Report
Full investigation - Ombudsman Act 1972

Complainant Mr Nigel Carney

Department Department for Energy and Mining

Ombudsman reference 2018/04735

Date complaint received 1 May 2018

Issues

1. Whether the department's application of the FOI Act exemption provisions to redact the complainant's submission on the Environmental Impact Report and Statement of Environmental Objectives, prior to publishing on the Environmental Register on the department's website, was a mistake of law.

2. Whether the department's removal of the public's submissions on the Environmental Impact Report and Statement of Environmental Objectives from the Environmental Register on the department's website, between 24 April 2018 and 1 May 2018, was a mistake of law.

Jurisdiction

The complaint is within the jurisdiction of the Ombudsman under the Ombudsman Act 1972.

The complainant is the Chairperson of the William Light Foundation, which is a not-for-profit organisation.

The complaint concerns submissions that the complainant had provided to the Minister for Energy and Mining (the Minister), in response to an invitation to provide comment on the Environmental Impact Report and Statement of Environmental Objectives for the Leigh Creek Energy underground coal gasification trial.

It was alleged that the complainant's submissions were redacted prior to their publication on the Environmental Register that appears on the website of the Department for Energy and Mining. The Environmental Register contains information about petroleum industry activity pursuant to the Petroleum and Geothermal Energy Act 2000 (PGE Act) and Petroleum and Geothermal Energy Regulations 2013 (PGE Regulations).
The general administration of the PGE Act is undertaken by the Minister. Under sections 106 and 107 of the PGE Act, the Minister must maintain an Environmental Register and ensure that the Environmental Register can be inspected at the website of the Department for Energy and Mining.

Under section 7(1)(a) of the PGE Act, the Minister may delegate any of his or her powers or functions under the PGE Act to a specified person, or a person holding or acting in a specified office or position. The Minister has provided such delegated authority to the Executive Director of the Energy Resources Division of the Department for Energy and Mining, and the Chief Executive of the Department for Energy and Mining.

The complaint concerns the actions and decisions of the Department for Energy and Mining in performing the delegated functions under the PGE Act and PGE Regulations.

At the time that the redaction of the complainant's submissions was alleged to have occurred, the relevant agency was the Energy Resources Division of the Department of the Premier and Cabinet. Since 1 July 2018, the Energy Resources Division is now part of the Department for Energy and Mining. Throughout this report, I have referred to the Energy Resources Division of the Department for Energy and Mining as ‘the department’.

Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking information and obtaining a number of responses from the department
- considering
  - the Ombudsman Act
  - the PGE Act
  - the PGE Regulations
  - the Freedom of Information Act 1991 (the FOI Act)
  - the following publication by the Department of the Premier and Cabinet, Energy Resources Division: South Australia Assessment of Leigh Creek Energy UCG Trial Proposal, April 2018
  - the following publications by Leigh Creek Energy Limited:
    - Environmental Impact Report, ISG Demonstration Plant, 3 April 2018
    - Statement of Environmental Objectives, ISG Demonstration Plant, 9 April 2018
- providing the department and the complainant with my provisional report for comment, and considering their responses
- preparing this report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court’s decision in Briginshaw v Briginshaw (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld.

1 Petroleum and Geothermal Energy Act 2000, section 6. Prior to March 2018, the relevant Minister for administering the PGE Act and PGE Regulations was the Minister for Mineral Resources and Energy.
2 Petroleum and Geothermal Energy Act 2000, section 106(1) and 107(3).
4 Delegation under Section 7(1)(a) of the Petroleum and Geothermal Energy Act 2000 by the Hon Tom Koutsantonis MP, Minister for Mineral Resources and Energy, dated 31 March 2017; Delegation under Section 7(1)(a) of the Petroleum and Geothermal Energy Act 2000 by the Hon Dan van Holst Pellekaan MP, Minister for Energy and Mining, dated 29 June 2018.
5 Public Sector (Administrative Units) Proclamation 2018 under sections 26 and 28 of the Public Sector Act 2009, published in Gazette 17 May 2018, p 1599.
That decision recognises that greater care is needed in considering the evidence in some cases. It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...  

Response to my provisional report

I provided my tentative views to the parties by way of my provisional report dated 27 August 2019.

Response from the department

In responding to my provisional report, the department stated that it accepted my provisional conclusions and foreshadowed recommendations.

The department’s response included an explanation of how the department had either implemented or commenced implementing my foreshadowed recommendations. I subsequently requested further information from the department about its implementation of the foreshadowed recommendations, and two further responses were provided by the department. I have addressed this later in the report.

Response from the complainant

The complainant provided a considered response to my provisional report and recommendations. In his response, the complainant submitted that I should also make the following recommendations:

- more elevated legal review beyond the consideration of the department’s interpretation of the FOI Act
- that the redacted public submissions document be reinstated without delay
- that a Royal Commission be commenced into the Mining approval process as well as the Native Title process applied in South Australia.

In relation to the first and third recommendations proposed by the complainant, I do not consider that my jurisdiction in this investigation extends to making recommendations beyond the issues that I have investigated.

Later in this report, I have noted that the department has now published on the Environmental Register an unredacted copy of all submissions that were made by members of the public, in response to the invitation from the Minister under section 102 of the PGE Act. Accordingly, I consider that the complainant’s proposed second recommendation has been addressed by the department.

In light of the responses from the parties, my views remain as expressed in my provisional report.

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6 This decision was applied more recently in Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.
7 Briginshaw v Briginshaw at pp361-362, per Dixon J.
Background information

Relevant legislative and regulatory framework

1. The exploration and production of petroleum, gas storage and geothermal resources in South Australia is governed by the PGE Act and PGE Regulations.

2. The Energy Resources Division of the Department for Energy and Mining (the department) is the South Australian government agency with primary responsibility for the administration of the PGE Act and PGE Regulations.

3. Under the PGE Act and PGE Regulations, proponents may apply to the Minister (or their delegate) for approval to undertake exploration and production of petroleum, gas storage and geothermal resources in South Australia. The process to approve such activities consists of three stages. Those three stages are:
   - Stage one - Licensing
   - Stage two - Environmental assessment and approval of Statement of Environmental Objectives
   - Stage three - Activity notification and approval.

4. The complaint that was received by my Office relates to stage two of the approval process. Under stage two, the proponent is required to prepare an Environmental Impact Report for the proposed activities. The Environmental Impact Report contains information about the potential environmental impact and potential risks to the health and safety of the public from the proposed activities, and outlines the extent to which those threats are likely and manageable.

