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Submission - Roadmap to establish an Australian decommissioning industry for offshore oil and gas: issues paper

Australasian Centre for Corporate Responsibility

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On behalf of the Australasian Centre for Corporate Responsibility

Introduction

The Australasian Centre for Corporate Responsibility (ACCR) is pleased to participate in the *Roadmap to establish an Australian decommissioning industry for offshore oil and gas* consultation process.

ACCR is a philanthropically-funded, not-for-profit, research and shareholder advocacy organisation, focused on the investment risks and opportunities brought about by the global energy transition. We closely monitor how climate-related risks are being managed by a selection of heavy-emitting companies, and we enable institutional investors to engage effectively with these companies.

In January 2023, ACCR published a report, *Offshore oil and gas asset decommissioning,*[1] which summarised some of the main issues and risks associated with Australia's current and upcoming decommissioning exercise. It also reviewed how decommissioning obligations are currently being accounted for by Australia's listed offshore oil and gas operators, and made recommendations for future reporting and action by companies.

As we noted in that report, decommissioning of offshore assets is a material, complex, and immediate challenge for many Australian oil and gas companies. Inexperience, uncertain timelines and costs, environmental and social licence risks, regulatory scrutiny and energy transition pressures are all factors affecting Australian companies' decommissioning plans, and estimated costs.

Investors and other stakeholders have raised concerns about the ability of oil and gas companies to effectively decommission infrastructure in a safe, timely and responsible way. In 2022, ACCR filed resolutions with two major Australian oil and gas companies, calling for transparency and greater disclosure around decommissioning liabilities at a time when a significant number of these companies' assets are at or nearing end of life. At Santos, 15.63% of shareholders supported ACCR's resolution on decommissioning, but the company rejected these calls for enhanced disclosure. At Woodside, 12.06% of shareholders supported ACCR's resolution on decommissioning calling for greater disclosure. Woodside's subsequent merger with BHP Petroleum assets has substantially increased their decommissioning liabilities.

As the fledgling Australian decommissioning industry evolves, it is critically important that operators are transparent about their short, medium and long term plans for decommissioning. Further regulation is needed to ensure greater transparency, disclosure, and public consultation on decommissioning. This is strongly in the interests of industry, shareholders and the public.

[1] Australasian Centre for Corporate Responsibility, 2023, Offshore oil and gas asset decommissioning.

Response

26. How are companies planning for offshore decommissioning activities within the current regulatory regime?

Currently, many operators are not sufficiently planning for future decommissioning activities, and/or not reporting sufficiently on those plans to investors and other stakeholders.

Undoubtedly, public and shareholder scrutiny around company decommissioning activities has increased since the Northern Endeavour fiasco. This is particularly the case for Woodside, whose decision to sell an ageing asset, leaving a 'legacy [of] extensive corrosion' as well as several outstanding regulatory matters,[2] was taken up in the Walker Review. Similarly, it has been discovered that abandoned wells in the Legendre field - originally operated by Woodside on behalf of its other owners Santos Ltd and Apache, but under total control of Santos since 2018 - have been leaking for a decade without any adequate provisioning or action by any of the companies involved.[3] This is another telling case which demonstrates that neither the oil and gas companies, nor the regulators, nor the regulatory regime are adequate to the task ahead for Australia's oil and gas decommissioning.

Our recent analysis found that reporting of present and upcoming decommissioning obligations by Australian operators is generally minimalist, preventing shareholders from obtaining an accurate picture of assets due for decommissioning in the short, medium and long term, and from understanding the primary inputs into assumptions underlying provisioning. This indicates that the current regulatory regime is not fit for purpose, particularly in regards to transparency and company disclosure.

ACCR has advocated for operators to:

- be transparent with shareholders about their infrastructure due for decommissioning over the short, medium and long term.
- carefully comply with existing law, and in particular the principle of 'equal or better environmental outcomes' when deviating from any removal requirements.
- provide timely updates to shareholders around the progress of plans to repurpose infrastructure for CCS, or other activities.
- open all Environmental Plans for decommissioning filed with NOPSEMA for public comment.
- explain the major assumptions underpinning their provisioning, including in terms of the timing of planned activities, in audited Notes to Financial Statements.

