and that interested parties be given the opportunity to comment on the proposed approach. We further submit that if it is not a matter that this Expert Panel intends dealing with then we request that this part of our submission be brought to the attention of the President to determine the appropriate way forward.

⁹ <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/mar-2026/Quarterly%20CPI%20-%20September%202025%20Conversion%20Factors.xlsx>

¹⁰ <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>

Appendix 1

Information Note—Method for adjusting expense-related allowances for the Annual Wage Review 2019–20



This information note outlines the method of adjustment and calculation of the expense-related allowances in modern awards for the Annual Wage Review 2019–20. It sets out the latest quarter of the Consumer Price Index (CPI) that will be used to adjust the expense-related allowances of the Group 2 and Group 3 Awards before their operative date, which will be the September quarter 2020 and the December quarter 2020, respectively.

The timing of the Australian Bureau of Statistics (ABS) CPI releases means that the draft expense determinations will have to be published a few days before their commencement date. The Commission acknowledges that the opportunity to provide feedback on the determinations will be shorter than it has been in other years.

This paper also notes that referring to different CPI quarters may lead to differences between award groups for similar types of expense-related allowances previously set at a common rate, such as the vehicle and meal allowances. Any anomalies that arise can be addressed in the next annual wage review.

Background

In the Annual Wage Review 2019–20 decision ([[2020\] FWCFB 3500](#)), the Expert Panel decided to increase modern award minimum wages by 1.75 per cent, but determined that different operative dates would apply to 3 groups of awards as follows:

- Group 1 Awards – 1 July 2020
- Group 2 Awards – 1 November 2020
- Group 3 Awards – 1 February 2021

The wage determinations giving effect to the adjustment of modern award minimum wages (including wage-related allowances) were published for all industry and occupational modern awards before 1 July as required under s.292(1) of the *Fair Work Act 2009* (Cth). There is no similar requirement for the publication of expense-related allowances.

Draft expense determinations for the Group 1 Awards were published for comment on 19 June 2020 followed by final determinations on 26 June 2020.¹ As noted on the Commission's [website](#), the expense determinations for the Group 2 and Group 3 Awards will be published closer to their respective date of operation.

¹ This includes the expense determination for the *Pastoral Award 2010*, which is a Group 2 Award. This was published because some of the wage rates are the sum of one or more expense-related allowances. Since a variation determination varying modern award minimum wages must be published by 1 July under s.292(1), the corresponding expense

determination was also published based on the March quarter 2020. However, the expense-related allowances of this award are intended to be recalculated on a later quarter closer to its operative date.

Method for adjusting expense-related allowances

Section 194 of the *Fair Work Act 2009* (Cth) provides for the automatic variation of allowances to coincide with a variation in modern award wages:

'If a modern award includes allowances that the FWC considers are of a kind that should be varied when wage rates in the award are varied, the award must include terms providing for the automatic variation of those allowances when wage rates in the award are varied.'²

Consistent with s.194, the method of adjustment of expense-related allowances is provided for in a standard clause incorporated in most modern awards.³ The following standard clause from the *Manufacturing and Associated Industries and Occupations Award 2020* is a typical example:

D.2.2 Adjustment of expense related allowances

- (a) At the time of any adjustment to the standard rate, each expense related allowance must be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index Figure
Carbon black overall allowance	Clothing and footwear group
Meal allowance	Take away and fast foods sub-group
Vehicle allowance	Private motoring sub-group
Tool allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group

A [Statement](#) issued by the President of Fair Work Australia in May 2010 formally outlined the process for adjusting expense-related allowances in modern awards for the Annual Wage Review 2009–10, referring to the standard clause above.⁴ It also provided that draft variations would be published in advance for the parties to consider, and that any substantial objections could be determined prior to 1 July.⁵ Subsequent annual wage reviews have followed the same process to date.

² *Fair Work Act 2009* (Cth), s 149.

³ Some of the enterprise and State reference public sector modern awards may not have the standard clause incorporated, however, their expense-related allowances are adjusted in the same manner nonetheless.

⁴ [2010] FWA 3857 at paras 1, 3.

⁵ [2010] FWA 3857 at paras 6–7.

Calculating the adjustment of an expense-related allowance for the Group 1 Awards

As noted in the standard clause above, expense-related allowances are adjusted by the percentage increase in the applicable CPI figure between its most recent figure and its figure at the time the allowance was last adjusted. The allowance otherwise remains the same if the applicable CPI figure falls, remains constant or if the increase was not large to change the allowance dollar value after rounding.⁶

The adjustment of expense-related allowances is triggered at the time of any adjustment to the standard rate of a modern award through the annual wage review or otherwise.⁷ As the annual wage review decision generally comes into operation on 1 July, the latest CPI data available by then is the March quarter. This was the quarter used to update the expense-related allowances for the Group 1 Awards.

