Mrs Giulia Jones

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

Dear Mrs Jones

I write in response to comments made by the Standing Committee on Justice and Community Safety (the Committee) in Scrutiny Report 13 of 6 February 2018 in relation to the Work Health and Safety Legislation Amendment Bill 2017 (the Bill).

I note that the Committee has requested further information be provided in a revised Explanatory Statement for the Bill as to the nature and the extent of the application of schedule 1 to non-workplaces in the context of the right to privacy and reputation under the *Human Rights Act 2004* (HRA).

As the committee may be aware, in passing the *Work Health and Safety Act 2011* (WHS Act), the Assembly made its intention clear via schedule 1 that the WHS Act was to apply outside of the workplace to dangerous goods. Schedule 1 of the WHS Act currently allows inspectors to enter premises that are not workplaces if it is, or is reasonably suspected to be, a premises at or in which dangerous goods are stored or handled under s163. However, given there are no dangerous goods currently prescribed this power of entry is not used as there is no subject matter to enforce.

Up until this point, dangerous goods have not been prescribed under the WHS Act due to the fact that hazardous chemicals are currently regulated in the Territory as dangerous substances under the *Dangerous Substances Act 2004* (DS Act).

The DS Act currently applies a general duty under s23 to “*Everyone involved in handling a dangerous substance [hazardous chemical] must take all reasonable steps to minimise the risks resulting from handling the substance.*” As such, this is a general safety duty that is applied to both a workplace and non-workplace. Accordingly, it is open for inspectors under the DS Act to enter a premises being used only for residential purposes if dangerous substances are being used at the premises under s142(1)(a) and s142(2). This compliance activity is undertaken for the purposes of ensuring compliance with the DS Act, in particular the general safety duty under s23, which is in place to ensure the health and safety of anyone as a result of handling a dangerous substance.

The adoption of hazardous chemicals regulation into the WHS legislation will give subject matter to the existing, but unutilised, entry and inspection provisions in relation to the use of hazardous chemicals outside of the workplace. In particular, the amendments in this Bill to s2 of schedule 1 are intended to ensure that the general safety duty under the s23 of the DS Act is adequately and appropriately transferred into the WHS legislation.

Consistent with the general duty that applies under the DS Act, the purpose of schedule 1 is to ensure the public health and safety of occupiers of residential premises, visitors to a residence, passers by and neighbours when hazardous chemicals are being used. Anyone should have a reasonable expectation that their health and safety is not recklessly or adversely affected by anyone storing or handling hazardous chemicals, whether at the workplace or not.

In response to the Committee’s comments I intend to table a revised Explanatory Statement for the Bill further explaining the nature and extent of the application of schedule 1 as briefly outlined above.

I note the Committee has also made some comments regarding the displacement of subsections 47(5) and 47(6) of the *Legislation Act 2001* under the dangerous substances legislation. The requirement to make all incorporated documents under the DS legislation publicly available is already found in s206 of the DS Act. The notes to the definition of the Australian Standards are incomplete and as such will be amended on republication of the *Dangerous Substances (Explosives) Regulation 2004* to state where copies of the standards may be inspected as required under s206.

I thank the Committee for its careful consideration of the Bill and trust that the above response will assist the Committee.

Yours sincerely

Rachel Stephen-Smith MLA