ACCR is also concerned about current methods of provisioning by key operators. While a handful of high-level, Australia-wide liability estimates have been conducted, due to the infancy of Australia's decommissioning industry, these have not been benchmarked to actual costs yet.[4] In other overseas jurisdictions, there have been very significant differences between estimated and actual decommissioning costs. Recent analysis of selected offshore oil and gas platform decommissioning projects in the North Sea found that the average actual cost was about 76% more than the estimated cost.[5] This indicates the need for much better provisioning by operators, as well as much greater disclosure to shareholders about the liabilities. The Australian government also needs much more thorough data and estimates than it has at present.

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[2] https://www.industry.gov.au/sites/default/files/2020-09/disclosure-log-20-036.pdf

[3] WA Today, 13 June 2023, Santos wells have been leaking gas into the ocean off WA for a decade.

[4] Centre of Decommissioning Australia, 2021, A Baseline Assessment of Australia's Offshore Oil and Gas Decommissioning Liability, p. 10.

[5] Yi Tan et al., 2021, 'Cost and Environmental Impact Estimation Methodology and Potential Impact Factors in Offshore Oil and Gas Platform Decommissioning: A Review.', Environmental Impact Assessment Review, 87(March): 106536. https://doi.org/10.1016/j.eiar.2020.106536.

In 2022, ACCR filed two shareholder resolutions at Woodside and Santos, calling on each company to disclose more information about:

- onshore and offshore oil and gas infrastructure which is due for decommissioning over the medium term;
- provisions for the decommissioning of this infrastructure and the restoration of sites;
- analysis of the useful life of all assets using different oil and gas demand scenarios, including the IEA Net Zero by 2050 scenario.

These resolutions rallied a significant proportion of shareholders in support, yet the companies' management has not yet provided these disclosures. ACCR anticipates that shareholder understanding and concerns about decommissioning will only grow in the coming years. ACCR recognises that it should not be the responsibility of shareholders to seek these disclosures from companies about decommissioning, and industry-wide improvements are needed.

Currently, ASX-listed operators are making various assumptions about their decommissioning obligations. Assumptions made by two major operators are summarised in Table 1, below. As can be seen, these two companies are continuing to assume that offshore infrastructure equipment can be left in situ, even though this is directly contrary to the legal requirements. Full removal of infrastructure is the 'base case' in Australia, and while deviations may be pursued in particular circumstances and with regulatory approvals in place, NOPSEMA has questioned if operators are properly valuing offshore assets on the basis of full removal.[6] ACCR has made recommendations on these matters in the sections below.

Table 1: ASX-listed operators' provisioning assumptions around offshore infrastructure removal

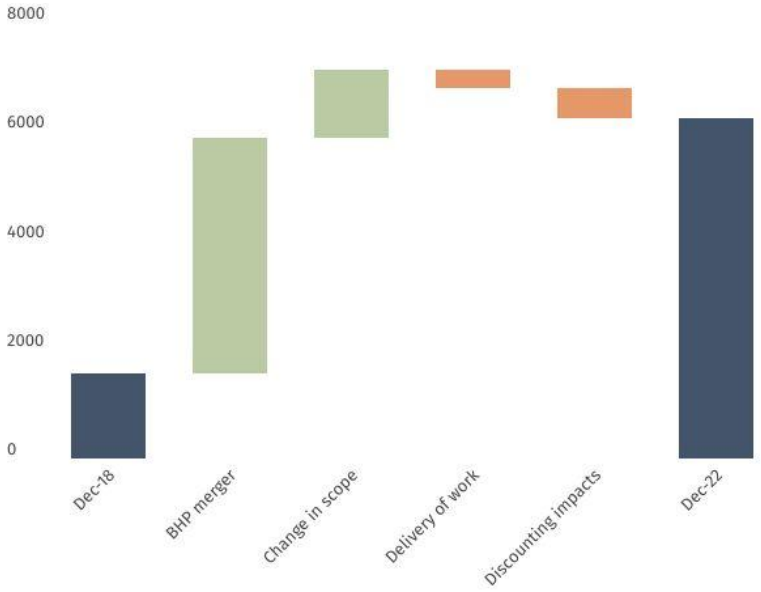
	Annual Report 2021	Annual Report 2022
Woodside Energy Group Ltd (ASX: WDS)	WDS plans to leave 'certain pipelines and infrastructure, parts of offshore platform substructures, and certain subsea infrastructure' in-situ, where regulatory approval can be granted.[7] WDS notes that if it was required to remove 'all, or a substantial portion of' its infrastructure, its provisioning would increase by approximately $300-$500 million, plus extra costs 'related to large diameter trunklines between the offshore platforms and onshore plants', for which the company needs to conduct further assessments.	Woodside no longer includes a sensitivity for full removal of offshore equipment. It does not appear that full removal has been incorporated in the restoration estimates, since the language around leaving some infrastructure in situ remains.[8]
Santos Ltd (ASX: STO)	STO assumes that it may only have to partially remove some offshore infrastructure, 'where the Company believes it will result in better environmental, safety and asset integrity outcomes that will be within regulatory requirements'.[9]	Onshore, provision has been made for the plug and abandonment of all wells and the full removal of production facilities and pipelines. Santos has noted that if it is legally required to remove these major trunklines, then the 'estimated additional cost would result in an increase to the provision of approximately $400-$600 million.[10]