5. After preparation of the Environmental Impact Report, the Minister (or their delegate) is required to classify the environmental impact of the activities that are proposed by the proponent as either low impact, medium impact or high impact activities. The classification is made on the basis of:
   - the Environmental Impact Report that has been prepared by the proponent; and
   - the criteria for assessing the environmental impact of regulated activities that has been established by the Minister.

6. The proponent is also required to prepare a Statement of Environmental Objectives, which must address, among other things:
   - the environmental objectives to be achieved in carrying out the activities; and
   - the criteria to assess whether the environmental objectives have been achieved by the proponent.

7. The PGE Act stipulates varying levels of consultation on the Environmental Impact Report and the proposed Statement of Environmental Objectives that is required prior to approval of the Statement of Environmental Objectives by the Minister. The type of consultation that is required will be determined from the classification of the likely environmental impact of the activities that are proposed by the proponent; either low impact, medium impact, or high impact.

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8 Email from the department, dated 15 June 2018.
8. Proposed activities which are classified as ‘medium impact’ require the Minister (or their delegate) to publish a notice in a newspaper circulating generally throughout South Australia, inviting submissions from interested members of the public on the Environmental Impact Report and on the subject matter of the proposed Statement of Environmental Objectives.15

9. After completion of the requisite consultation process, the proponent must ensure that they address the matters that are raised during the consultation process and, where necessary, submit a revised Statement of Environmental Objectives, prior to approval by the Minister (or their delegate).16

The Environmental Register

10. Information about licences and activities that are proposed and approved under the PGE Act are required to be publicly accessible on an Environmental Register.17

11. As noted above, the Environmental Register is required to be maintained by the Minister (or their delegate).18 The Environmental Register must be available for inspection during ordinary office hours at a public office determined by the Minister, and the Minister must ensure that the Environmental Register can be inspected at the department’s website.19

12. The Environmental Register must contain a copy of every Environmental Impact Report that is prepared for the purposes of the PGE Act, and a copy of every current Statement of Environmental Objectives that has been approved under the PGE Act.20 The Environmental Register must also contain a copy of written submissions that have been made to the Minister (or their delegate) in response to an invitation to provide submissions on the Environmental Impact Report and Statement of Environmental Objectives for a medium impact activity.21

Application by Leigh Creek Energy, the Environmental Impact Report and Statement of Environmental Objectives consultation process

13. The complaint relates to a proposal by Leigh Creek Energy Limited (LCK) to construct and operate an in-situ gasification demonstration plant at the Leigh Creek coalfield in South Australia.

14. The Environmental Impact Report that was prepared by LCK describes the process of in-situ gasification as follows:

   The ISG process converts coal from its solid state into a gaseous form, resulting in the generation of a synthesis gas (syngas) containing methane, hydrogen and other valuable components. The syngas can be either used to produce electricity directly or further refined into a variety of products including synthetic methane and ammonia.22

15. Between August and December 2017, LCK undertook consultation with members of the Copley community, in relation to its proposed Environmental Impact Report and proposed Statement of Environmental Objectives for the underground coal gasification trial.23 Copley is a township located approximately four kilometres South-West of the Leigh Creek coalfield perimeter.

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15 Petroleum and Geothermal Energy Act 2000, section 102(1).
19 Petroleum and Geothermal Energy Act 2000, sections 107(1) and 107(3).
21 Petroleum and Geothermal Energy Regulations 2013, Regulation 12(7).
22 Leigh Creek Energy Environmental Impact Report, ISG Demonstration Plant, pages 8 and 12.
23 Email from the department, dated 28 August 2018.
16. On 7 December 2017 the complainant sent an email to the department, attaching a letter dated 6 December 2017. The subject heading of the letter stated ‘RE: Community Concerns - LCK Announcement and Draft EIR’, and comprised 70 questions that were accompanied by additional information and commentary.

17. The department advised my Office that on 11 January 2018, it classified LCK’s proposed underground coal gasification trial as a ‘medium impact’ activity.

18. On 16 January 2018, the Minister invited public comment on the Environmental Impact Report and Statement of Environmental Objectives via notice in the Advertiser newspaper and a notice on the department’s website. The department advised that it invited comment on the Environmental Impact Report and Statement of Environmental Objectives from co-regulatory agencies such as the Environment Protection Authority, the Department for Water, the Department for State Development - Aboriginal Affairs and Reconciliation, and the Department for Health, Outback Communities Authority, and the Department of Primary Industries and Regions. The consultation period closed on 28 February 2018.

19. On 31 January 2018 the department sent the complainant a letter, advising him of the Minister’s invitation to submit any formal submissions on the Environmental Impact Report and Statement of Environmental Objectives by 28 February 2018.

20. On 28 February 2018 the complainant sent an email to the department. That email included the following documents:
   - ‘cover letter to Leigh Creek Energy (LCK) In-Situ Gasification Demonstration Plant Submission in Response to Invitation for Public Comment’, the content of which raised concerns about the consultation process and the actions of the department more broadly in relation to this matter
   - a copy of the complainant’s letter dated 6 December 2017.

21. The department advised that as the questions that had been raised in the complainant’s letter of 6 December 2017 were relevant to the Environmental Impact Report and Statement of Environmental Objectives, the department determined that it would treat the complainant’s letter as a submission in response to the Minister’s invitation to submit a response on the Environmental Impact Report and proposed Statement of Environmental Objectives. The correspondence that I have received from the complainant suggests that he too considers his letter of 6 December 2017 to be a formal submission provided in response to the Minister’s invitation for submissions on the Environmental Impact Report and proposed Statement of Environmental Objectives. Throughout the rest of this report, I will refer to the complainant’s letter dated 6 December 2017 as ‘the complainant’s submission’.

22. The department advised my Office that it received a total of 104 submissions during the consultation period, comprising 99 submissions from the public and five submissions from state government agencies.24 The department advised that all submissions that were received during the consultation period were provided to LCK, which was required to address the issues raised in the submissions within a revised Environmental Impact Report and Statement of Environmental Objectives.

23. In early April 2018 LCK submitted an amended Environmental Impact Report and Statement of Environmental Objectives to the department. The amended Environmental Impact Report included a summary of the submissions that had been received during the consultation period, and LCK’s responses to those submissions.

