

# Supplementary Draft Decision

Marinus Link Stage 1, Part B (Construction costs)  
Transmission Determination 2025–30

Appendix A: Pass through definitions

November 2025

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## A Cost pass through definitions

Marinus Link Pty Ltd (MLPL) proposed eight pass throughs: insurer coverage event, insurer credit risk event, natural disaster event, terrorism event, unavoidable contract variations event, contractor insolvency event, contractor force *majeure* event and biodiversity event.<sup>1</sup>

Our Supplementary Draft Decision is to accept the insurance coverage event, insurer’s credit risk event, natural disaster event and terrorism event proposed by MLPL.<sup>2</sup> We did not accept MLPL’s proposed unavoidable contract variations event, contractor force *majeure* event, contractor insolvency event and biodiversity event. We do not consider that these events are capable of being defined events.<sup>3</sup>

This appendix specifies the definitions for the pass through events proposed by MLPL which we considered in our Supplementary Draft Decision and our proposed definitions for the accepted pass through events.

### A.1 MLPL’s proposal

MLPL’s proposed nominated pass through events are set out in Table A.1.

**Table A.1 MLPL’s nominated pass through events**

Proposed event	MLPL’s proposed definition
Insurance coverage event	<p>An insurance coverage event occurs if:</p> <ol style="list-style-type: none"> <li>1. MLPL: <ol style="list-style-type: none"> <li>a. makes a claim or claims and receives the benefit of a payment or payments under a relevant insurance policy or set of insurance policies; or</li> <li>b. would have been able to make a claim or claims under a relevant insurance policy or set of insurance policies but for changed circumstances; and</li> </ol> </li> <li>2. MLPL incurs costs: <ol style="list-style-type: none"> <li>a. beyond a relevant policy limit for that policy or set of insurance policies; or</li> <li>b. that are unrecoverable under that policy or set of insurance policies due to changed circumstances; and</li> </ol> </li> <li>3. The costs referred to in paragraph 2 above materially increase the costs to MLPL in constructing or commissioning Marinus Link.</li> </ol>

<sup>1</sup> MLPL, [MLPL-B-002 MLPL Revised Revenue Proposal Stage 1 - Part B \(Construction\)](#), July 2025, p 68.

<sup>2</sup> This is one of the constituent decisions we must make under NER, cl. 6A.14.1(9). MLPL proposed to amend the standard wording of the insurance coverage, natural disaster and terrorism events to refer to changes in costs of constructing or commissioning Marinus Link.

<sup>3</sup> AER, *Supplementary Draft Decision: Marinus Link Stage 1, Part B (Construction costs) Electricity Transmission Determination 2025-30*, November 2025, p. 32

Proposed event	MLPL’s proposed definition
	<p>For the purposes of this insurance coverage event:</p> <p>'changed circumstances' means movements in the relevant insurance market, including liability insurance, that are beyond the reasonable control of MLPL, where those movements result in it no longer possible for MLPL to take out an insurance policy or set of insurance policies at all or on reasonable commercial terms that include some or all of the costs referred to in paragraph 2 above within the scope of that insurance policy or set of insurance policies. .</p> <p>'costs' means the costs that would have been recovered under the insurance policy or set of insurance policies had:</p> <ul style="list-style-type: none"> <li>i. the limit not been exhausted;</li> <li>ii. those costs not been unrecoverable due to changed circumstances.</li> </ul> <p>A 'relevant insurance policy' or 'set of insurance policies' is an insurance policy or set of insurance policies held during the regulatory control period or prior to the commencement of the regulatory control period; and</p> <ul style="list-style-type: none"> <li>i. MLPL will be deemed to have made a claim on a relevant insurance policy or set of insurance policies if the claim is made by a related party of MLPL in relation to any aspect of MLPL’s network or business; and</li> <li>ii. MLPL will be deemed to have been able to make a claim on a relevant insurance policy or set of insurance policies if, but for changed circumstances, the claim could have been made by a related party of MLPL in relation to any aspect of MLPL’s network or business.</li> </ul> <p>Note for the avoidance of doubt, in assessing an insurance coverage event through application under rule 6A.7.3(j), the AER will have regard to:</p> <ul style="list-style-type: none"> <li>i. the relevant insurance policy or set of insurance policies for the event;</li> <li>ii. the level of insurance that an efficient and prudent Transmission Network Service Provider (TNSP) would obtain, or would have sought to obtain, in respect of the event;</li> <li>iii. any information provided by MLPL to the AER about MLPL’s actions and processes; and</li> <li>iv. any guidance published by the AER on matters the AER will likely have regard to in assessing any insurance coverage event that occurs.</li> </ul>
Insurer credit risk event	An insurer credit risk event occurs if an insurer of MLPL becomes insolvent, and as a result, in respect of an existing or potential claim for a risk that was insured by the insolvent insurer, MLPL:

