

NEW WESTERN AUSTRALIAN GUIDELINE ON DECOMMISSIONING

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Legal Briefings - By **Stuart Barrymore and Alexander Butler**

In the [Petroleum Decommissioning Guideline](#) published on 13 November 2017 (**Guideline**),¹ the Department of Mines, Industry Regulation and Safety (**DMIRS**) seeks to clarify how the government of Western Australia will approach the decommissioning of onshore and offshore registered petroleum assets in Western Australia.

GLOBAL CONTEXT

Decommissioning of offshore oil and gas infrastructure has emerged as an issue of global significance. Similar to many other countries, Australia is currently assessing whether its existing regulatory systems are appropriate to manage the upcoming large scale decommissioning works, including the appropriate way to regulate end of field life activity and the removal of offshore oil and gas installations and associated pipelines.² The challenges surrounding the planning and execution of decommissioning projects and the public interest in these activities (as well as their cost) are now well recognised.

Australia's decommissioning laws have a basis in the Geneva Convention on the Continental Shelf (1958), which stipulated complete removal of disused marine infrastructure. Since then, international law and institutions have moved forward and the UN Convention on the Law of the Sea (1982) provided that decisions to remove installations or structures should take into account generally accepted international standards as established by the competent international organisation. It is generally accepted that the competent international organisation is the International Maritime Organisation, which in 1989 issued a guideline³ that recognised that certain structures may be left in place, for example, where those structures serve another use or where there is some other reasonable justification for in situ disposal.⁴

As the Guideline points out, in many instances decommissioning work will need to consider cross jurisdictional activities with production facilities being located in Australia's Commonwealth offshore waters with complementary activities to be carried out in Western Australia, including the final disposition of material. Prior to the Guideline, there was little formal precedent or guidance to determine the nature of the operation or the preferred planning, review, assessment and approval process. We note that considerable work is underway at a Commonwealth level with development of a discussion paper on decommissioning of facilities expected to be published in 2018.

DECOMMISSIONING IN WESTERN AUSTRALIA

In Western Australian, offshore installations are generally smaller in size than those in deeper waters (such as those in the North Sea or the major gas production installations offshore Australia). Some fields have been decommissioned providing some precedential indications.⁵ Others are identified as approaching the end of their life.

Petroleum activities in Western Australia are primarily regulated by the *Petroleum and Geothermal Energy Act 1967* (WA) and the *Petroleum Pipelines Act 1969* (WA) and in its coastal areas the *Petroleum (Submerged Lands) Act 1982* (WA) as well as by the associated regulations. Importantly, the Guideline confirms the key regulatory planning instrument for a decommissioning operation, Well Management Plans, Field Management Plans (**FMP**), Environmental Plans, and Safety Case or Safety Management Systems.

Considerable similarities are now evident with how decommissioning will be assessed, implemented and regulated within the Western Australian territorial waters under the Guideline and how decommissioning is regulated in Commonwealth waters.

The Guideline outlines the approach that will be taken by the Western Australian government agencies in overseeing decommissioning work. Specifically, the Guidelines provides that:

- The DMIRS is the key point of contact for titleholders and will facilitate meetings with other Government stakeholders.
- Each operation will be assessed on a 'case-by-case' basis - there is not a 'one size fits all' approach.
- The starting position is total removal, though titleholders can seek less than complete removal provided they "demonstrate that all feasible decommissioning and removal options have been considered and a comparative assessment made".
- A risk assessment based determination is the appropriate decommissioning approach.
- In addition to environment and safety considerations, the Guideline notes that the DMIRS is not limited as to what it can consider relevant in assessing a proposal, including the

cost.

- The importance of early planning is also recognised. The Guideline emphasises that operators will be required to show that they have "thoroughly" researched production enhancement technologies and that there are no other viable options than decommissioning. Other factors that will be evaluated include the "complexity and associated technical risk, risks to personnel, environmental impact, effect on safety of navigation, other users, and full social and economic considerations."
- The Guideline acknowledges that an FMP seeks to maximise petroleum recovery, and the risks associated with the stranding of resources, acknowledging that the State's "ultimate goal in field management is to maximise the recovery of resources".
- Specific mention is made of "rigs to reef" projects - the idea of converting decommissioned offshore petroleum facilities into artificial reefs either in-situ, or in another location. This concept is popular in the Gulf of Mexico and getting increasing attention in the UKCS.⁶ However the Guideline remains equivocal referencing ongoing scientific research, which has "complex implications", and stating that any such decommissioning plan would need to be "supported by in-depth research studies" and the assessment of future pollution risks and ultimate liabilities of continued maintenance of the facility. This remains a work in progress.
- The Guideline states that for offshore decommissioning, "pipelines and associated equipment on the seabed are normally required to be removed and taken onshore for disposal or recycling."
- The Guideline confirms that all liabilities "pertaining to decommissioning obligations" will transfer with the ownership of the production licence.
- Following decommissioning there will be a period of monitoring at the titleholders expense (to be determined on a case-by-case basis) before titleholders can surrender the licence.