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24 However, the department’s website also states that it received a total of 102 submissions. See: http://www.energymining.sa.gov.au/petroleum/projects/prj_leigh_creek_energy_isg.
24. The Environmental Impact Report and Statement of Environmental Objectives were subsequently approved by the Minister for Energy and Mining on 19 April 2018.

**Background information relevant to issue one**

*Publication of submissions about the Environmental Impact Report and Statement of Environmental Objectives on the Environmental Register on the department’s website*

25. Regulation 12(7) of the PGE Regulations requires that any written submissions made to the Minister, in response to an invitation for submissions on an Environmental Impact Report and proposed Statement of Environmental Objectives for a medium impact activity, must be included on the Environmental Register.

26. The written submissions that were received in response to the invitation by the Minister concerning LCK’s Environmental Impact Report and proposed Statement of Environmental Objectives are located on the Environmental Register on the department’s webpage.\(^{25}\)

27. The submissions that the Minister received from the public are located within a pdf document. My report references two iterations of that document, which I collectively refer to as ‘the public submissions document’.

28. The submissions that the Minister received from South Australian government departments and agencies are located within a separate pdf document.

29. Throughout the course of my investigation, my Office noted that it appeared that information in relation to the publication of those submissions on the department’s website was updated from time to time.

*Public submissions document on the Environmental Register on the department’s webpage, at the time of providing my provisional report - August 2019*

30. At the time of providing the department and complainant with a copy of my provisional report, the following statement was located on the department’s webpage directly under a hyperlink to the public submissions document:

*Please note:*
- For privacy reasons, the names and addresses of individual members of the public whom[sic] made submissions have been redacted;
- The content of these written submissions is not to be attributed to DEM nor to be taken as representative of any government view or position on the matters concerned. The use and reproduction of written submissions including third party attachments is at the risk of the user.

The Energy Resources Division has developed an assessment summary report to summarise the main findings in relation to the potential issues and environmental risks associated with the Leigh Creek Energy (LCK) Underground Coal Gasification (UCG) trial proposal and how they will be managed.

For a copy of the assessment summary report and more information please see the Leigh Creek Energy In Situ Gasification page.

31. The version of the public submissions document that was present on the department’s website consisted of a 158-page document with submissions on the Environmental Impact Report and Statement of Environmental Objectives.\(^{26}\) Certain information

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\(^{25}\) As at 9 January 2020, they can be accessed at the following webpage:

\(^{26}\) It was accessed via the department’s webpage on 27 August 2019 at the following hyperlink:
http://petroleum.statedevelopment.sa.gov.au/__data/assets/pdf_file/0005/313097/20180410_-_All_Public_Submissions_incorporated_redactions_completed_Reda...pdf. That hyperlink is no longer active.
contained within the submissions had been redacted from view with a blacked-out text box. The location of those blacked-out text boxes suggested that the information that was redacted included the names of individuals, signatures and other personal details.

32. The complainant’s submission commenced at page 66 of the public submissions document, under the heading ‘Letter dated 6 December 2017 - For Leigh Creek Energy to address as part of the public consultation under the P&GE Act’, as shown below:

Letter dated 6 December 2017 – For Leigh Creek Energy to address as part of the public consultation under the P&GE Act

33. The complainant’s submission as it appeared within the public submissions document comprised two pages. The unredacted and complete copy of the complainant’s submission comprised 16 pages.

34. The content from the first four-and-a-half pages of the complainant’s submission was missing entirely from the public submissions document. In addition, significant portions of the remainder of the complainant’s submission was also not included in the public submissions document.

35. Whilst much of the complainant’s submission appeared to have been either redacted or simply removed from the public submissions document, there was little indication within that document to suggest that some of the text had been redacted or removed prior to publication on the department’s website.

36. As of the date of writing my provisional report, it appeared that the Environmental Register, as presented on the department’s website, did not make available a complete copy of the complainant’s written submission that the Minister received in response to the invitation to provide comment on LCK’s Environmental Impact Report and proposed Statement of Environmental Objectives.

Public submissions document on the Environmental Register on the department’s webpage, at the time of writing my final report

37. The public submissions document is currently accessible by clicking on a pdf icon corresponding to the information ‘Leigh Creek Energy ISG Demonstration Plan’ and ‘PCC’, located within a table as shown below:

<table>
<thead>
<tr>
<th>Operator</th>
<th>Activity</th>
<th>Consultation Close Date</th>
<th>PCC</th>
<th>GCC</th>
<th>DAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAPEX</td>
<td>PEL 122 &amp; 123 Fracture Stimulation</td>
<td>4 June 2018</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leigh Creek Energy</td>
<td>ISG Demonstration Plant</td>
<td>28 February 2018</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beach Energy</td>
<td>Onshore Otway Production and Processing</td>
<td>1 February 2019</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leigh Creek Energy</td>
<td>Geophysical Operations in PEL 650</td>
<td>15 April 2019</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

38. At the time of writing this report, the statement quoted at paragraph 30 of my report no longer appears on the department’s webpage.

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39. Instead, the following statement is present beneath the table shown at paragraph 37:

Please note that all written submissions received in response to invitations for public comment under section 102 of the PGE Act are published in full on the DEM website as part of the Environmental Register, in accordance with the provisions of the PGE Act and Regulations. The content of these written submissions is not to be attributed to DEM nor to be taken as representative of any government view or position on the matters concerned. The use and reproduction of written submissions including third party attachments is at the risk of the user.

40. The public submissions document now appears to be an unredacted version, comprising 174 pages. The complainant’s submission, in its entirety, commences at page 116 of the document.

41. In responding to my provisional report, the department advised that all written submissions that were received in response to the invitation for submissions on LCK’s Environmental Impact Report and proposed Statement of Environmental Objectives have now been published in full on the Environmental Register.

Background information relevant to issue two

Removal of the public submissions document from the department’s website between 24 April 2018 and 1 March 2018

42. On 27 April 2018 the complainant sent an email to the department. The email requested a copy of the submissions that had been received by the Minister in relation to LCK’s Environmental Impact Report and proposed Statement of Environment Objectives. The email from the complainant explained that the hyperlink for the public submissions document at the department’s website was not active.

43. On 30 April 2018 the department sent an email to the complainant which advised that the department had temporarily removed the public submissions document from the department’s website until it had resolved what it described as ‘an issue pertaining to privacy afforded to individuals and organisations via the redaction process’.

