



ONESTEEL SUBMISSION

**National Review into Model
Occupational Health & Safety Laws**

Shane Murphy: GM OHSE OneSteel



WHAT SHOULD THE OPTIMAL STRUCTURE AND CONTENT OF A MODEL OHS ACT BE?

1. Introduction

1.1 OneSteel Limited

OneSteel Limited (**OneSteel**) is Australia's premier manufacturer of steel long products and a leading metals distribution company. OneSteel has more than 11,000 employees in over 200 locations across Australia and 13 offshore facilities. OneSteel markets more than 40,000 products to over 30,000 customers.

OneSteel manufactures and distributes structurals, rail, rod, merchant bar, cold finished bar, chrome plated bar, reinforcing, wire, tube, pipes, fittings, valves and actuation, rail wheels and axles, lite steel beam, grinding media and has a recycled metals business. The majority of OneSteel's products are used in the construction, manufacturing, housing, mining and agricultural industries.

OneSteel demonstrates a strong commitment to occupational health and safety (**OHS**), believing that all injuries, occupational illnesses and incidents are preventable. One of OneSteel's core values is that 'we will not compromise on safety' and, as such, a focus on the health and safety of employees, contractors and customers underpins OneSteel's activities. Achieving zero injuries is a clear objective in all OneSteel businesses.

OneSteel recognises that significant improvements have been made to the regulation of OHS legislation over recent years. There still remain significant differences between approaches in the States and Territories. This creates complexity for an organisation faced with meeting various OHS requirements. The breadth and complexity of OHS legislation across Australia increases compliance costs and, for a business such as OneSteel which competes in global markets where competitors do not face such compliance costs, results in a competitive disadvantage. OneSteel supports moves that provide for greater consistency and uniformity in OHS legislation across Australia.

Any move to a model OHS Act must result in change and greater consistency both in legislation and in application across Australia rather than merely becoming a model for States to selectively adopt, change and apply.

1.2 Structure of the submission

Our submission responds to the Issues Paper.

1.3 Legislation

References to legislation are as follows.

- *Occupational Health and Safety (Commonwealth Employment) Act 1991 (Cth) (Cth Act);*
- *Occupational Health and Safety Act 1984 (WA) (WA Act);*

- *Occupational Health and Safety Act 1989 (ACT) (ACT Act);*
- *Occupational Health and Safety Act 2000 (NSW) (NSW Act);*
- *Occupational Health and Safety Act 2004 (Vic) (Vic Act);*
- *Occupational Health, Safety and Welfare Act 1996 (SA) (SA Act);*
- *Work Health Act 1986 (NT) (NT Act);*
- *Workplace Health and Safety Act 1995 (Qld) (Qld Act);*
- *Workplace Health and Safety Act 1995 (Tas) (Tas Act).*

References to other materials are as follows:

- Bob Stensholt MP, Public Accounts and Estimates Committee, *A Report on the Occupational Health and Safety Act 2004 – Administrative Review* (State of Victoria, Melbourne) 2007 (the **Stensholt Review**);
- Chris Maxwell QC, *Occupational Health and Safety Act Review Final Report* (State of Victoria, Melbourne) 2004 (the **Maxwell Review**);
- Lord Robens, Committee of Health and Safety at Work, *Report* (London, HMSO, Cmnd 5034) 1972 (the **Robens Report**).

2. Legislative Approach:

2.1 Regulatory structure

Q1. Which regulatory approach or approaches should be taken in the model OHS Act, and why?

OneSteel is of the opinion that any model OHS Act requires a balanced approach which includes:

- principles-based standards for issues such as general duties of care; and
- process-based standards for issues such as risk management and consultation.

Q2. How detailed should the model OHS Act be in comparison with the subordinate regulations and codes of practice?

Any model OHS Act should contain 'high-level' objectives, principles, processes and duties. OneSteel believes that any prescriptive detail should remain in the subordinate regulations and codes of practice. However, in order for a revised regulatory approach to be of benefit to employers operating across multiple States and Territories, any prescriptive approaches in regulations must also be coordinated across the States and Territories.

2.2 Title, objects and principles

Q3. What is an appropriate title for the model OHS Act?

OneSteel does not wish to make any submissions about this issue.

Q4. Should the model OHS Act specify its objectives? If so, how and what should they be?

The model OHS Act should clearly state its objects. OneSteel believes that the objects of the model OHS Act will be important in highlighting and determining the purposes for which the Act was enacted. The objects should be limited to a key set of fundamental principles rather than highly detailed prescriptions.

Q5. Should the model OHS Act include a set of principles of health and safety protection? If so, what should they be?

OneSteel does not wish to make any submissions about this issue.

Q6. Are there any other issues that should be considered in the legislative approach of a model OHS Act?

OneSteel does not wish to make any submissions about this issue.

3. Scope, Application & Definitions:

3.1 Industry sectors

Q7. Should the model OHS Act maintain the status quo in each jurisdiction regarding industry specific safety legislation? If so, what provisions should be made for establishing the relationship between the model OHS Act and industry specific legislation?

Q8. Alternatively, should a model OHS Act incorporate all industry specific safety legislation? If so, how and to what extent (e.g., could industry specific issues be dealt with in regulations, codes of practice or guidance material under the model OHS Act)?

OneSteel considers the move to a single OHS Act as a major step forward in greater OHS standardisation across Australia. Consideration should be given to industry specific safety legislation, however the issue should not hinder the implementation of a model OHS Act. OneSteel considers that many States have been able to incorporate industry sectors, such as mining and construction, within the ambit of OHS legislation and as such, there should be no barrier to the inclusion of such industry specific safety legislation.

For companies which operate nation-wide, the development of independent State and Territory-based industry specific legislation can add complexity and costs to a company's operations, particularly when they operate differently. For example, in Victoria and New South Wales, the OHS regulations have been consolidated covering, at least in Victoria, all OHS requirements. The fact that such regulations differ between those States results in added complexity and confusion regarding OHS responsibilities for duty holders. OneSteel considers that the model OHS Act or regulations should incorporate industry specific legislation, which should be drafted and implemented on a national level.

Q9. Should the model OHS Act contain provisions for improving coordination between safety regulators within jurisdictions? If so, what should be provided?

OneSteel considers that the model OHS Act should contain provisions for improving coordination between safety regulators within jurisdictions. For example, the publication of common guidance material relating to prosecution and enforcement would provide clarity regarding OHS responsibilities for duty holders. OneSteel considers that better coordination between safety regulators would result in less complexity and decreased costs and is an important factor in having a national approach to OHS law.