For example, the expense [determination](#) for the *Aged Care Award 2010* published on 26 June 2020 adjusted the vehicle allowance under clause 15.7(a) from \$0.78 to \$0.80. This was based on the percentage movement in the applicable CPI figure (the ‘Private motoring’ sub-group) available before 1 July 2020 (the March quarter 2020) and at the time the allowance was last adjusted, which was in the 2013–14 Review (the March quarter 2014). The relevant CPI figures over that period were as follows:

- CPI figure at last adjustment (March quarter 2014) = 103.8
- Latest CPI figure at Group 1 operative date (March quarter 2020) = 106.0
- Adjustment factor = $106.0 / 103.8 = 1.0211946$

Therefore, the vehicle allowance was calculated as $\$0.78 * 1.0211946 = \0.796532 , rounded to the nearest cent to be \$0.80.

The uniform and laundry allowances under clause 15.2(b) of the same award are an example of expense-related allowances which remained unchanged over the year. In fact, these particular allowances have remained the same since the award first came into operation. This is because the applicable CPI figure (for the ‘Clothing and footwear’ group) for the latest year did not increase above the index figure in the base period when the award was first made. This initial base period was set at the June quarter 2008 as provided in the 2010 [Statement](#).⁸ The relevant CPI figures in the 2019–20 Review were as follows:

- CPI figure at last adjustment (June quarter 2008) = 101.0
- Latest CPI figure at Group 1 operative date (March quarter 2020) = 94.8
- Adjustment factor = $94.8 / 101.0 = 0.938614$

Because the adjustment factor is not greater than 1, the uniform and laundry allowances remain unchanged and are omitted from the expense determination.

In the case of a new expense-related allowance, the CPI figure of last adjustment is taken to be the same quarter as that used for other allowances based on the same CPI group, unless the relevant

⁶ This has proven to be the case for allowances with low absolute values such as the Stonemasonry tools and equipment allowance (cl 24.1(d)(i)) from the *Joinery and Building Trades Award 2010*. Despite recording a positive adjustment factor in the 2019–20 Review by a little over 1 per cent, the allowance amount remained unchanged from the previous year at \$0.07 per hour when rounded to the nearest cent.

⁷ See [2010] FWA 3857 at paras 1, 3–4.

⁸ [2010] FWA 3857 at paras 5–6.

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decision provides for otherwise. For example, the uniforms allowance in the *Ports, Harbours and Enclosed Water Vessels Award 2020* under clause 16.3(k) converted from a wage to an expense-related allowance at the commencement of the 2020 Award. This has the applicable CPI group of ‘Clothing and footwear’. As this is a Group 2 Award, when this allowance is adjusted in November 2020, it is intended that the June quarter 2008 be used for the CPI figure at last adjustment as this is the same period used for all expense-related allowances adjusted via this group.

For information, the methodology and calculation of expense-related allowances is further outlined in the paper ‘[Methodology for adjusting expense-related allowances](#)’ on the Commission’s website. In addition, a [consolidated list](#) of Group 1 expense-related allowances with their calculated adjustment factor is also available and will be updated with the allowances for the Group 2 and Group 3 Awards as more recent CPI data become available.

Calculating the adjustment of an expense-related allowance for the Group 2 and Group 3 Awards

Consistent with the standard clause, the adjustment of the expense-related allowances for the Group 2 and Group 3 Awards will be triggered at their operative date. They will refer to the latest CPI data available at that time.

Table 1 shows the ABS release schedule of the CPI data and the expected release date of the expense determinations. The Group 2 Awards will refer to the September quarter 2020 CPI data, which will be published by the ABS on 28 October 2020. The Group 3 Awards will refer to the December quarter 2020 CPI, which is expected to be published on 27 January 2021.⁹

The timing of these releases means that these new expense-related allowances will only be known a few days in advance prior to them taking effect. The Commission will publish the draft expense determinations the day following the release of the CPI data, followed by the publication of the final determinations the day before their commencement date.

The Commission acknowledges that this does not leave much time for the parties to provide feedback on the draft expense determinations for both award groups. The schedule in Table 1 leaves only one whole business day for feedback before the Group 2 and Group 3 Awards come into operation. Any issues found with the determinations after their commencement date would be resolved through a correction with a retrospective effect.

Table 1: ABS CPI and expected determination release schedule using the latest available CPI quarter

Award Group	Award Group operative date	ABS CPI issue	ABS CPI release date	Expected draft determination release date	Expected final determination release date
Group 2	1 November 2020	September quarter 2020	Wednesday, 28 October 2020	Thursday, 29 October 2020	Saturday, 31 October 2020

Group 3	1 February 2021	December quarter 2020	Wednesday, 27 January 2021 <i>(tentative)</i>	Thursday, 28 January 2021	Sunday, 31 January 2021
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Considerations for using different CPI quarters

Because the expense-related allowances of the Group 1, 2 and 3 Awards are to be based on different quarters of the CPI, it is possible that allowances of the same type will diverge. For example, the

⁹ This date will be confirmed in August 2020 on the [ABS release calendar](#).

vehicle allowances of the Group 1 Awards increased from \$0.78 to \$0.80 per km with reference to the March quarter 2020. The same allowances in the Group 2 and Group 3 Awards would be adjusted on a different adjustment factor, which could result in a different rate between the award groups.

The anomalies that may arise by using CPI data from different quarters can be addressed in submissions to the next annual wage review. Separate variations to the expense-related allowances in the awards in Group 2 and Group 3 may be required to address any issues.

Information note—Method for adjusting expense-related allowances for the Annual Wage Review
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