W+K UPDATE

A new frontier of risk – offshore oil and gas asset decommissi-oning in Australia

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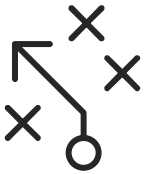
At a glance

- Earlier this year, a new 'trailing liability' regime was introduced with amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth).
- These changes ensure former titleholders carry a liability, even if their title has been disposed of, surrendered or terminated.
- There is a predicted estimated liability of USD $40.5 billion for well plugging, abandonment and pipeline removal in Australia's decommissioning portfolio.
- Effectively managing the associated decommissioning risks will be critical for current and former asset holders and their insurers.



A new frontier of risk

Insurers in the oil and gas sectors will be aware of important changes in the decommissioning space, which could impact the management of long tail remediation liabilities.

Recent statutory amendments create a potential new frontier of risk for insureds by expanding the mechanisms for how entities associated with decommissioned assets can be exposed to unpredictable liability.

In this new environment, insurers may be asked to pick up more risk than they bargained for. Post-closure liabilities attaching to decommissioned assets are a relatively untested risk in the insurance market and insurers in this sector will be careful to robustly test disclosure regimes to understand whether they are insuring entities carrying long-term exposures.

End-of-life issues

While many international offshore oil and gas assets are reaching end-of-life status, Australian projects are in a less mature operational cycle.

While most of the documented risks associated with offshore resources highlight the unique, and at times catastrophic, liabilities for asset holders and insurers during the construction and operational phases, the risks associated with decommissioning assets are also significant. They include well pollution, loss of existing property, dropped objects, environmental and marine exposures, and ongoing financial exposures that arise during and after the decommissioning phase.

Australian oil and gas assets are young relative to comparable fixtures in Europe, so the local market has been less exposed to decommissioning risks for local end-of-life assets – but that may be about to change. The Centre of Decommissioning Australia predicts Australia's decommissioning portfolio will increase substantially over the next few decades, with a predicted estimated liability of USD $40.5 billion for well plugging, abandonment and pipeline removal.

The new ‘trailing liability’ regime

To recalibrate the cost and liability associated with decommissioning, the Commonwealth government amended the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (the Act). These changes, which became effective on 2 March 2022, ensure former titleholders carry a liability, even if their title has been disposed of, surrendered or terminated.

The new ‘trailing liability’ regime also provides a wider scope for the regulator to issue a remedial direction to ‘related persons’ associated with the title, meaning the regulator can pursue those who acted jointly with the current or former titleholder, those who derive a significant benefit from the title, or those who have the ability to influence activities under the title.

In real terms, the regulator can chase down entities associated with the asset and hand them a bill for the clean-up, even if they were not the direct owner. Where the former titleholder has ceased to exist, the new regime makes it possible to direct another company within the corporate group to undertake the remediation.

An opaque disclosure protocol could see insurers in the oil and gas sector unintentionally offering cover to a ‘holding’ insured that knowingly carries an expensive corporate trailing liability.

Under the Act, the regulator can issue a remedial direction to carry out decommissioning works to titleholders and related persons, requiring the:

- removal of property
- plugging or closing of wells
- conservation and protection of natural resources, and
- making good of damage to the seabed or subsoil.

This statutory framework is designed to ensure that property that is no longer in operation within the title area is removed completely, and that any damage to the seabed or subsoil is rectified and made good. These activities are, of course, risky and costly exercises.

Strategies for asset holders and their insurers

For current and former asset holders, decommissioning risks can be better managed by contractually allocating liability to specialist contractors and undertaking transparent consultation with the regulator.

Insurers can protect their interests by insisting on comprehensive disclosure protocols, appropriate policy limits, reviewing (and perhaps restricting) insured entities captured by decommissioning activities, and ensuring specific risks around statutory trailing expenses are managed inside purpose-built and capped endorsements.

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