3.2 Workplaces and non-workplaces

Q10. Should general duties of care be tied to the conduct of work, to the workplace or to some other criteria?

OneSteel considers that general duties should be linked to the work that is, in fact, being done, rather than being limited to the 'workplace'. OneSteel recognises that this may lead to more than one entity or individual owing a duty under OHS law in relation to the same persons and the same risks. For this reason, the general duties should be limited to the matters the entity or individual has control over (see further discussion in response to questions in section 4, below).

Q11. Should general duties of care under the model OHS Act be extended to members of the public? If so, how?

The model OHS Act should have, as primary focus, the workplace and the protection of people at work. In some cases, there may be a need to consider and include public safety. However, this should be clearly defined and limited to cases such as major hazards and dangerous goods where there may be a clear and demonstrated link between the impact of the health risks associated with the business of the employer to workers and to the public.

3.3 Responding to change

Q12. Should the scope and application of the model OHS Act be sufficiently broad and flexible to accommodate new and evolving types of work arrangements? If so, how should this be achieved?

OneSteel does not wish to make any submissions about this issue.

Q13. Are there current or emerging hazards and risks that are not effectively addressed under general duties of care? If so, how should they be provided for under a model OHS Act?

OneSteel does not wish to make any submissions about this issue.

3.4 Definitions

Q14. Which terms are critical for achieving national consistency? How should they be defined in the model OHS Act?

Q15. Are there any other issues relating to the scope, application and definitions of a model OHS Act?

OneSteel believes that there are a number of OHS terms requiring definition in order to achieve national consistency. Such definitional consistency is required in the model OHS Act and subordinate regulations or codes of practices. OneSteel believes that the following terms require definition:

- 'employer';
- 'employee';
- 'worker',
- 'contractor';
- 'workplace';
- 'control';
- 'notifiable occurrence';
- 'reasonably practicable';
- 'consultation';
- 'reckless endangerment'; and
- 'others'.

This review into a model OHS Act provides an opportunity to clarify and remove some of the differences between State and Territory legislation which creates confusion and differential application. One example of this variance, albeit in regulations and codes of practice, is the definition of 'confined space' which varies across State and Territory OHS legislation, regulations and codes of practice.

4. Duties of Care – Who owes them and to whom?:

4.1 Control

Q16. Should the model OHS Act include a 'control' test or definition? If so, why and what should it be?

Q17. What should the role of control be in relation to determining who is a duty holder, the nature of the duty, the extent of the duty and the defences?

OneSteel considers that, while it may be appropriate to extend the duty owed by employers to independent contractors and to the employee's of independent contractors where an employer has control, the duties an employer owes its employees should be limited to the matters it has control over. In order to achieve this OneSteel recommends the model OHS Act contain either a specific limitation on each duty or the addition of specific defence where a duty holder had no control over the hazard or risk.

For the model OHS Act to be effective, credible, and workable, it must impose obligations which duty holders are able to comply with. Where a duty holder does not control the risks or hazards to which the duty is directed, it becomes very difficult for the duty holder to comply and will undermine the purposes of the model OHS Act.

There are three ways of addressing this issue that are either presently contained in legislation or have been considered in previous reviews of OHS. The first is to include

'control' as an element in determining whether the duty holder has done everything reasonably practicable. The second is to directly limit the duty to the matters over which the duty holder has control. The third is related to the above and allows a duty holder with a specific defence where they had no control over the hazard or risk.

The 2004 Maxwell Review of OHS law in Victoria recommended that 'control' should be added to the list of practicability factors. It also noted that the definition of 'control' should include the capacity to control, even where control is not, in fact, being exercised and that an ability to influence decisions was sufficient for control. This was not ultimately adopted in the amendments to the Vic Act following the Maxwell Review. In the administrative review of the Vic Act undertaken in 2007 by Bob Stensholt MP, this issue was again considered. The Stensholt Review rejected including control as either a limit on the duty or as a defence to a breach by a duty holder reasoning that the inclusion of control as an aspect of 'reasonably practicable' would shift the enquiry from whether a duty holder had done what was reasonably practicable to whether a duty exists at all. OneSteel submits that such objections can be addressed by including either a specific limitation on each duty *independently* of the reasonably practicable limitation or with the addition of a specific defence where a duty holder had no control over the hazard or risk.

Excepting those situations where there is a defence based on control (which only exists in those jurisdictions that reverse the onus of proof and require a duty holder to prove that they did not commit an offence), OneSteel considers that the absence of clear direction in relation to control can create gaps and uncertainties about the extent of the duty holder's responsibilities and may not capture contemporary employment practices.

The Vic Act extends the duties of employers to independent contractors and their employees in relation to matters over which they have control. This limits the extension of duties to persons other than direct employees to issues under the control of the duty holder but does not limit the duty owed to direct employees in that way.

The WA Act contains a specific regime to address new forms of work organisation, such as contracting, franchising and labour hire. However, none of these regimes adequately protect an employer from liability where a direct employee is exposed to risks outside the control of the employer.

Q18. Should control be able to be delegated or relinquished? If so, in what circumstances and what should the legal effect of doing so be?

OneSteel does not wish to make any submissions about this issue.

Q19. Should the model OHS Act clarify responsibilities where multiple duty holders and multiple duties are involved? If so, how should this be achieved?

The overlapping duties which exist where multiple duty holders duties are involved should be limited by the duty holder's ability to control the hazards and risks. However, rather than attempting to cover all possible overlaps in the model OHS Act, guidance material should be used to clarify such responsibilities.

It may be useful for the concepts introduced for construction work—where a Principal Contractor has the primary obligation to coordinate OHS matters—to be applied more broadly. This could mean that where there are multiple contractors and employees of such

contractors at a workplace, that one duty holder has an obligation to coordinate the plans used to eliminate or minimise OHS risks. However, if such concepts are introduced other duty holders should only be held liable for their part in the overall response to OHS risks.

4.2 Work relationships

Q20. Is primary reliance on employment relationships a valid basis for framing safety obligations?

OneSteel considers that reliance on employment relationships remains a valid basis for framing safety obligations.

Q21. How should the model OHS Act provide for duties owed to non-employees such as contractors, labour hire personnel, volunteers, apprentices/trainees and other persons performing work?

