SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand

President's Message

Decommissioning on the Rise

As a number of offshore oil and gas fields in the Asia Pacific region have reached or are soon to reach end of life, decommissioning is becoming an increasingly important area of focus for governments and titleholders alike. Decommissioning involves plugging wells that have reached end of their economic viability and safe disposal of the infrastructure and equipment used in the production phase. It is an immense task and raises a vast number of considerations, including legal, scientific, environmental, safety and social to name a few.

On 17 January 2018, the Australian Government issued the *"Offshore Petroleum Decommissioning Guideline"* (Guideline). The aim of the Guideline is to de-mystify decommissioning obligations: to aid titleholders to better understand the Australian Commonwealth regulatory regime and to better plan for and implement a decommissioning project.

This brief note provides a high level overview of Australia's current regulatory framework and touches briefly on what lessons Australia can learn from other, more experienced decommissioning jurisdictions.

Australia's Legal Framework

The default position in Australia is that titleholders should remove all structures, equipment and property that are not used in connection with their operations (s 572(3) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (OPGGSA)). The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) or the responsible Commonwealth Minister can however permit a titleholder to only partially remove the structure or to undertake its "in situ" disposal.

It is worth noting that the federal regulatory framework does not end with the OPGGSA – rather other Acts are also relevant to decommissioning, such as the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Cth), the *Environment Protection (Sea Dumping) Act 1981* (Cth) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). There is also State legislation that is relevant, such as the *Petroleum Act 1936* (WA), the *Petroleum (Submerged Lands) Act 1982* (WA) and the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

In this complex and sometimes confusing labyrinth of statutes and regulations, the Guideline is a welcome clarifier of the interaction and operation of the various components of the Commonwealth regime for offshore decommissioning. The Guideline helpfully sets out the Commonwealth's decommissioning policies and the regulatory approvals required for decommissioning operations.

Despite the significant advance represented by the Guideline, it remains the case that Australia currently lacks a single, comprehensive decommissioning regime. Now may be an ideal time for Australia to show innovative leadership by developing a regulatory regime that is clear, comprehensive and flexible. If it chooses to take up this challenge, Australia will be aided by the options adopted by more experienced decommissioning jurisdictions. Some examples include:

- Norway — the Norwegian *Petroleum Act* requires licensees to submit a decommissioning plan two to five years before their production license expires. Could Australia require titleholders to submit a decommissioning plan when applying for a petroleum title, which is to be reviewed and updated regularly?

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- the UK — the UK *Petroleum Act 1998* requires an abandonment program to include provision for continuing maintenance if it is proposed that an installation or pipeline not be wholly removed. Could Australia require that an ongoing maintenance plan accompany a decommissioning plan if the titleholder proposes leaving the structure wholly or partially in situ?
- the USA — the United States have implemented alternatives to total removal, for example, converting the facility into an artificial reef (30 CFR § 250.1730) or re-purposing structures for energy-related or marine-related uses (s 388(a) of the Energy Policy Act of 2005). Possible uses include offshore aquaculture, research and education or renewable energy production. Could Australia move away from its default position of total removal and consider implementing some of these alternatives?

To minimise its imminent decommissioning liabilities and maximise its opportunities, Australia could consider how best to achieve a comprehensive and cohesive decommissioning regime, dealing with the various stakeholder interests and taking into account the hazards (legal, environmental, and safety to name a few), the risks and costs of decommissioning.

By Dr Pat Saraceni and Shang-Wen Chien of Clifford Chance (Australia)

Pat Saraceni
President, MLAANZ
Director, Litigation and Dispute Resolution, Clifford Chance
Level 7, 190 St Georges Terrace
Perth, Western Australia, 6000
+61 8 9262 5524, +61 419 784 206
pat.saraceni@cliffordchance.com

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