Proposed event	MLPL’s proposed definition
	<p>a) is subject to a higher or lower claim limit or a higher or lower deductible than would have otherwise applied under the insolvent insurer's policy; or</p> <p>b) incurs additional costs associated with funding an insurance claim, which would otherwise have been covered by the insolvent insurer</p> <p>Note: in assessing an insurer credit risk event pass through application, the AER will have regard to, amongst other things:</p> <p>i. MLPL’s attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer's track record, size, credit rating and reputation; and</p> <p>ii. In the event that a claim would have been covered by the insolvent insurer’s policy, whether MLPL had reasonable opportunity to insure the risk with a different provider.</p>
<p>Natural disaster event</p>	<p>Natural disaster event means any natural disaster including but not limited to cyclone, fire, flood or earthquake that occurs during the 2026–30 regulatory control period that changes the costs to MLPL in constructing or commissioning Marinus Link, provided the cyclone, fire, flood, earthquake or other event was:</p> <p>a) a consequence of an act or omission that was necessary for MLPL to comply with a regulatory obligation or requirement or with an applicable regulatory instrument, or</p> <p>b) not a consequence of any other act or omission of the service provider.</p> <p>Note: In assessing a natural disaster event pass through application, the AER will have regard to, among other things:</p> <p>i. whether MLPL has insurance against the event, and</p> <p>ii. the level of insurance that an efficient and prudent TNSP would obtain in respect of the event.</p>
<p>Terrorism event</p>	<p>Terrorism event means an act (including, but not limited to, the use of force or violence, or the threat of force or violence, or group of persons (whether acting alone or on behalf of or in connection with any organisation or government), which:</p> <p>a) from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons (including the intention to influence or intimidate any government and/or put the public, or any section of the public, in fear); and</p> <p>b) changes the costs to MLPL in constructing or commissioning Marinus Link.</p>

Proposed event	MLPL’s proposed definition
	<p>Note: In assessing a terrorism event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> <li>i. whether MLPL has insurance against the event;</li> <li>ii. the level of insurance that an efficient and prudent TNSP would obtain in respect of the event; and</li> <li>iii. whether a declaration has been made by a relevant government authority that a terrorism event has occurred.</li> </ul>
<p>Unavoidable contract variations event</p>	<p>An unavoidable contract variations event occurs if:</p> <ul style="list-style-type: none"> <li>a) a variation to a contract relating to the construction of Stage 1 of Marinus Link is required to accommodate a change in project design or proposed route that is beyond MLPL’s control; and</li> <li>b) the required variation to that contract has a material impact (positive or negative) on MLPL’s costs of constructing or commissioning Marinus Link</li> </ul> <p>The cost of the unavoidable contract variations event may include, but is not limited to, the increase or decrease in the prudent and efficient costs of any civil or building works, environmental and planning approvals; and any plant, equipment, materials and labour costs; and delay costs.</p> <p>Note: In assessing an unavoidable contract variations event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> <li>i) evidence that the contract variation has been caused by factors that were beyond MLPL’s control;</li> <li>ii. MLPL’s attempts to mitigate and prevent the event from occurring;</li> <li>iii. the prudence and efficiency of the contract amounts claimed by MLPL, including whether it accords with the terms and conditions of the relevant contract;</li> <li>iv. the prudence and efficiency of any actual or forecast costs to be incurred by MLPL as a result of the event.</li> </ul>
<p>Contractor force majeure event</p>	<p>A contractor force majeure event is the material change in construction costs incurred by MLPL due to an unforeseen force majeure event impacting the construction contractor. The contractor force majeure event includes the additional prudent and efficient construction costs incurred by MLPL, as a result of an unforeseen force majeure event impacting the contractor, where:</p> <ul style="list-style-type: none"> <li>(i) the costs are not covered by an existing insurance policy or other pass through event, and</li> </ul>