44. On 1 May 2018 the department sent an email to the complainant which advised that the public submissions document had been returned to the department’s website. The email from the department provided the relevant hyperlink to access the public submissions document on the department’s website. The email from the department also provided the following information about the department’s redaction process:

Please note that under Regulation 12(6) under the Petroleum and Geothermal Energy Act 2000 we are required to make public on our environmental register all written submissions made as part of any SEO consultation process. To that end, before we make any submissions available we must afford all individuals and/or organisations making any such submissions natural justice by redacting relevant information in these submissions so as to ensure we:

1) Protect the identity of individuals and organisations making the submissions;
2) Avoid any potential of defamation made or inferred in any public submission about an individual or an organisation; and finally
3) Avoid any potential litigation that could be reasonably instigated by comments in submissions that are presented in the form of legal opinion.

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28 It was accessed via the department’s webpage on 9 January 2020 at the following hyperlink: http://www.energymining.sa.gov.au/__data/assets/pdf_file/0005/313097/20191008_-_All_Public_Submissions_incorporated.pdf

29 The complainant’s email dated 28 February 2019 which attached the complaint’s submissions, and the ‘cover letter to Leigh Creek Energy (LCK) In-Situ Gasification Demonstration Plant Submission in Response to Initiation for Public Comment’ are also included in the document at pages 113-115.
In relation to the LCK submissions, after publishing the comments we realised there were a number that after closer scrutiny had the potential to breach the above criteria that in turn required us to remove all submissions from the website temporarily to immediately rectify this issue.

45. My Office received a complaint from the complainant on 1 May 2018. The complaint included the following allegations:
   - that 56 out of 70 of the submissions that the complainant had made on behalf of the William Light Foundation are not available for inspection on the Environmental Register on the department’s website, for no apparent or justifiable reason
   - that the public submissions document was also removed from the Environmental Register on the department’s website for a period of time.

Responses from the department

Responses to initial enquiries

46. My Office sought several responses from the department in relation to the complainant’s allegations. In response to initial enquiries as to whether any submissions were removed from the department’s website for a period of time, the department stated:

   Section 102 of the PGE Act as well as the Regulations requires [the department] to make all public submissions, received as part of an invitation for public comment on draft SEO and EIRs, available on the environment register...

   This service is now provided online using the Environment Register in accordance with the Premier’s Digital by Default Declaration. Hard copies of the public submissions are kept to be made available to members of the public in accordance with our statutory obligation. Aligned with Section 102 of the PGE Act, all submissions are available for inspection at the Minister’s public office.

   Submissions are provided in full where possible. However, submissions are reviewed using Freedom of Information Act 1991 guidelines to ensure they do not contain confidential/sensitive information.

   After uploading the public submissions received during the consultation process for the Leigh Creek project, it was brought to our attention that some submissions may contain sensitive information that was not previously identified. In this instance, some documents were inadvertently uploaded in full before they could be redacted to comply with FOI guidelines [sic] Once alerted to this situation, the documents were temporarily taken down on 24 April 2018 and FOI guideline compliant versions returned to the website on 1 May 2018. Importantly, during this short period, public submissions were still available in hard copy in accordance with section 102 of the PGE Act.

47. In response to initial enquiries as to the basis on which any submissions were redacted prior to publication on the Environmental Register, the department stated:

   Transparency is our overarching policy. We also endeavour to comply with the Premier's Digital by Default Declaration and Freedom of Information Act 1991 guidelines and procedures are used to review public submissions before being uploaded to the web page to:
   1. Protect the identity of individuals making the submissions;
   2. Avoid any potential of defamation made or inferred in any public submission about an individual or organisation; and finally, and[sic]
   3. Avoid any potential litigation that could be reasonably instigated by comments in submissions that are presented in the form of legal opinion.

   The review is also aligned with the exemptions provided under Freedom of Information Act 1991 Schedule 1 Part 2, 6 (1) and (2):
6 - Documents affecting personal affairs:

(1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

(2) A document is an exempt document if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) the truth of which has not been established by judicial process and the disclosure of which would be unreasonable.

Responses to my investigation

48. The department provided several responses to my investigation.

49. In responding to enquiries as to why the department redacted the complainant’s submission prior to publishing the public submissions document on the Environmental Register on the department’s website, the department’s response included that:
   - the department had concerns with the material within some of the submissions. Specifically, the department had concerns about:
     - the disclosure of names/addresses/phone/email contact details and possible implications for the department (including legal claims that may be made) if steps were not taken to protect the privacy of individuals names in the submissions
     - amplifying potentially offensive, defamatory, confidential information, and unsubstantiated allegations of unlawfulness
   - out of an abundance of caution, the department took steps it considered necessary and reasonable to redact offensive statements in the submissions, in order to manage risks that could arise out of publication of those submissions in full
   - the department used as a general guide the FOI exemptions as the most relevant existing government-wide policy
   - the department maintains that not redacting the public submissions would have potentially exposed the department to accusations of being complicit in amplifying unsubstantiated allegations that maligned reputations or worse.

50. In response to a request for an explanation of why and on what basis the department applied the FOI Act exemptions for the purpose of redacting the submissions prior to publishing the submissions on the department’s website, the department’s response included the following:
   - the FOI exemptions criteria seem to the department to be the most appropriate existing government-wide policy to guide the redaction of online submissions
   - the department considers these criteria provide useful guiding principles for government to manage risks of republishing material that is potentially offensive, defamatory or containing confidential information.

51. My Office asked the department whether any other submissions that were received in relation to LCK’s Environmental Impact Report and Statement of Environmental Objectives had been redacted prior to their publication on the Environmental Register published on the department’s website. The department’s response included that:
   - all submissions were reviewed using FOI criteria and in most cases redacted to protect privacy of named individuals
   - the submissions that were received from the complainant were subject to the same criteria used to review all submissions.

52. The department also provided the following information:
   - the essence of a response to all submissions received during the consultation process was documented in the in the South Australia Assessment of Leigh Creek Energy UCG Trial Proposal that is publicly available online
LCK received unredacted copies of all submissions in confidence to inform its development of the final Environmental Impact Report and Statement of Environmental Objectives.

Appendix E of the Environmental Impact Report, titled ‘Summary of Public Consultation Submissions and Responses’ demonstrates how aspects of all of the public’s submissions were taken into account in the development of the final version of the report. That report is publicly available.