OneSteel considers that it may be appropriate to extend the duty owed by employers to independent contractors and the employee's of independent contractors and the other groups identified above. For the reasons set out above in response to questions 16 and 17 such duties should be limited to the extent that the employer has control.

Q22. Is there a broader concept that more effectively covers the various work arrangements?

The introduction of a broader concept of working arrangements as a basis for OHS duties is unnecessary and is likely to introduce uncertainty.

4.3 Duties of employers

Q23. How and to what extent should the model OHS Act specify an employer's duty of care?

Q24. To whom should these duties be owed?

The model OHS Act should be drafted to clarify rather than expand the number of duty holders. An employers' duty should be limited to doing what is 'reasonably practicable' and any duties imposed must be capable of measurement. OneSteel believes that the model OHS Act should elucidate the general duties of protecting workplace health, whilst giving those duty holders the freedom to develop their own solutions to the issues as they rise to hand, in the context in which they arise.

As noted above in response to questions 16 and 17, OneSteel considers that, while it may be appropriate to extend the duty owed by employers to its independent contractors and the employee's of independent contractors where the employer has control, the duties the employer owes to its employees should also be limited to the matters it has control over.

A related issue for companies utilising specialised independent contractors is the introduction of specific risks by those independent contractors. OneSteel considers where an independent contractor introduces specific risks outside the expertise of the employer, the employer should only be liable where they have control over the risks introduced by the independent contractor and the expertise required to manage the risks.

4.4 Duties of workers and others

Q25. How, and to what extent, should the model OHS Act specify worker's duties of care?

OneSteel considers that the duties, as currently drafted and as they apply to workers, tend to be passive. Whilst recognising the responsibility of the employer, there is an opportunity to improve the safety of persons in the workplace by including more active duties for workers. This would recognise that employees have an active role to play in achieving healthy and safe workplaces.

Q26. Should the model OHS Act include duties of care for persons who are not performing work (e.g. visitors to a workplace, members of the public)? If so, what should the duties be?

OneSteel considers that it may be appropriate to extend the duties owed by employers to persons who are not performing work. For the reasons set out above in response to questions 16 and 17 such duties should be limited to the extent that the employer has control.

4.5 Appointed persons and officers

Q27. Should the model OHS Act provide a mechanism for persons to be appointed to a position that has specific OHS responsibilities?

Given the adequacy of the general duties and consultation mechanisms, OneSteel considers there is no need to provide a mechanism for persons to be appointed to a position that has specific OHS responsibilities. OneSteel considers that it is a matter for the duty holder to determine the appropriate management structures and hierarchy of responsibilities. Furthermore, it should be for companies to design and implement their internal governance structures and processes, based on what is most appropriate for the organisational and business structure. An arbitrary requirement that a person be appointed to a position that has specific OHS responsibilities should not be a feature of the model OHS Act. OneSteel considers that it is likely that OHS is best managed by integrating OHS in to normal management decisions.

Q28. What should the liabilities of such appointed persons be if the responsibilities are not met?

OneSteel does not wish to make any submissions about this issue.

Q29. What should the relationship be between the OHS responsibilities of the duty holder and such appointed persons?

OneSteel does not wish to make any submissions about this issue.

Q30. Should the model OHS Act include positive duties for officers of bodies corporate?

OneSteel does not wish to make any submissions about this issue.

4.6 Duties of persons in control

Q31. Do current provisions for persons in control of a workplace (and plant and substances) clearly express who owes a duty, to whom, and under what circumstances the duty is owed? If not, how could this be clarified?

The current provisions applying duties to persons in control of a workplace vary significantly from one State or Territory to another. For example, under the SA Act and NT Act, such duties are framed within an occupier's liability model and impose duties only in relation to the physical attributes of the workplace, plant, substance.

Any proposal to shift the focus of duties to persons in or with control should be based on evidence of manifest failings in the current framework. Furthermore, any shift has the potential to confuse duty holders about who is in control and who has the duty and to undermine the basic Robens principles on which Australian OHS law is based. For example, such change may result in a shifting of responsibility for OHS down the line to supervisors and managers rather than the employer or its officers who have ultimate control over budgetary matters and health and safety resources.

Q32. Should the model OHS Act specify that persons in control of a work area or a temporary workplace also have a duty? If so, to whom?

It may be useful for the concepts introduced in the construction industry—where a Principal Contractor has the primary obligation to coordinate OHS matters be applied more broadly to persons in control of a work area or a temporary workplace. This could mean that where there are multiple contractors and employees of such contractors at a workplace, one duty holder has an obligation to coordinate the plans used to eliminate or minimise OHS risks. However, if such concepts are introduced other duty holders should only be held liable for their part in the overall response to OHS risks.

4.7 Activities which impact on health and safety

Q33. Should the model OHS Act clearly establish health and safety obligations for various activities which affect health and safety for the whole life of an item, structure or system (i.e., conception to disposal)? If so, what should the duties be in relation to these activities?

OneSteel does not wish to make any submissions about this issue.

Q34. How should the model OHS Act deal with situations where the relevant upstream activity occurs in another jurisdiction or outside Australia, for example, where design occurs in one jurisdiction and manufacture in another? Should the manufacturer be responsible for the failings of a designer in this situation?

OneSteel does not wish to make any submissions about this issue.

Q35. How should the activity of supply be defined? Should it occur only once or every time an item changes hands, whether permanently (wholesale, retail, second hand, and gratis) or temporarily (loan or hire)?

OneSteel does not wish to make any submissions about this issue.

Q36. Are there any other issues in relation to the duties of care that should be addressed in the model OHS Act?

OneSteel does not wish to make any submissions about this issue.

5. 'Reasonably Practicable' & Risk Management

5.1 The concept of 'reasonably practicable'

Q37. Should a test of 'reasonably practicable' be included in the model OHS Act?

Q38. If not, what alternative standard should be included?

Q39. How should the standard be defined? What level of detail should be provided?

OneSteel is of the opinion that the concept of 'reasonably practicable' should be included as a limit on each duty in the model OHS Act. The model OHS Act should contain an objective standard that offers transparency regarding the intent of the law and this means that the model OHS Act must provide a clear definition of 'reasonably practicable'.

OneSteel submits that any definition of 'reasonably practicable' should include similar aspects to the definition as contained in section 20(2) of the Vic Act.

Q40. Should control be an element of the standard?