[6] NOPSEMA advisory board, 2020, NOPSEMA advisory board meeting minutes.
[7] Woodside, *Annual Report 2021*, p. 129.
[8] Woodside, *Annual report 2022*, p 139.
[9] Santos, *Annual Report 2021*, p. 94.
[10] Santos, *Annual Report 2022*, pp 96-97.

Case study: Woodside and decommissioning provisioning

Woodside's recent annual reports provide an insight into how decommissioning provisioning is changing. Between Woodside's 2018 and 2022 Annual Reports, its decommissioning liability increased by 360%. The largest contribution to this increase has been the merger with BHP Petroleum's assets.

Figure 1: ***Changes in Woodside's restoration provision from 2018 to 2022 (US$ million)***

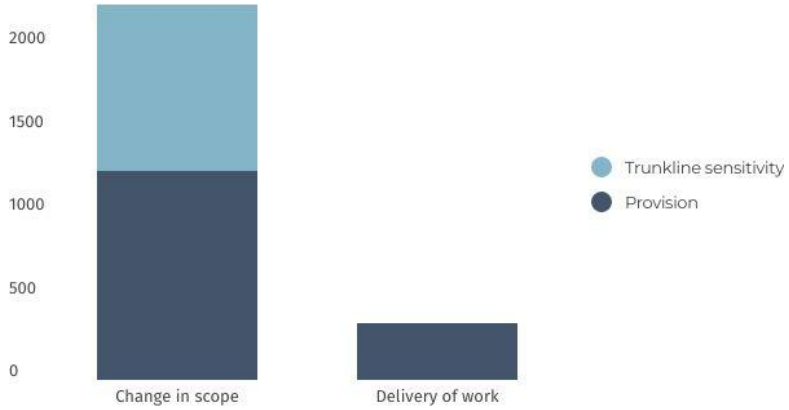


Tellingly however, even excluding the BHP Petroleum merger, the provision has increased. In each year, the change in the provision - due to increased scope and updated cost estimates - has been more than the completion of decommissioning scope. Over the four year period, the scope has increased by $1.3 billion, whilst $0.3 billion of decommissioning scope has been delivered.

Woodside's Annual Reports also note that the cost estimate is not based on full removal of all equipment, with "some decommissioned in-situ where it can be demonstrated that this will deliver equal or better environmental outcomes…".[11] The 2021 Annual Report did however include a $300-500 million cost estimate for removing the North West Shelf (NWS) trunklines. The BHP Petroleum merger in 2022 doubles Woodside's exposure to costs associated with the NWS trunkline.[12]

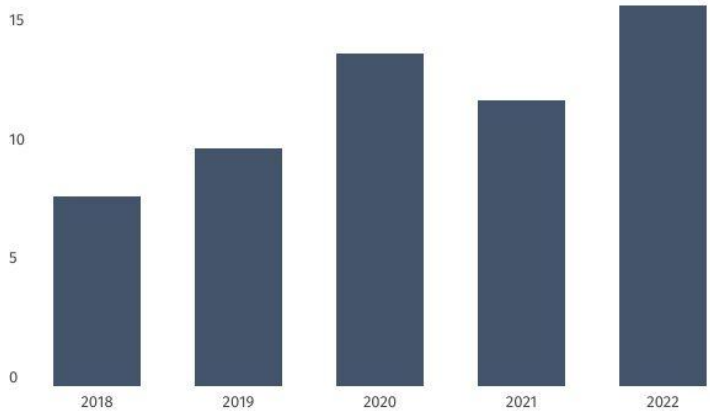
[11] Woodside, *2022 Annual Report*, p139
[12] Woodside, *2021 Annual Report*, p129

Figure 2: ***Changes in restoration provision due to increases in and delivery of scope (US$ million)***



This highlights that decommissioning is a growing issue for Woodside. As a ratio of the book value of its oil and gas properties, Woodside's decommissioning provision has doubled from 8% at Dec 2018, to 16% in December 2022.