Whilst the submissions that are available online were partially redacted, unredacted versions of all of the submissions are kept at the Minister’s office and are available indefinitely for viewing by the public upon request.

There have been no requests for access to the un-redacted submissions and those versions remain accessible in the Minister’s office.

53. My Office asked the department whether it had applied the FOI exemptions to any other materials that it published on the Environmental Register on its website in relation to the LCK underground coal gasification project. The department provided the following information:

- All PGE Act related information published on the department’s web-pages is published using principles reflected in the SA government’s FOI guidelines.
- Information that is potentially offensive, defamatory, confidential, and/or poses unsubstantiated allegations of misdeeds or unlawfulness are not posted on PGE Act-related department web pages, including its Environmental Register, out of concern that such publication could create risk for Government, and/or that the documents contain irrelevant material.
- Government-authored and contracted third party-authored reports related to the PGE Act are reviewed before posting online for veracity, correctness, relevance, to avoid disclosure of commercial in confidence information and to avoid the publication of ‘unsubstantiated allegations of misdeeds or illegality’.

54. The department also provided the following information within its response:

- The public submissions for LCK’s Environmental Impact Report and Statement of Environmental Objectives is the first instance of the Department for Energy and Mining receiving:
  - More than one submission for any one PGE Act related Environmental Impact Report and draft Statement of Environmental Objectives;
  - Submissions relating to PGE Act matters that in parts contained potentially offensive, defamatory, confidential information, and/or posed ‘unsubstantiated allegations of misdeeds or unlawfulness’.
- There are ten Environmental Impact Reports that have been previously submitted under the PGE Act that were classified as medium environmental impact pursuant to section 98 of the PGE Act. Of these 10, during the consultation process, four received single submissions from a member of the public or a NGO. All submitted comments were addressed in the relevant published Environmental Impact Report and available through the Environmental Register.
- The department has found no prior need to redact information in accordance with FOI Act guidelines from submissions lodged as part of the public consultation of Environmental Impact Reports or Statements of Environmental Objectives published on the Environmental Register.

55. I also made enquiries about the assertion that the public submissions document was removed from the Environmental Register on the department’s website for a period of time. The responses from the department included the following information:

- The Department originally published the public submissions document on the Environmental Register on the department’s website on 19 April 2018.
- The submissions published on that day were in their original, unredacted form.
the Director of Engineering Operations at the department became aware on or around 24 April 2018 that a number of submissions contained information that was potentially defamatory or that may pose risk for the department if published, and that those statements had not been redacted prior to publication on the website. This information was relayed to the Executive Director, Energy Resources Division at the department. A decision was made to temporarily take down the public submissions document and redact parts of submissions that the department considered may pose a legal risk if published in full, so that relevant passages could be published on the relevant publicly available web-page.

- some of those submissions were then temporarily taken off the department’s website on or around 24 April 2018
- redacted versions of the submissions were then republished on the department’s website on or around 1 May 2018.

56. I asked the department whether it held any policies about the publication of information or materials on its website, or about the review and/or redaction of information prior to publication on the department’s website. The responses from the department included the following:
- in this instance and in general, the department does not have a formal written guideline or policy document to rely upon
- the department in its current form came into being on 1 July 2018. There is an ongoing process underway to review, audit and endorse best-practice policies across government departments to determine their adequacy and suitability for adoption or adaptation by the department
- at the time of publishing the public submissions document on the department’s website, the Energy Resources Division was a part of the Department of the Premier and Cabinet, but publication of information or materials on public websites was managed in accordance with policies in place under the former Department of State Development (DSD).

57. The department provided my Office with a copy of the DSD policy referred to above. The document titled Department of State Development, Provision of Information Policy, Policy Statement, relevantly states as follows:

The Department of State Development interacts and communicates with external parties and provides information and advice through various mediums of communication which may be used by the external party to make economic decisions.

The Provision of Information Policy promotes a consistent approach in relation to provision information and advice to external parties.

The policy sets out appropriate requirements to ensure DSD’s reputation and financial position is not compromised through possible litigation as a result of financial loss suffered by an external party by relying on information from DSD.

58. I also asked the department if it had sought or received any legal advice concerning the content to be available on the Environmental Register, or the application of the FOI Act to the department’s process of reviewing and redacting information prior to publication. In November 2018, the department provided the following response:

I confirm the Department has not yet received legal advice in relation to content that is required to be available on the environmental register, or the Department’s reliance on the FOI Act to guide the review and redaction of statements within public submissions received for the Leigh Creek Energy project.
Relevant law

_PGE Act and Regulations_

59. Section 6 of the PGE Act provides:

   The Minister has the general administration of this Act.

60. Section 7(1) of the PGE Act provides:

   The Minister may:
   (a) delegate any of the Minister’s powers or functions under this Act to a specified person, or a person holding or acting in a specified office or position; or
   (b) vary or revoke a delegation under this section.

61. Section 98(1) of the PGE Act provides:

   After preparation of an environmental impact report, the Minister must classify the activities to which the report relates as-
   (a) low impact activities; or
   (b) medium impact activities; or
   (c) high impact activities.

62. Section 99(1) of the PGE Act provides:

   A statement of environmental objectives for regulated activities is to be prepared in accordance with the requirements of the regulations -
   (a) for low impact or medium impact activities - on the basis of an environmental impact report...

63. Section 102(1) of the PGE Act provides:

   When a statement (or revised statement) of environmental objectives has been prepared for medium impact activities, the Minister must, if satisfied that the statement (or revised statement) is an acceptable basis for public consultation, publish a notice in a newspaper circulating generally throughout the State—
   (a) stating that the relevant environmental impact report and the proposed statement of environmental objectives may be inspected at a nominated address or a copy may be obtained from that address; and
   (b) inviting submissions from interested members of the public on the environmental impact report and on the subject matter of the proposed statement (or revised statement) of environmental objectives within a period ending on a date (the closing date for submissions) at least 30 business days after publication of the notice.

64. Section 102(3) of the PGE Act provides:

   Copies of written submissions made in response to an invitation under this section are to be kept available for inspection at the Minister's public office.

65. Section 106 of the PGE Act provides:

   (1) The Minister must maintain an environmental register.

   (2) The register must contain—
   (a) a copy of every environmental impact report prepared for the purposes of this Act; and
   (b) a copy of the current criteria for the classification of regulated activities; and
   (c) a copy of every classification of regulated activities made by the Minister under this Part; and
(d) a copy of every current statement (or revised statement) of environmental objectives approved under this Act and a copy of the environmental impact report on which the statement is based; and

(e) a copy of every environmental impact assessment affecting regulated activities under the Development Act 1993; and

(f) a copy of every report provided under reporting obligations imposed by a statement of environmental objectives.