Proposed event	MLPL’s proposed definition
	<p>(ii) the force majeure event is declared in accordance with the terms of the relevant contract.</p> <p>Note: In assessing a contractor force majeure event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> <li>i. whether the event is covered by insurance;</li> <li>ii whether the event falls within the definition of a different pass through event, in which case the relevant costs can only be recovered once;</li> <li>iii. the prudence and efficiency of the contract amounts claimed by MLPL, including whether it accords with the terms and conditions of the relevant contract; and</li> <li>iv. the prudence and efficiency of any actual or forecast costs to be incurred by MLPL as a result of the event.</li> </ul>
Contractor insolvency event	<p>A contractor insolvency event occurs if a contractor is declared insolvent and as a result of that insolvency there is a material increase in MLPL’s costs of constructing or commissioning Marinus Link.</p> <p>The cost may include, but is not limited to, those arising from project delays; renegotiation of new contract terms; appointing an alternative contractor; and any increase in the costs of completing the project.</p> <p>For the avoidance of doubt, this pass through event does not allow MLPL to recover payments to a contractor to avoid or mitigate the risk of insolvency.</p> <p>Note: In assessing a contractor insolvency event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> <li>i. Whether MLPL made reasonable enquires at the time of contracting with the relevant service provider to verify its financial capacity to meet its contractual obligations;</li> <li>ii. Whether MLPL obtained reasonable protections against insolvency, including appropriate financial guarantees and novation provisions;</li> <li>iii. Any action or omission on the part of MLPL that may have resulted in costs that are not prudent and efficient; and</li> <li>iv. the prudence and efficiency of the costs claimed by MLPL.</li> </ul>
Biodiversity event	<p>A biodiversity event occurs if there is a change in MLPL’s biodiversity obligations in relation to Marinus Link which results in a cost impact (positive or negative) to achieve compliance, where a change in MLPL’s biodiversity obligations means:</p> <p>(a) A decision by a planning authority which requires additional measures be taken to avoid and minimise biodiversity impacts (or to refuse an application based on those impacts), or increase or decrease the credit obligations identified by MLPL at the time of its revised Revenue Proposal.</p>

Proposed event	MLPL’s proposed definition
	<p>(b) The decision referred to in paragraph (a) excludes a decision which results from a legislative or regulatory change where that change falls within the definition of a regulatory change event.</p> <p>The cost impact is the net effect of the incremental changes in MLPL’s biodiversity obligations in relation to Marinus Link, noting that a combination of positive and negative incremental changes may arise. For the avoidance of doubt, the cost impact includes Marinus Link’s prudent and efficient internal costs in responding to the change in MLPL’s biodiversity obligations in addition to the direct costs of meeting those changed obligations.</p> <p>Note: In assessing a biodiversity event, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> <li>• The compliance options facing MLPL, having regard to the constraints imposed by the project timeframes; and</li> <li>• The time value of money to address any timing differences between the incremental allowance provided by the AER and incremental costs (or savings) incurred as a result of the change in obligations.</li> </ul>

Source: MLPL, *Revised Revenue Proposal Stage 1 – Part B (Construction costs)*, November 2024, pp.67-84

**Table A.2 AER pass through event definitions**

Pass through event	Supplementary Draft Decision definition
Insurance coverage event	<p>An insurance coverage event occurs if:</p> <ol style="list-style-type: none"> <li>1. MLPL: <ol style="list-style-type: none"> <li>a) makes a claim or claims and receives the benefit of a payment or payments under a relevant insurance policy or set of insurance policies; or</li> <li>b) would have been able to make a claim or claims under a relevant insurance policy or set of insurance policies but for changed circumstances; and</li> </ol> </li> <li>2. MLPL incurs costs: <ol style="list-style-type: none"> <li>a) beyond a relevant policy limit for that policy or set of insurance policies; or</li> <li>b) that are unrecoverable under that policy or set of insurance policies due to changed circumstances; and</li> </ol> </li> <li>3. The costs referred to in paragraph 2 above materially increase the costs to MLPL in constructing or commissioning Marinus Link.</li> </ol> <p>For the purposes of this insurance coverage event:</p> <ul style="list-style-type: none"> <li>• 'changed circumstances' means movements in the relevant insurance market, including liability insurance, that are beyond the control of</li> </ul>