OneSteel also considers that the general duties should be limited by the extent of control the duty holder has over the particular risk or hazard to which the duty is directed either by direct incorporation into the definition of 'reasonably practicable', the inclusion of an independent limit on each duty or by the incorporation of an appropriate defence where the duty holder does not have control.

Q41. Should a test or examples for assessing compliance with the standard be set out in the model OHS Act or in subordinate instruments? If so, what would that contain?

Any mandatory requirements addressing how to comply with the standard set should be included in the model OHS Act. To the extent that guidance, examples or options for compliance are provided, these should be included in subordinate regulations or codes of practice.

5.2 Risk management

Q42. Should 'hazard' and 'risk' be defined in the model OHS Act?

Risk management principles and processes provide a fundamental platform for the improvement of health and safety. OneSteel believes that the model OHS Act should incorporate the Australian Standard AS4360 definitions of 'hazard' and 'risk' to ensure consistency. Further, the Australian Standard AS4360 and the Australian Standards Handbook HB205 should be incorporated as for the basis risk management processes required under the model OHS Act.

Q43. Should a definition of 'reasonably practicable', or an alternative standard, include a reference to risk management principles and processes (hazard identification, risk assessment and risk control)? If so, how?

Q44. Should risk management principles and processes be specifically required by the model OHS Act in relation to the general duties, or otherwise?

While hazards and risks should form part of the definition of 'reasonably practicable', risk management principles should not be a mandatory component in complying with a 'reasonably practicable' standard. Such a mandatory requirement may create an unnecessary burden on a duty holder in a situation where a solution is known and reasonably practicable. The model OHS Act should allow the solution to be implemented without the need to formalise it within a risk management process. The position adopted in the Vic Act following the Maxwell Review is appropriate. OneSteel endorses the conclusions of the Maxwell Review and believes that the model OHS Act should give clear support to the risk management model without making compliance with the such a model mandatory.

6. Consultation, Participation and Representation:

6.1 Duty to consult

Q45. What provisions should be made in the model OHS Act for consultation?

Q46. What are the work relationships to which a consultation provision should apply?

Q47. Should there be different levels of consultation required for different work relationships?

Q48. How should consultation be provided for:

- a multi-employer worksite;
- an employer with operations across more than one worksite;
- small business;
- remote workplaces;
- precarious employment; and
- workers from culturally and linguistically diverse backgrounds.

Consultation is a fundamental platform for the improvement of health and safety performance and OneSteel considers that employees should be consulted on health and safety matters. The model OHS Act should define the minimum standards for consultation. If formal consultation arrangements are specified, they should be in addition to provisions that allow for flexible arrangements as determined between an employer and the relevant workers, as these are, at times, the most effective.

6.2 Participation and representation

- Q49. Should there be a requirement for establishing HSRs and HSCs?**
- Q50. What provision should be made in the model OHS Act to enable the effective participation and representation of workers to improve health and safety outcomes?**
- Q51. How, and in what circumstances should HSRs be appointed or elected, and HSCs established?**
- Q52. Where an election is required, who should be entitled to vote?**
- Q53. What should the powers and functions of HSRs be?**
- Q54. What should the structure and functions of HSCs be?**
- Q55. What training and qualifications should members of HSRs and members of HSCs have?**
- Q56. Are there alternative mechanisms that should be considered?**
- Q57. To what extent should the specific requirements be dictated in the OHS Act, and to what extent in regulations?**
- Q58. Are there classes of workers for whom current representation requirements are not effective? How could the model OHS Act address such problems?**

OneSteel believes that representation underpins consultation, which is fundamental to achieving safe and healthy workplaces. However, the requirement to establish Health and Safety Committees (**HSC**) and appoint Health and Safety Representatives (**HSR**) should not be mandatory. There needs to be a valid mechanism for consultation, which may include HSRs and HSCs, but these are only two models.

The principles of consultation, participation and representation should be contained in the model OHS Act, whilst the processes and prescription should be contained in subordinate regulations or codes of practice.

Where formal HSRs and HSCs are in place, HSC members require formal training in consultation, issue resolution, risk management, management of meetings, to name but a few examples. The specific content and requirements of this training should be defined in the subordinate regulations, rather than in the model OHS Act.

OneSteel believes that issue resolution should be a requirement in the model OHS Act and that this should require that any issues which arise should be resolved in the workplace through consultation between affected parties, using relevant procedures agreed between the parties.

- Q59. Should the model OHS Act include right of entry provisions? If so, who should be entitled to exercise the right of entry?**
- Q60. Should the model OHS Act specify training and qualifications for such persons?**
- Q61. In what circumstances should the right of entry be exercisable?**
- Q62. What powers should be exercisable upon entry, and subject to what conditions or limitations?**

Authorised employee representatives (**AERs**) have an important role to play in the OHS framework. However, the right of entry needs to be restricted and controlled. The right of

entry should be to inspect, observe and consult for the purposes of enquiring into a suspected contravention of OHS legislation. OneSteel considers there should be an authorising process, OHS training and demonstrated competency prior to approval as an AER.

Any exercise of the right of entry should be controlled and limited to those formally representing employees within that specific workplace when invited by those employees that they represent. OneSteel believes there should be a notice of entry provided to the employer, prior to the exercise of the right, and an appeal mechanism where the right of entry has been refused.

OneSteel considers that the model OHS Act should include offences that allow for the revocation or disqualification of AERs where there has been an improper exercise of the right of entry.

Q63. What provisions should be made in the model OHS Act to assist the effective resolution of health and safety issues?

Q64. When should issue resolution procedures be activated?

Q65. If issue resolution procedures are to be specified, in whole or in part, should they appear in the model OHS Act or in the regulations?

Q66. How best can the model OHS Act ensure resolution procedures are, where possible, agreed at a workplace level?

OneSteel believes that issues should be resolved in the workplace through consultation between those parties directly affected, using relevant agreed procedures. Where those parties are unable to resolve the issue, then a review process using an external arbiter should be available.

Q67. Should a model OHS Act specifically provide for the right of workers to refuse or cease to undertake work they consider unhealthy or unsafe?

Q68. Should a model OHS Act provide for the right of a HSR to direct that work cease? If so, what conditions, limitations or restrictions should be placed on the exercise of the right by a worker or representative?

Q69. Should the model OHS Act require payment of wages and/or associated benefits to workers who have exercised the right to cease work in accordance with the Act? If so, what should be provided?