66. Section 107(1) of the PGE Act provides:

The environmental register is to be available for inspection, without fee, during ordinary office hours at a public office, or public offices, determined by the Minister.

67. Section 107(3) of the PGE Act provides:

The Minister must ensure that the environmental register can be inspected at the department's website.

68. Regulation 12(7) of the PGE Regulations provides:

A copy of written submissions made to the Minister in response to an invitation under section 102 of the Act…must be included on the environmental register.

69. Petroleum and Geothermal Energy Act 2000 Delegation under Section 7(1)(a), dated 31 March 2017 provided the following:

I, TOM KOUTSANTONIS, Minister for Mineral Resources and Energy in the State of South Australia, under Section 7(1)(a) of the Act, do hereby delegate with effect from 1 April 2017, to the persons who, from time to time hold, occupy or perform the following positions, Ministerial powers or functions pursuant to the following Sections and Regulations and the power of sub-delegation pursuant to Section 7(2) of the Act:

To the Chief Executive, Department of the Premier and Cabinet.
To the Deputy Chief Executive, Department of the Premier and Cabinet.
To the Executive Director, Energy Resources Division, Department of the Premier and Action.

Petroleum and Geothermal Energy Action 2000 - all sections except 35(2), 49(1), 49(2), 52,55(1), 55(3), 55(6), 55(7), 55(9), 111(2), 125(4), 126(1), 126(4), 127(1), 127(2) and 127(3).

Regulation under the Petroleum and Geothermal Energy Act 2000 - all regulations.

...
71. Section 3 of the FOI Act provides:

3-Objects
(1) The objects of this Act are, consistently with the principle of Executive Government's responsibility to parliament-
   (a) to promote openness in government and accountability of Ministers of the Crown and other government agencies and thereby to enhance respect for the law and further the good government of the State; and
   (b) to facilitate more effective participation by members of the public in the processes involved in the making and administration of laws and policies.

(2) The means by which it is intended to achieve these objects are as follows:
   (a) Ensuring that information concerning the operations of government (including, in particular, information concerning the rules and practices followed by government in its dealings with members of the public) is readily available to members of the public and to Members of Parliament; and
   (b) Conferring on each member of the public and on Members of Parliament a legally enforceable right to be given access to documents held by government, subject only to such restrictions as are consistent with the public interest (including maintenance of the effective conduct of public affairs through the free and frank expression of opinions) and the preservation of personal privacy; and
   (c) Enabling each member of the public to apply for the amendment of such government records concerning his or her personal affairs as are incomplete incorrect, out-of-date or misleading.

(3) Nothing in this Act is intended to prevent or discourage the publication of information, the giving of access to documents or the amendment of records otherwise than under this Act if it is proper and reasonable to do so or if it is permitted or required by or under any other Act or law.

72. Section 20(1)(a) of the FOI Act provides:

20-Refusal of access
(1) An agency may refuse access to a document-
   (a) if it is an exempt document

73. Schedule 1, clauses 6(1) and 6(2) of the FOI Act provides:

6-Documents affecting personal affairs
(1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).
(2) A document is an exempt document if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) the truth of which has not been established by judicial process and the disclosure of which would be unreasonable.

Whether the department's application of the FOI Act exemption provisions to redact the complainant's submission on the Environmental Impact Report and Statement of Environmental Objectives, prior to publishing on the Environmental Register on the department's website, was a mistake of law

74. Section 106(1) of the PGE Act places an obligation on the Minister to maintain an Environmental Register.

75. The Minister's authority and responsibilities under the PGE Act have been delegated to the Chief Executive of the department and the Chief Executive Officer of the Energy Resources Division of the department.
76. Under section 107(3) of the PGE Act, the Minister (or their delegate) must ensure that the Environmental Register can be inspected at the department’s website. The inclusion of the word “must” within section 107(3) suggests that this is a mandatory obligation.

77. Regulation 12(7) of the PGE Regulations requires that a copy of written submissions made to the Minister, in response to an invitation for consultation under section 102 of the PGE Act, must be included on the Environmental Register.

78. The inclusion of the word “must” within regulation 12(7) suggests that this is a mandatory requirement. The regulation does not state in what manner that information is to be included, but merely that the information is required to be included on the Environmental Register.

79. Read collectively, section 107(3) of the PGE Act and Regulation 12(7) of the PGE Regulations required all written submissions that were made to the Minister, during the consultation period of LCK’s Environmental Impact Report and Statement of Environmental Objectives, to be included on the Environmental Register on the department’s website.

80. The PGE Act and PGE Regulations do not appear to suggest that the Minister (or their delegate) can derogate from the requirement to ensure that the Environmental Register at the department’s website is available for inspection. Nor does there appear to be provision within the PGE Act or PGE Regulations for the Minister (or delegate) to determine what information (that would be available within a paper-form version of the Environmental Register) is to appear on the department’s website.

81. At the time of sending my provisional report to the parties, the version of the complainant’s submission that appeared on the Environmental Register, on the department’s website, had been significantly altered from the original document. The majority of the information within the document that was submitted by the complainant was not present, without any explanation for this absence. This suggested that the department published an incomplete copy of the complainant’s submission.

82. At that stage, the department had advised my Office that it applied the exemptions listed within Schedule 1 to the FOI Act to review and redact the submissions that the Minister had received from the public, prior to publishing those submissions on the Environmental Register on the department’s website.

83. The purpose of the FOI Act is stated as:

An Act to provide for public access to official documents and records; to provide for the correction of public documents and records in appropriate cases; and for other purposes.

84. The FOI Act details the rights of an individual to be given access to documents or information that is held by a South Australian government agency, and how an individual may submit an application to South Australian government agencies to obtain information held by that agency. There are various instances where there may be a public interest to refuse access to information to an application; those exemptions are detailed within Schedule 1 to the FOI Act.

85. The objects of the FOI Act are provided in section 3 of that Act. Of most significance, section 3(3) of the FOI Act states:

3) Nothing in this Act is intended to prevent or discourage the publication of information, the giving of access to documents or the amendment of records otherwise than under this Act if it is proper and reasonable to do so or if it is permitted or required by or under any other Act or law.
86. The FOI Act is not intended to act as a ‘veil’ for government departments to conceal information from the public, for which the public has a legal right of access. Further, the FOI Act does not prevent the voluntary disclosure of information even where exemptions may apply.