TAKEAWAYS

- It is encouraging to see the increasing alignment of approach between the Commonwealth and the State of Western Australia as far as the planning and submission of decommissioning programs and the apparent acceptance of a risk based assessment to determine what is the appropriate decommissioning option.
- The Guidelines emphasis on a base position of complete removal is at odds with emerging trends though, noting that in the offshore areas regulated by Western Australia, the depths are typically shallow, the arguments in favour of complete removal

will be more powerful.

- The Guideline leaves open a door to approval of decommissioning plans that do not extend to complete removal. While this arguably allows titleholders to determine the most efficient and sensible approach, due to the case-by-case approach being taken by the DMIRS, it does nothing to address the lack of certainty as to what will be required by government to meet decommissioning obligations.
- In places the Guideline is inconsistent, for example references in the Guideline as to how pipelines will be approached swing between complete removal and an acknowledgement that removal may lead to greater detrimental impacts than leaving it in place. “[i]n some circumstances, the removal of property may be shown to have greater detrimental impact than leaving it in place. The removal of pipelines may present such circumstances.” Additionally, we have some doubt about the breadth of the complete removal statement as it applies to pipelines as our understanding is that major pipelines are often left in situ especially as the disturbance associated with their removal can be extensive and the cost of removal significantly outweighs any environmental benefit.
- Most trunk pipelines will involve access through shallow coastal waters with a shore crossing before reaching land facilities. Extensive studies and public consultations are required of the likely impacts before the construction of such pipelines are permitted and conversely very similar issues will present themselves in connection with their complete removal. The potential significant economic consequence must be recognised,⁷ including that these pipelines could be important infrastructure that can be utilised for other purposes. The cost benefit analysis in favour of complete removal of these pipelines may not be easily met.
- Titleholders hoping to pursue “rigs to reef” can take some comfort that the DMIRS has now at least recognised that such a program may be appropriate where it is supported by the necessary scientific studies.
- Unsurprisingly, monitoring is mentioned and this is in line with the increasing scientific approach taken for these activities. The Guideline notes that the monitoring requirements will be assessed on a case-by-case basis and required for ‘multiple-years’ with ‘annual reporting’. It is not readily apparent under what legislative instrument the monitoring obligations will occur, although we note the rather curious reference to a pipeline licence continuing if a pipeline is not removed. If this position prevails then monitoring obligations could be imposed under that licence.

CONCLUSION

The Guideline represents an important step for the West Australian government in establishing a comprehensive regulatory approach to decommissioning. There has been considerable activity at a Commonwealth level and a discussion paper on decommissioning drawing on comparative experience around the globe is expected in the first half of 2018. While it is not likely that legislation will emerge quickly after the publication of that discussion paper, it can be anticipated that this will generate a fresh debate including at State levels and it would not surprise us to see the Guideline updated and brought into line with the ultimate Commonwealth position. There are those in industry and government who favour the flexibility that is offered by the general regime currently in place, however, in our view, it would be disappointing if the extensive analysis and energy of the numerous stakeholders who will have had input into these reviews does not lead to a serious consideration of whether new laws are needed to reflect the challenges posed by and society's expectations for the 21st century rather than in keeping with an international treaty agreed in 1958.

ENDNOTES

1. Department of Mines, Industry Regulation and Safety, *Petroleum Decommissioning Guideline*, 30 October 2017.
2. The scale of this task is immense. By way of example, in 2015 £1.1 billion was spent on decommissioning in the UK and £1 billion in Norway and it is estimated that decommissioning on the UK Continental Shelf from 2016 until 2025 represents a £17.6 billion opportunity - Oil & Gas UK, *Decommissioning Insight 2016*.
3. Maritime Safety Committee of the International Maritime Organisation, *The Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone* (1989) art 3.4.1 and 3.5.
4. Due consideration has been given to navigation, rate of deterioration, risk of structural movement and environmental impact costs, technical feasibility, risks of injury.
5. For example, the decommissioning of the Thevenard Island. Rick Wilkinson, *Chevron group plans decommissioning of Thevenard Island facilities*, Oil and Gas Journal, 16 April 2015.
6. See for example: Ed Davey and Jonathon Porritt, *Flexible approach to decommissioning can pay off for everybody*, The Times, 23 January 2017; John Hughes, *Could old oil and gas rigs in the North Sea help marine life?*, The Scottish Wildlife Trust, 28 May 2017.
7. This cost has been acknowledged in other jurisdictions. See for example, Oil & Gas UK, *Decommissioning Insight <2016*.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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