Q70. In addition, or alternatively, should the model OHS Act provide for the resolution of disputes associated with cessation of work?

Employers and workers should have the right to cease unsafe work. However, where this right is exercised, it should lead to the employers and workers engaging in an issues resolution process.

6.3 Protections from discrimination and victimisation

Q71. What provision should be made in the model OHS Act to protect persons from discrimination or victimisation and who should be protected?

Persons in the workplace should be protected from discrimination, harassment and victimisation for raising health and safety issues.

Q72. Who should be able to bring an action for unlawful discrimination? Should the model OHS Act allow representative actions?

OneSteel does not wish to make any submissions about this issue.

Q73. Should a breach of the provisions be the subject of criminal or civil proceedings or both?

OneSteel does not wish to make any submissions about this issue.

Q74. Who should have the burden of proving relevant elements of offences (e.g. conduct and intention) and should the standard of proof be the civil standard (on the balance of probabilities) or criminal standard (beyond a reasonable doubt) for these elements?

OneSteel does not wish to make any submissions about this issue.

Q75. Should specific powers be available to the regulator to provide protection from ongoing discrimination or victimisation pending proceedings?

OneSteel does not wish to make any submissions about this issue.

Q76. What remedies should be available to the victims?

OneSteel does not wish to make any submissions about this issue.

Q77. Should there be mechanisms in the model OHS Act for resolution of discrimination or victimisation disputes, as alternatives to criminal prosecution by the regulator, such as conciliation or arbitration before a tribunal?

OneSteel does not wish to make any submissions about this issue.

Q78. Are there any other issues in relation to consultation, participation and representation that should be addressed in the model OHS Act?

OneSteel does not wish to make any submissions about this issue.

7. Regulator Functions, Powers & Accountability:

7.1 Role and functions of regulators

Q79. Should the model OHS Act provide for the establishment, functions, powers and accountability of regulators? If so, what should be provided?

OneSteel considers that it is important that the functions, powers and accountability of the regulatory authority be included in the model OHS Act. Such matters are best included in the principal OHS Act because such matters are of significant concern to duty holders and requiring them to examine multiple Acts and associated instruments is not sensible. Further, the inclusion of these matters in the model OHS Act will encourage greater consistency between the States and Territories.

Similarly, the provisions for the establishment of an overreaching regulatory body could also be included in the model OHS Act. However, OneSteel considers this is less important as such matters are not generally of interest to duty holders and their inclusion may simply act as a distraction from the primary purpose of the model OHS Act.

Q80. Should the model OHS Act require regulators to publish enforcement and prosecution policies?

The publication of enforcement and prosecution policies provides useful guidance to duty holders about how the regulatory authority will enforce the OHS Act and the circumstances in which prosecutions will be instigated. OneSteel considers the model OHS Act should provide for similar publications.

Further, unless there is a significant level of consistency of regulation between each State and Territory, OneSteel is concerned that any differences that exist between States and Territories will undermine the model OHS Act. Indeed, one of the primary differences that employers observe in managing compliance with OHS law is the different approaches to enforcement and prosecution policy between the States and Territories.

Q81. Should the model Act include provisions that allow the making of interpretative documents?

The model OHS Act should allow for the regulatory authority to develop interpretive documents. Such materials are of great assistance to duty holders in understanding how a regulatory authority interprets and implements OHS legislation. OneSteel considers that such provisions should require consultation with relevant duty holders prior to the finalisation of interpretative documents.

The provisions in the Vic Act (sections 12 to 15) relating to the development of guidelines by the regulator provide an acceptable model for the provision of advice. The status of any interpretative documents must be clearly defined so that duty holders understand which, if any, of such documents:

- impose mandatory requirements;
- if followed, will provide a duty holder with confidence that they satisfy the requirements or the model OHS Act; or
- simply state the regulator's interpretation of the law.

Again, it is essential that interpretative documents apply throughout all States and Territories. If each State and Territory were to develop such materials independently, the benefits of the development of a national approach to OHS law will clearly be undermined.

Q82. Are there any functions and powers that should be available to an OHS regulator that should not be exercised by an inspector?

OneSteel does not wish to make any submissions about this issue.

Q83. Should the advisory and enforcement functions of an OHS regulator be separated? If so, how and why?

OneSteel considers it is essential for a regulatory authority's advisory and enforcement functions to be strictly separated. However, the model OHS Act should specifically empower inspectors to give advice. Where advice is given, the regulator should be able to give advice without any concern that a duty holder is able to transfer any responsibility for compliance with OHS law to the inspector or the regulator. Further, duty holders should not be bound to follow that advice.

Section 18 of the Vic Act (which relates to advice by the regulator) provides an acceptable model for the provision of advice.

7.2 Inspectors

Q84. How should the model OHS Act provide for the appointment, qualifications, powers, functions and accountability of inspectors?

OneSteel does not wish to make any submissions about this issue.

Q85. Should the model OHS Act strengthen the role and capacity of inspectors to provide advice and assistance? If so, how?

OneSteel does not wish to make any submissions about this issue.

Q86. Are there any circumstances in which an inspector should be independent from direction, instruction or review by a regulator?

OneSteel does not wish to make any submissions about this issue.

Q87. Should an inspector be able to modify, amend or cancel any notice or instrument issued by the inspector? If so, why and in what circumstances?

OneSteel does not wish to make any submissions about this issue.

7.3 Internal review of inspectors' decisions

Q88. What provisions should be made for the transparent internal review of decisions in the model OHS Act? What matters should be reviewable? What further appeal should be allowed?

OneSteel does not wish to make any submissions about this issue.

Q89. Are there any other issues in relation to the powers, functions and accountability of regulators and their inspectors that should be addressed in the model OHS Act?

OneSteel does not wish to make any submissions about this issue.

8. Compliance & Enforcement:

8.1 Enforcement measures

Q90. Should the model OHS Act include a hierarchy of enforcement measures in order of escalation? What should such measures consist of?

OneSteel considers that enforcement measures and the principles applied to selecting enforcement measures are very important aspects of any process to harmonise OHS laws. If these measures are not part of the model OHS Act then the enforcement of the model OHS Act is likely to vary significantly from one State or Territory to the next.

Q91. Should these be statutory principles or requirements for the appropriate use of enforcement measures? If so, should they be contained in the model OHS Act, regulations or other policy or guidance documents?