87. The department is required by law to include, on the Environmental Register, all written submissions that are received by the Minister on an invitation for comment on an Environmental Impact Report and Statement of Environmental Objectives under section 102 of the PGE Act. The department is also required by law to ensure that the Environmental Register is available for inspection on the department’s website.

88. I consider that the use of the FOI Act by the department, as a mechanism to prevent public access to information, is not only contrary to the objects and purpose of the FOI Act, but is also beyond the scope of that Act, and contrary to the requirements of the PGE Act.

89. In addition to the above, the redacted version of the public submissions document did not clearly detail what the department had removed from the document prior to publication on its website, nor had the department explained that it had applied the FOI Act exemptions to remove information prior to publication. As there was no indication that certain information had been deliberately removed prior to publication online, it would not have been possible for the public to be aware that some information received as part of the submission process was not available. It was also not apparent that an unredacted version of that document was available upon request.

90. In my provisional report, I also noted that the disclaimer that was previously included on the department’s website indicated that some information may have been redacted to protect the public’s private information, but did not suggest that the department also removed information for other reasons.

91. I accept that the department held genuine concerns about publishing personal details about members of the public on its website. To the extent that this extended to personal information of the person making the submission (i.e. as opposed to third parties), this may have been able to be addressed by including a disclaimer within the invitation for submissions that any submission provided is required to be published in full on the department’s website.

92. Of additional concern, it appears that the department suggested that it had used discretion to discern what information is deemed ‘appropriate’ for publication on its website. I also note that in one submission from the department, it raised a concern about publishing material that is irrelevant. There is no discretion afforded to the department in this regard.

93. The process of discerning what information is of relevance, or should be included, detracts from the transparency of the process, and the purpose of the legislative provisions under both the PGE Act and the FOI Act.

94. The department had also indicated that it relied on the Provision of Information Policy, Policy Statement of the Department of State Development to guide its decision to redact information from the public submissions document. I do not consider that this policy statement would be intended to prevent a government department from complying with its obligations under legislation to ensure that certain information is available for inspection on a public register on the department’s website.

95. In light of the above, I consider that the department’s application of the FOI Act exemptions to justify the redaction and/or removal of the complainant’s submission on
the Environmental Impact Report and the Statement of Environmental Objectives appears to have been based on a mistake of law.

96. I also note that the department had advised that it relied on the FOI Act exemptions as a guiding principle for reviewing documents prior to publishing information on its Environmental Register on the department’s website. Noting my considerations above, I consider that this broader application of the FOI Act exemptions to materials published on the Environmental Register on the department’s website also appears to have been based on a mistake of law.

97. I consider that the department appears to have acted in good faith in attempting to minimise risk associated with the publication of information on its website; I acknowledge that there may be other legislation which creates overriding legal restrictions on publication of particular information. I have not considered in any detail whether there was some legitimate basis for making redactions in relation to the complainant’s submissions (for example, there may be circumstances in which the requirements in the PGE Act and PGE Regulations must be read as being subject to other legislative requirements).

98. Further, regardless of other potential legal restrictions, I note that submissions may include sensitive personal information relating to third parties. While there is no privacy legislation that applies to South Australia, I acknowledge that sensitivity about personal information is appropriate for an agency.

99. I accept the department’s submission that it has not generally had to deal with this issue previously. That said, in my view, the department (as well as other agencies with similar requirements) need to have a clear, transparent and consistent process to manage such issues.

Opinion

I consider that by applying the FOI Act exemptions to redact and/or remove parts of the complainant’s submission prior to publishing on the Environmental Register on the department’s website, the department misapplied the FOI Act to information that is required under the PGE Act and PGE Regulations to be available on a public register, and on this basis, the department acted in a manner that appears to have been based on a mistake of law.

In addition, I consider that by applying the FOI Act more broadly to redact information when publishing information and documents on the department’s website, the department acted in a manner that appears to have been based on a mistake of law.

In my provisional report I foreshadowed the following recommendations under section 25(2) of the Ombudsman Act:

1. That the department seek legal advice on its obligations to record information on the Environmental Register including the interaction of the PGE Act and PGE Regulations and any other relevant legislation that may restrict the publishing of information.

2. That the department seek legal advice on how to manage potentially sensitive personal information in submissions that falls outside relevant legislative restrictions.

3. That the department review the information currently available on the Environmental Register in light of its legal advice to ensure that the department’s website is compliant with the PGE Act and PGE Regulations and publish all information required to be
recorded on the Environmental Register (subject to any other relevant restrictions or sensitivity that may apply to particular information).

4. That the department create a procedure or guideline on how to publish information that is required under the PGE Act and PGE Regulations to be made available on the Environmental Register on the department’s website.

5. That the department remind all relevant staff of their obligations to record information on the Environmental Register in accordance with the department’s legal obligations.

I acknowledge that the department has now taken steps to publish an unredacted version of the public submissions document on the Environmental Register on the department’s website.

I also note that the department’s response to my provisional report included details of the actions taken by the department to date to either implement or commence implementing the recommendations foreshadowed in my provisional report.

The department’s responses to each of my foreshadowed recommended included the following:

Recommendation One:

Subsequent to answering the Ombudsman enquiry dated 16 November 2018, the department has considered its obligations to record information on the Environmental Register, and the practice of relying upon the FOI Act to generally guide the department on publication of information within submissions made pursuant to s 102 of the PGE Act. The department has not considered the interaction of other potentially relevant legislation that may restrict publication of information in specific cases. However, the department is mindful of the need to consider other legislation that may restrict publication of information in a public submission process under s 102 of the PGE Act, and will consider such matters on a case-by-case basis as [sic] required.

Recommendation two:

The Department is currently considering options for addressing and/or minimising (to the extent permissible) the risks of personal or sensitive information being disclosed when taking steps to comply with relevant requirements under the PGE Act and Regulations, as well as ways to reduce the possibility of sensitive personal information being provided with a s 102 submission and/or published on the Environmental Register. The department is now also mindful of the need to consider how to manage the publication of submissions made for the purposes of s 102 of the PGE Act where personal or sensitive information has been included on a case by case basis as required.