Figure 3: ***Woodside's restoration provision (% of book value of oil and gas properties)***



28. Are there opportunities to enhance the efficiency of our existing regulatory frameworks to facilitate decommissioning activity in Australia?

Compliance with the current regulatory regime is inadequate. For over 50 years, successive legislation has upheld the requirement for removal of offshore oil and gas infrastructure in Australia, yet enforcement has been weak.

Regulatory processes for decommissioning have been improved in recent years, but there remains significant scope for improvement. Following the Walker Review, in 2020 and 2021 the Resources Department and NOPSEMA updated legislation and guidelines to ensure compliance with s.572 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (OPGGS Act). NOPSEMA has issued Directions for removal and remediation to companies who had not yet removed disused equipment. Continued, high-level, whole-of-government support for compliance with s.572 is essential.

Nevertheless, Australian regulations still lag behind international norms in key areas.

Despite the Commonwealth's *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* requiring transparency and consultation measures regarding proposed decommissioning plans made by offshore operators, at the present time, the public and shareholders do not have access to most of this information.

DISER's 2020 proposals[13] for enhancing Australia's decommissioning framework included requirements such as:

- a public comment period on Environment Plans involving decommissioning;
- public reporting of environmental performance once a petroleum activity is underway;
- publication of 'close-out' reports once an activity has been completed to NOPSEMA's satisfaction.

We recommend that these measures be implemented as part of this review to ensure a minimum level of transparency. Furthermore, this review should make recommendations to improve transparency through the entire decommissioning pipeline, which could support industry planning and coordination and allow Australia to capture more of the potential value from this industry transition.

This consultation presents many opportunities to enhance the efficiency of existing regulatory frameworks and to introduce further complementary legislation, guidelines and policies to clear up uncertainties and to improve the overall decommissioning regime to be fit for the future.

Financial assurance for decommissioning

Australia is out of step with international norms and regulatory requirements in the UK, Norway, US and Canada by not requiring financial security for decommissioning, and only requiring financial security for oil spills.

Following the Northern Endeavour fiasco, the Walker Review recommended legislative change to require oil and gas companies to provide financial surety for their decommissioning liabilities 'in a form that would be available to the Government in the case of the titleholder going into liquidation' (Recommendation 2). The Review stated that 'S571 of the [OPGGS Act], as currently drafted, [is not] appropriate to regulate financing for decommissioning.'

Indicating the government's support for the Walker recommendations, such requirements were subsequently implemented for offshore renewable energy developers in the *Offshore Electricity Infrastructure Act 2021* (Cth). DISER's 2020 recommendations for 'Enhancing Australia's decommissioning framework' included a diluted version of this recommendation for the oil and gas industry, which was expected to be delivered through updated guidelines.[14] However, to date this recommendation has not been implemented. The DISER proposals even recognised that Australia already has similar financial security requirements for the mining industry in Queensland, Western Australia, and Victoria.[15]

There appears therefore to be no conceptual, legislative or cultural barrier to introducing these or similar requirements for offshore oil and gas. This should be corrected as part of this review, both to reflect good practice domestically and best practice internationally.

ACCR recommends that legislative requirements for financial surety for decommissioning must be developed as per the Walker Review and at least equivalent to the requirements of the *Offshore Electricity Infrastructure Act 2021* (Cth), to protect the Commonwealth from further incidents like the Northern Endeavour.

[13] DISER, 2020, Enhancing Australia's Decommissioning Framework.
[14] Ibid.
[15] Ibid., p.9

ACCR's preferred recommendation is for a decommissioning bond. This would remove the incentive to delay decommissioning activities. ACCR therefore recommends that the OPGGS Act should be amended to require upfront surety bonds, paid by titleholders before production commences, and held by a third party for the duration of operation.

'Equal or better environmental outcome'

In February 2022 the Australian Securities and Investments Commission (ASIC), Australia's corporate regulator, revealed that it was conducting ongoing investigations into Woodside Petroleum Ltd's reporting of restoration provisions for offshore infrastructure assets, which did not allow for the full removal of certain infrastructure assets.[16] Full removal of infrastructure is the 'base case' in Australia, and while deviations may be pursued in particular circumstances and with regulatory approvals in place, NOPSEMA has questioned if operators are properly valuing offshore assets on the basis of full removal.[17]

Table 1 (above) shows that, in calculating decommissioning liabilities, some operators are assuming they will be able to leave certain assets in place, and that they will be successful in getting approval to do so.