OneSteel considers that the hierarchy of enforcement measures should be contained in the model OHS Act, whilst the methods by which those enforcement measures be

implemented should be contained in the subordinate legislation which should also be developed nationally. OneSteel considers this is necessary for a consistent approach throughout Australia.

8.2 Measures exercised in the workplace

(a) Prohibition notices

Q92. What provision should be made for PINs, improvement notices and prohibition notices in the model OHS Act?

OneSteel does not wish to make any submissions about this issue.

Q93. Should PINs, improvement and prohibition notices contain recommendations about how to achieve compliance?

OneSteel does not wish to make any submissions about this issue.

Q94. What provisions should be made to allow for the review of PINs, improvement and prohibition notices?

OneSteel does not wish to make any submissions about this issue.

Q95. Should there be a specified minimum timeframe to allow for compliance with PINs, improvement or prohibition notices?

OneSteel does not wish to make any submissions about this issue.

Q96. Should the lodging of an application for an internal review or an appeal?

OneSteel does not wish to make any submissions about this issue.

(b) Infringement notices

Q97. Should the model OHS Act provide for infringement notices? If offences should they be issued?

OneSteel does not wish to make any submissions about this issue.

Q98. Should the administration of infringement notices occur under state legislation?

OneSteel does not wish to make any submissions about this issue.

Q99. What amounts should be specified as fines for infringements?

OneSteel does not wish to make any submissions about this issue.

8.3 Measures exercised beyond the workplace

(a) Remedial orders and injunctions

Q100. Should the model OHS Act provide for injunctions to ensure compliance with the model OHS Act? If so, in what circumstances and what evidence should be required to apply for an injunction?

OneSteel does not wish to make any submissions about this issue.

(b) Enforceable undertakings

Q101. Should the model OHS Act provide for the use of enforceable undertakings as an alternative to prosecution for an offence against the Act? If so, for what offences?

OneSteel does not wish to make any submissions about this issue.

Q102. Should the giving of an enforceable undertaking result in an admission of fault or liability?

OneSteel does not wish to make any submissions about this issue.

Q103. Are there any other issues in relation to compliance and enforcement that should be addressed in the model OHS Act?

OneSteel does not wish to make any submissions about this issue.

9. Prosecutions:

9.1 Civil or criminal liability

Q104. Should the model OHS Act provide for breaches of duties or obligations to be criminal offences, or be the subject of civil proceedings and penalties, or a mixture of both?

Q105. Which duties or obligations should be the subject of criminal offences and penalties and which may appropriately be heard as civil matters?

OneSteel considers that in the aftermath of any incident, the general focus should be on ensuring that an incident does not reoccur and, in the most serious cases, prosecution should be used as a deterrent. OneSteel considers that the model OHS Act should provide for breaches of duties or obligations to be civil offences and that it may be appropriate for offences involving intentional or reckless conduct to be criminal offences

Where the offences are criminal in nature, and bearing in mind the fundamental principle of criminal law that the prosecution bear the onus of proving all of the elements of an offence, OneSteel considers that any reversal of the onus of proof (as is the case in NSW and Queensland), is not warranted.

9.2 Where prosecutions should be heard

Q106. Which courts or tribunals should have jurisdiction to hear prosecutions for OHS offences?

OneSteel does not wish to make any submissions about this issue.

Q107. Is it appropriate for prosecutions to be heard by specialist courts or tribunals (or specialist divisions in courts)? Why?

OneSteel does not wish to make any submissions about this issue.

Q108. To where should appeals lie? Should the right to appeal be subject to any conditions and if so, what should they be?

OneSteel does not wish to make any submissions about this issue.

Q109. Should defendants be entitled to trial by jury in prosecutions for any offence and, if so, which?

OneSteel does not wish to make any submissions about this issue.

9.3 Who may commence prosecutions and relevant procedures?

Q110. Who should be entitled to commence criminal proceedings?

OneSteel considers it should be solely for the regulatory authority to decide whether any coercive enforcement action (for example, an improvement notice, a prohibition notice or a prosecution) is necessary. Of course, this should not be taken to affect the ability of the relevant Director of Public Prosecutions (**DPP**) to commence a prosecution for an indictable offence.

A fundamental concern for OneSteel is that it is a principle of due process in the criminal law that a prosecution be investigated and initiated by an impartial body or person. Unions and union representatives cannot be impartial in workplace matters as they have an important role to play as supporters and advocates for their members. Similarly, it would be inappropriate for employers' organisations to have the power to prosecute. If a relevant regulatory authority has insufficient resources to instigate prosecutions in the numbers that are warranted, then their resources should be reinforced, or the overflow be assumed by the relevant DPP. In practical terms, while the majority of workplaces do not deal with safety issues in a confrontational ways, if unions are involved in OHS issues at the workplace, there are real risks that the process will become tainted by actual or perceived bias. If the two issues become confused, then there is a risk that once industrial outcomes are achieved, the OHS concerns will be forgotten, their agitation having only played a brief part in the process.

Where further protections are considered necessary to prevent inaction by the regulatory authority, OneSteel supports the model contained in the Vic Act (section 131) whereby a private person can lodge a request in writing if no prosecution has been brought within six months of an alleged offence. If a prosecution is not forthcoming within 3 months of the request, the regulator must advise the person who made request of the reasons. The person may then request that the matter is referred to the DPP. Where the DPP also declines to prosecute the person who made the request must be provided with reasons.

Q111. If the model OHS Act provides for civil proceedings for breach, who should be entitled to commence such proceedings?

Consistent with our answer to Q 110 above, OneSteel is of the opinion that it should be solely for the regulatory authority to decide whether any coercive enforcement action is necessary, including the commencement of civil proceedings for breach.

Q112. What should appropriate time limits be for the commencement of a prosecution and why?

OneSteel is of the opinion that a prosecution should be commenced within two years after the offence is committed or the relevant regulatory authority becomes aware that the offence was committed.

Q113. Should the model OHS Act include specific provisions for the conduct of prosecutions, and what should they be? Alternatively, should that be left to the rules of criminal law and rules of the relevant court or tribunal?

OneSteel considers that the model OHS Act should not contain specific provisions for the conduct of prosecutions and this should be left to the rules of criminal law and the rules of the relevant court or tribunal.

9.4 Evidence

Q114. Should the model OHS Act contain specific evidentiary procedures for OHS prosecutions? If so, why and what procedures?

OneSteel considers that three issues relating to evidentiary procedures should be specifically addressed in the model OHS Act.