The Department is developing a draft internal procedure for the Department’s use, and a draft guide. These are intended to provide guidance to Department staff and those persons wishing to make a submission in the public consultation process, and to alert persons to the way in which submissions are managed and to reduce the possibility of sensitive personal information being provided within a section 102 submission, or published on the Environmental Register.

In summary, for sensitive information it is proposed that persons are advised to omit personal information from their formal submission, and that the submission is made in a separate, standalone document which can be published. The intention of doing so is that sensitive personal information that the person making the submission would wish to remain private, is not disclosed on their formal submission.

The Department is considering options to manage republication by the Department of material that is offensive or otherwise inappropriate.
Recommendation three:

The department has completed your recommended review and its findings have been implemented.

Reviews of the Environmental Register has been completed to ensure compliance with the PGE Act and PGE Regulations for the written submissions that are the subject of the concerns raised. All written submissions received in response to the Leigh Creek Energy Project Proposal have been published on the Environmental Register in full.

The Statement of Environmental Objectives (SEO) and Environmental Impact Report (EIR) consultation process for the Leigh Creek Underground Coal Gasification project, is the only occasion the Department is aware of where public submissions were received which contained substance that the Department considered defamatory, offensive or otherwise inappropriate comment. The Department is currently reviewing the Environmental Register in light of the legal advice for prior projects, to ensure compliance with the requirement to publish all written submissions received.

Recommendation four:

Development of the guideline is in progress and will be published on DEM’s relevant web-pages once endorsed.

Recommendation five:

The department has reminded all relevant staff of their obligations to record in (sic) and will also be incorporated into the induction process for new (relevant) staff.

While I commend the steps taken by the department to date, my view remains that it is necessary to make recommendations and monitor the implementation of those recommendations accordingly.

Having considered the above, I make the following amended recommendations:

1. That the department complete its internal procedure and guide to manage potentially sensitive information in submissions received under the PGE Act and PGE regulations that may fall outside relevant legislative restrictions.

2. That the department complete its review of the information currently available on the Environmental Register, to ensure that the department’s website is compliant with the PGE Act and PGE Regulations and publish all information required to be recorded on the Environmental Register (subject to any other relevant restrictions or sensitivity that may apply to particular information).

3. That the department create a procedure or guideline on how to publish information that is required under the PGE Act and PGE Regulations to be made available on the Environmental Register on the department’s website.

In further reporting to me on my recommendations, I expect that the department will:

- provide me with a copy of the internal procedure and guide that is noted within recommendation one
- confirm when it has completed its review of the Environmental Register for prior projects to ensure compliance with the requirement to publish all information required to be recorded on the Environmental Register (subject to any other relevant restrictions or sensitivity that may apply to particular information)
- provide me with a copy of the guideline developed to address recommendation three.
Whether the department’s removal of the public’s submissions from the Environmental Register on the department’s website, between 24 April 2018 and 1 May 2018, was a mistake of law.

100. The department advised my Office that on 24 April 2018, it removed the public submissions document from the department’s website. The department stated that some of the submissions within the public submissions document contained information that the department considered would be ‘exempted material’ under Schedule 1 to the FOI Act.

101. The department subsequently republished the public submissions document on the department’s website after it had made further redactions. Those redactions were made on the basis that the department applied the exemptions within Schedule 1 to the FOI Act.

102. As stated above, I consider that the department is required under the PGE Act and the PGE Regulations to publish the written submissions, that the Minister receives in response to an invitation for public comment on an Environmental Impact Report and Statement of Environmental Objectives under section 102 of the PGE Act, on the Environmental Register.

103. That Environmental Register must be accessible online.

104. The department also advised that between 24 April 2018 and 1 May 2018, an unredacted version of the public’s submissions were available at the Ministers Office. As noted above, the requirement that the Environmental Register be available for inspection of the Minister’s Office does not negate the additional obligations on the Minister (or their delegate) to ensure that this information is also available for inspection on the Environmental Register on the department’s website.

105. Removing the public’s written submissions for a period of time from the Environmental Register meant that those documents were not included on the register as required by legislation.

106. While it is unfortunate that there was a period of time when submissions were not included on the Environmental Register, it appears that the department was motivated by genuine concerns rather than any improper motive.

107. I further note that the period of removal was a matter of seven days only.

108. In all of the circumstances, I do not consider that this issue amounts to a serious failure to meet a proper standard of public administration that warrants further investigation by my Office. Further, I consider that the fundamental error in the department’s process has been sufficiently addressed in this report in regard to issue one.

109. In light of this, I consider that further investigation of this particular issue is not necessary or justifiable for the purposes of section 17(2)(d) of the Ombudsman Act.

Opinion

In light of the above, my view is that continuing to investigate this issue is unnecessary or unjustifiable within the meaning of section 17(2)(d) of the Ombudsman Act.
Summary and Recommendations

Issue One

In light of the above, my final view is that:

- by applying the FOI Act exemptions to redact and/or remove parts of the complainant’s submission prior to publishing on the Environmental Register on the department’s website, the department misapplied the FOI Act to information that is required under the PGE Act and PGE Regulations to be available on a public register, and on this basis, the department acted in a manner that appears to have been based on a mistake of law
- by applying the FOI Act more broadly to redact information when publishing information and documents on the department’s website, the department acted in a manner that appears to have been based on a mistake of law.

To remedy the above, I make the following recommendations under section 25(2) of the Ombudsman Act:

1. That the department complete its internal procedure and guide to manage potentially sensitive information in submissions received under the PGE Act and PGE regulations that may fall outside relevant legislative restrictions.

2. That the department complete its review of the information currently available on the Environmental Register, to ensure that the department’s website is compliant with the PGE Act and PGE Regulations and publish all information required to be recorded on the Environmental Register (subject to any other relevant restrictions or sensitivity that may apply to particular information).

3. That the department create a procedure or guideline on how to publish information that is required under the PGE Act and PGE Regulations to be made available on the Environmental Register on the department’s website.

Issue Two

I consider that continuing to investigate this issue is unnecessary or unjustifiable within the meaning of section 17(2)(d) of the Ombudsman Act.

Final comment

In accordance with section 25(4) of the Ombudsman Act, to the extent that it has not already done so, the department should report to me by 9 April 2020 on what steps have been taken to give effect to the recommendations above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to me.

I have also sent a copy of my report to the Minister for Energy and Mining as required by section 25(3) of the Ombudsman Act 1972.

Wayne Lines
SA OMBUDSMAN

10 January 2020