Pass through event	Supplementary Draft Decision definition
	<p>MLPL, where those movements mean that it is no longer possible for MLPL to take out an insurance policy or set of insurance policies at all or on reasonable commercial terms that include some or all of the costs referred to in paragraph 2 above within the scope of that insurance policy or set of insurance policies.</p> <ul style="list-style-type: none"> <li>• 'costs' means the costs that would have been recovered under the insurance policy or set of insurance policies had: <ul style="list-style-type: none"> <li>– the limit not been exhausted; or</li> <li>– those costs not been unrecoverable due to changed circumstances.</li> </ul> </li> <li>• a 'relevant insurance policy or set of insurance policies' is an insurance policy or set of insurance policies held during the regulatory control period or a previous regulatory control period in which MLPL was regulated; and</li> <li>• MLPL will be deemed to have made a claim on a relevant insurance policy or set of insurance policies if the claim is made by a related party of MLPL in relation to any aspect of MLPL's network or business; and</li> <li>• MLPL will be deemed to have been able to make a claim on a relevant insurance policy or set of insurance policies if, but for changed circumstances, the claim could have been made by a related party of MLPL in relation to any aspect of MLPL's network or business.</li> </ul> <p>Note: for the avoidance of doubt, in assessing an insurance coverage event pass through application under rule 6A.7.3(j), the AER will have regard to:</p> <ul style="list-style-type: none"> <li>i) the relevant insurance policy or set of insurance policies for the event</li> <li>ii) the level of insurance that an efficient and prudent TNSP would obtain, or would have sought to obtain, in respect of the event</li> <li>iii) any information provided by MLPL to the AER about MLPL's actions and processes; and</li> <li>iv) any guidance published by the AER on matters the AER will likely have regard to in assessing any insurance coverage event that occurs.</li> </ul>
Insurer credit risk event	<p>An insurer credit risk event occurs if an insurer of MLPL becomes insolvent, and as a result, in respect of an existing or potential claim for a risk that was insured by the insolvent insurer, MLPL:</p> <ul style="list-style-type: none"> <li>a) is subject to a higher or lower claim limit or a higher or lower deductible than would have otherwise applied under the insolvent insurer's policy; or</li> <li>b) incurs additional costs associated with funding an insurance claim, which would otherwise have been covered by the insolvent insurer.</li> </ul>

Pass through event	Supplementary Draft Decision definition
	<p>Note: in assessing an insurer credit risk event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> <li>i) MLPL’s attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer’s track record, size, credit rating and reputation; and</li> <li>ii) in the event that a claim would have been covered by the insolvent insurer’s policy, whether MLPL had reasonable opportunity to insure the risk with a different provider.</li> </ul>
Natural disaster event	<p>Natural disaster event means any natural disaster including but not limited to cyclone, fire, flood or earthquake that occurs during the 2026–30 regulatory control period that changes the costs to MLPL in constructing or commissioning Marinus Link, provided the cyclone, fire, flood, earthquake or other event was:</p> <ul style="list-style-type: none"> <li>a) a consequence of an act or omission that was necessary for the service provider to comply with a regulatory obligation or requirement or with an applicable regulatory instrument; or</li> <li>b) not a consequence of any other act or omission of the service provider.</li> </ul> <p>Note: In assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> <li>i) whether MLPL has insurance against the event;</li> <li>ii) the level of insurance that an efficient and prudent NSP would obtain in respect of the event.</li> </ul>
Terrorism event	<p>Terrorism event means an act (including, but not limited to, the use of force or violence or the threat of force or violence) of any person or group of persons (whether acting alone or on behalf of or in connection with any organisation or government), which:</p> <ol style="list-style-type: none"> <li>1. from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons (including the intention to influence or intimidate any government and/or put the public, or any section of the public, in fear); and</li> <li>2. changes the costs to MLPL in providing constructing or commissioning Marinus Link.</li> </ol> <p>Note: In assessing a terrorism event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> <li>i) whether MLPL has insurance against the event</li> <li>ii) the level of insurance that an efficient and prudent NSP would obtain in respect of the event; and</li> <li>iii) whether a declaration has been made by a relevant government authority that a terrorism event has occurred.</li> </ul>

# Glossary

Term	Definition
ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
MLPL	Marinus Link Pty Ltd
NSP	Network Service Provider

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