(a) Legal professional privilege

OneSteel believes the model OHS Act should create an offence or refusing or failing to comply with a requirement by an inspector – whether to produce documents or to answer questions. However, a defence of 'reasonable excuse' should be available, consistent with the Vic Act. The model OHS Act should specify that nothing in the Act or regulations entitles or requires a person to disclose information that is the subject of legal professional privilege or affects the law or practice relating to legal professional privilege. Section 155 of the Vic Act provides an acceptable model.

(b) Protection against self-incrimination

OneSteel considers that the model OHS Act should provide for protection against self-incrimination. Whilst this is expressly protected in Victoria (see section 154 of the Vic Act), in other Australian jurisdictions, OHS legislation expressly abrogates the privilege against self-incrimination, subject to restrictions on the use of the material against the person in later proceedings.

OneSteel considers the privilege against self-incrimination is a fundamental human right. As was noted in the Maxwell Report, 'the presumption in favour of maintaining the privilege is rightly a strong one'. Should the model OHS Act create indictable offences which carry heavy monetary penalties and specific offences carrying terms of imprisonment, OneSteel considers this should tend against any abrogation of the privilege against self-incrimination.

OneSteel does not consider that the privilege against self-incrimination should be available to corporations.

(c) Right to seek legal advice

OneSteel considers that a person should always have the right to seek legal advice and the model OHS Act should require inspectors to inform persons they have the right to do so.

Q115. Should the proof of any elements of an offence be affected by specific provisions in the model OHS Act? If so, which elements and how?

OneSteel does not wish to make any submissions about this issue.

Q116. What should be the evidentiary status of codes of practice, regulations and other subordinate instruments?

OneSteel does not wish to make any submissions about this issue.

9.5 The burden of proof and defences

Q117. Is 'reasonably practicable' an appropriate standard for the model OHS Act?

OneSteel considers that 'reasonably practicable' is an appropriate standard for the model OHS Act as the term 'reasonably' provides for a 'limiting' of practicability.

Q118. Should the prosecutor or the duty holder be required to prove whether the standard was met? Why?

OneSteel considers that the prosecutor should bear the onus of proving all elements of all offences under the general duty provisions, including reasonable practicability. OneSteel considers that it is not appropriate for a defendant to criminal proceeding to be required to prove their innocence.

Q119. Should the burden of proving elements of an offence differ between different types of offences (e.g. duties of care and procedural obligations)? If so, why?

OneSteel considers that the burden of proof should remain with the prosecution notwithstanding the type of offence.

Q120. What, if any, defences should the model OHS Act provide?

Unless the duties imposed on duty holders are limited to matters within the duty holder's control, OneSteel considers that a specific defence should be provided where a duty holder had no control over the hazard or risk.

Q121. Should the burden of proof or defences be different for a corporation and an individual (officer or employee)? If so, why?

OneSteel considers that the burden of proof should remain with the prosecution notwithstanding the defendant being a corporation or individual.

9.6 Liability of officers

Q122. Should 'officers' of a corporation be liable to an offence because the corporation has committed an offence?

OneSteel considers that it may be appropriate for an 'officer' of a corporation be liable to an offence because the corporation has committed an offence but only in situations where there is some link between the action (or inaction) of the relevant officer.

The potential for prosecution of civil or criminal offences against officers necessarily changes the nature of the interaction between the employer and the regulator as the employer seeks to protect its officers from prosecution. This could, in turn, reduce information-sharing between the company and the regulator and could, ultimately, reduce how effectively an incident can be investigated by the regulator. As mentioned in section 9.1 above, OneSteel considers that in the aftermath of any incident, the general focus should be on ensuring that an incident does not reoccur and, therefore, OneSteel

considers that it would be preferable to limit civil and criminal penalties for individual managers to the most serious offences.

Q123. How should officer be defined?

The model OHS Act should adopt the definition of 'officer' as contained in section 9 of the *Corporations Act 2001* (Cth). This would provide for consistency between other legislative provisions that impose obligations on 'officers' and assists with developing holistic approaches to compliance within organisations. However, where such a wide definition of officer is used, there must be a clear link between the breach of the corporation and the part that the particular office played in the breach by the company.

Q124. Should liability of an officer, if any, be subject to the prosecution proving that an act or omission by the officer contributed to the offence of the corporation? Alternatively, should the officer be automatically guilty of an offence, subject only to proving a defence? Why?

Q125. Should the model OHS Act provide for a test for determining liability of an officer? If so, what should the test be or contain?

Q126. Should the model OHS Act provide for specific defences to be available to an officer? If so, what?

Broadly speaking, the personal liability of an officer under Australian OHS law for an offence by a corporation may arise by one of two different models: Deemed Liability (as in New South Wales, Queensland and Tasmania) or Attributed Liability (as in Victoria, South Australia, Western Australia and the Northern Territory).

The Deemed Liability model deems those responsible for managing the corporation (including directors and officers) guilty of the same contravention for which the corporation is guilty. To avoid liability, the directors or officers are required to show they were not in a position to influence the conduct of the corporation in relation to the contravention or that they used all due diligence to prevent the contravention.

The Attributed Liability model only convicts those responsible for managing the corporation (including directors and officers) where they have failed to take reasonable care. The factors considered within this model are the knowledge of the officer, their ability to make or participate in decisions and who else may be responsible.

No matter the model, all States and Territories have provisions allowing for directors and officers to be prosecuted regardless of whether the relevant body corporate is prosecuted. The prosecution can simply prove the offences against the corporation as part of the prosecution of the director or officer.

OneSteel considers that it is never appropriate for a directors or officers to be deemed to be liable for an offence committed by the corporation. This is particularly the case where the offence is criminal in nature. Further, the onus of proving that an offence occurred should always fall the prosecution. For these reasons and taking into account the response to questions 122 and 123, above, OneSteel considers that the Attribution Model provided in the Vic Act (section 144) is the most appropriate model for officer liability. The Attribution Model enables the actual role of the person charged to be taken into account. The

person's involvement and ability should always be a relevant consideration in determining an individual's culpability and liability and the Attribution Model is best able to provide this.

Q127. What should the approach to officers of unincorporated associations or volunteer officers be?

OneSteel does not wish to make any submissions about this issue.

9.7 Sentencing options

(a) Fines

Q128. For which offences should monetary penalties (fines) be imposed?

OneSteel does not wish to make any submissions about this issue.