ACCR's report highlighted evidence that calls into question whether company decision-makers are planning for full removal as the 'base case', or assuming they will receive approval to do less.[18] Whether, and to what extent, companies will be able to leave a portion of their infrastructure 'in-situ' is unknown. However, it is clear that many ASX-listed operators are making strong assumptions about their future ability to do this, and doing so without adequate disclosures or the requisite permissions in place.

Current guidance provides too much latitude for companies to attempt to avoid complete removal. ACCR believes the government must retain explicit support for the principle of requiring 'equal or better environmental outcomes'. Furthermore, ACCR recommends that regulatory guidance be revised to clarify the specific processes and extremely rare circumstances under which complete removal would not apply, and re-emphasize the expectation of complete removal as the 'base case' for all operators.

To monitor this and ensure it is adequately implemented, ACCR recommends NOPSEMA's application of the principle should be closely scrutinised before any permissions are granted that would allow changes to these removal requirements.

Transparency and public consultation

ACCR recommends that as a minimum, the government should introduce DISER's proposed measures to improve transparency and consultation, as outlined above.

First Nations and Native Title

We acknowledge that Traditional Owners will be affected by decommissioning offshore oil and gas infrastructure. ACCR recommends that the government and companies conduct thorough consultation with Traditional Owners on all matters regarding decommissioning including developing decommissioning regulations, Environmental Plans covering removal and remediation, and dismantling facilities. We encourage, for example, an approach that places emphasis on consultation with affected Traditional Owners, as seen in the current *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth). We note that the Federal Court of Australia, when interpreting these Regulations, has emphasised both the centrality of consultation with Traditional Owners for the functioning of the approvals process created by Parliament,[19] and further that the extent of consultation with affected owners that the Regulations, correctly construed, require is

[16] ASIC, 2022, 22-027MR Woodside Petroleum increases restoration provision and enhances associated disclosure.
[17] NOPSEMA advisory board, 2020, NOPSEMA advisory board meeting minutes.
[18] Australasian Centre for Corporate Responsibility, 2023, *Offshore oil and gas asset decommissioning*, p.20-21
[19] *Cooper v National Offshore Petroleum Safety and Environmental Management Authority (No 2) [2023] FCA 1158*, [40]-[42], [59]-[72].

not ‘unworkable’ or ‘onerous’.[20] ACCR opposes any attempts to reduce these consultation requirements which must be implemented at every stage of decommissioning.

Assessment of long-term risk

Another area to be improved is how the long term risks of historic wells are managed and paid for. It is becoming clear that plugged petroleum wells fail over time. Santos has recently been condemned by NOPSEMA for failing to fix leaking wells in the Legendre field for over a decade and claiming that these are ‘impossible’ to repair.[21] This indicates that the monitoring and regulatory regime is not adequate.

ACCR recommends that this review give extensive consideration of how to best manage the long-term security and integrity of petroleum wells. The trailing liability amendments made to the OPGGS Act in 2021 provide for companies to be called back to make repairs to wells after titles have been surrendered, as it is not yet possible to evaluate how long a well may be sealed or the likelihood of leaks.

Given the long-term risk that oil and methane leaks pose to the environment and the climate, there is an urgent need for a comprehensive system for monitoring abandoned wells, including both periodic physical inspection by divers and permanently installed systems that can detect methane leakage. ACCR recommends that a government agency be assigned to take long term responsibility for monitoring the safety and integrity of wells after petroleum titles are handed back to the Commonwealth. This agency must be involved in the Joint Authority decision about whether petroleum titles are fit to be handed back to the Commonwealth. ACCR contends that in line with the ‘polluter pays principle’, it is most appropriate that the operators and companies fund this independent monitoring service. The Sea Dumping Act contains measures which can facilitate this. New requirements for this monitoring of methane leakage should be legislated through an amended OPGGS Act.

[20] *Santos NA Barossa Pty Ltd v Tipakalippa [2022] FCAFC 193*, [86]-[109], [153].
[21] WA Today, 13 June 2023, Santos wells have been leaking gas into the ocean off WA for a decade.