Q129. Should maximum fines be provided in the model OHS Act, or is there an alternative approach?

OneSteel does not wish to make any submissions about this issue.

Q130. Should the level of fines be different for the various offences? If so, for what offences and at what levels?

OneSteel does not wish to make any submissions about this issue.

Q131. Should there be a statutory minimum fine for some offences? If so, what?

OneSteel does not wish to make any submissions about this issue.

Q132. Should the level of penalties depend on culpability (recklessness) or outcome (death) or repeat offences?

OneSteel does not wish to make any submissions about this issue.

Q133. Are there options that could facilitate more consistent outcomes across the jurisdictions, such as a national register of decided cases?

OneSteel does not wish to make any submissions about this issue.

(b) Other sentencing options

Q134. What penalty options should be available in addition to or instead of fines?

OneSteel does not wish to make any submissions about this issue.

Q135. Should the model OHS Act provide for terms of imprisonment for specified offences? If so, which offences and what maximum periods of imprisonment?

OneSteel does not wish to make any submissions about this issue.

9.8 Workplace death and serious injury

Q136. Should there be specific offences relating to workplace death or serious injury? If so, what?

Q137. Should breaches of OHS duties resulting in death or serious injury be dealt with in OHS legislation or in the Crimes Act?

Q138. Should the consequences of the breach, rather than only the degree of culpability, determine the penalties to be imposed for some offences? If so, which offences and how should this be dealt with in the model OHS Act?

In general terms, the provisions of the model OHS Act should continue to reflect the principles first introduced by the Robens Report and implemented throughout Australia. This means that it is the degree of culpability rather than the consequence of a breach that determines the nature of the offence and the possible penalties. Courts are able to assess other aspects of the particular offence (whether mitigating or extenuating) when sentencing offenders.

Nonetheless, OneSteel recognises that where a failure by a duty holder is such that the potential consequences are extremely serious, the community expects such offenders have more significant penalties imposed. However, undue focus on the actual consequences of a breach has the potential to undermine the power of duty based offence. Such offences provide a significant incentive for duty holders to act in a positive way to implement measure that will control risks to health and safety. Where it is the actual severity of an offence determining the possible penalty, there is a reduced incentive for duty holders to act to control risks that, while they may have severe consequences if they occur, are very unlikely to occur.

Provisions such as the reckless endangerment offences introduced in a number of jurisdictions are an appropriate way to address community concerns about serious injuries and deaths in the workplace. However, such provisions should avoid undue focus on the consequences. OneSteel considers that the approach set out in the Vic Act (section 32) is an appropriate model.

9.9 Enforcement of penalties

Q139. What, if any, provisions should be included in the model OHS Act for the enforcement of penalties imposed by a court?

OneSteel does not wish to make any submissions about this issue.

Q140. Should the model OHS Act provide for the enforcement of penalties against officers or other persons? If so, how and subject to what conditions, limitations, defences or requirements?

OneSteel does not wish to make any submissions about this issue.

Q141. Are there any other issues in relation to prosecutions that should be addressed in the model OHS Act?

OneSteel does not wish to make any submissions about this issue.

10. Other Issues:

10.1 Regulation making powers

Q142. Should the power to make regulations be limited and if so, in what way?
Q143. Should regulations provide for summary offences with lower penalties, or should some breaches under regulations also be taken to be a breach of the model OHS Act?

To promote consistency between the States and Territories, any regulations or codes of practices should be proposed, made and implemented at the national level. To effectively improve health and safety, the model OHS Act will require support from national regulations and codes of practices that describe standards, licensing and record keeping. Regulations should only be proposed if regulation is demonstrated to be the most effective way to deal with the health and safety issues. OHS regulations should be consolidated similar to the approach taken in recent years in New South Wales and Victoria.

10.2 Codes of practice

Q144. What provisions should be made in the model OHS Act relating to the development and approval of codes of practice?

Codes of practice should set out examples of how to comply with the particular aspect of the regulation they address. Employers should have the flexibility to comply with the regulation using methods that may be different to those described in the codes of practice. National codes of practice should be flexible enough to describe a range of practical measures for guiding the compliance effort and for communicating information on known and effective means of controlling OHS risks.

National codes of practice should identify which duty holder may rely on compliance with the code to deem compliance. National codes of practice should also identify the extent to which reliance on the code of practice will discharge the duty holder's duties under the model OHS Act or regulations.

10.3 Notification of incidents and reporting

Q145. How should an effective reporting system be provided for in the model OHS Act without an unnecessary compliance burden?

There is significant variation between jurisdictions in the definition of 'notifiable incidents'. Uniformity of notification requirements would simplify compliance for employers operating across multiple jurisdictions.

The single notification process employed in some states, such as New South Wales, reduces duplicate notification in instances where employees are injured. A consistent set of definitions would lead to a better national data set that would greatly aid in better data analysis and subsequent improvement of health and safety at a national level.

10.4 External appeals and issue resolution

Q146. What provisions should be made in the model OHS Act for the external review of regulatory decisions?

OneSteel does not wish to make any submissions about this issue.

Q147. Should the model OHS Act include provisions for the resolution of OHS issues by conciliation or arbitration?

OneSteel does not wish to make any submissions about this issue.

Q148. Should the model OHS Act facilitate tripartism in the administration of OHS regulation, and if so, how?

OneSteel does not wish to make any submissions about this issue.

Q149. Should there be some provision for tripartite committees that deal with OHS matters in particular industries?

OneSteel does not wish to make any submissions about this issue.

10.5 Mutual recognition

(a) Permits and licensing arrangements for workers engaged in high risk work

Q150. What areas should be subject to formal mutual recognition provisions in the model OHS Act?

OneSteel does not wish to make any submissions about this issue.

Q151. What is the most appropriate way for a model OHS Act to provide for permits and licensing for workers engaged in high risk work that results in:

- better OHS outcomes;
- greater efficiency and effectiveness;
- lower regulatory compliance and enforcement burdens; and
- improved harmonisation of the requirements for such permits and licensing for industry across Australia?

OneSteel does not wish to make any submissions about this issue.

10.6 Interaction of federal and state laws

Q152. How should the model OHS Act be framed to reduce or remove the extent of overlap between federal and State or Territory OHS laws, or minimise the difficulties of such overlap?

OneSteel does not wish to make any submissions about this issue.

11. General Comments:

OneSteel does not wish to make any further general comments.