



PARLIAMENT OF TASMANIA

PARLIAMENTARY STANDING COMMITTEE OF PUBLIC ACCOUNTS

Inquiry into Hydro Tasmania and the Termination of the Basslink Services Agreement

Members of the Committee

Legislative Council

Hon Ruth Forrest MLC
(Chair)

Hon Luke Edmunds MLC
(from 21 May 2024)

Hon Bec Thomas MLC
(from 21 May 2024)

Hon Meg Webb MLC
(until 14 February 2024)

Hon Josh Willie MLC
(until 27 February 2024)

House of Assembly

Ms Lara Alexander MP
(until 14 February 2024)

Mr Simon Behrakis MP
(from 14 November 2023)

Dr Shane Broad MP
(until 14 February 2024)

Mr Felix Ellis MP
(until 25 July 2022)

Mr Mark Shelton MP
(from 23 May 2024)

Mr John Tucker MP
(until 21 November 2022)

Mr Josh Willie MP
(from 23 May 2024)

Mr Dean Young MP
(until 9 November 2023)

Table of Contents

Charter of the Committee	ii
Abbreviations and Glossary	iii
Executive Summary	1
Summary of Findings	3
Summary of Recommendations	5
Background	6
Conduct of Review	10
Outcome of Legal and Sale Process	13
Part 1 - Hydro Tasmania Responses	23
Timing and Rationale of the Decision	23
Response to Question 3 – Impact on Hydro Tasmania’s financial position	26
Response to Question 4 – Potential future impact on Tasmania’s energy security and fibre optic telecommunications	32
Part 2 – Post-June 2022 Developments	36
The Future Regulation of Basslink	38
Establishment of Basslink Technical Performance Characteristics	50
APA: The New Basslink Owner.....	52
Future Interconnections	57
Basslink Import and Export Energy Flows	58
Basslink Operations Agreement.....	60
Basslink Projected Lifespan.....	61
Appendix A – Chronology of Key Developments between BPL and Hydro Tasmania related to the BSA Disputes	63
Appendix B – Synopsis of Events (Tabled 9 June 2023 Public Hearing)	65
Appendix C – Annual Basslink Import and Export Energy Flows (GWh)	71

Charter of the Committee

The Public Accounts Committee (the Committee) is a Joint Standing Committee of the Tasmanian Parliament constituted under the *Public Accounts Committee Act 1970* (the Act).

The Committee comprises six Members of Parliament, three Members drawn from the Legislative Council and three Members from the House of Assembly.

Under section 6 of the Act the Committee:

- **must** inquire into, consider and report to the Parliament on any matter referred to the Committee by either House relating to the management, administration or use of public sector finances; or the accounts of any public authority or other organisation controlled by the State or in which the State has an interest; and
 - **may** inquire into, consider and report to the Parliament on any matter arising in connection with public sector finances that the Committee considers appropriate; and any matter referred to the Committee by the Auditor-General.
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Abbreviations and Glossary

ACCC	Australian Competition and Consumer Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
APA	A listed energy infrastructure business
Australian National Electricity Market	Operating in New South Wales, the Australian Capital Territory, Queensland, South Australia, Victoria and Tasmania, the NEM is both a wholesale electricity market and the physical power system. It incorporates around 40,000 km of transmission lines and cables, supplies about 200 terawatt hours of electricity to businesses and households each year (around 9 million customers). ¹
BFFS	Basslink Facility Fee Swap
BOA	Basslink Operations Agreement
BPL	Basslink Pty Ltd
BSA	Basslink Services Agreement
CCI	Cable Consulting International
Force majeure	a common clause in contracts which essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties
GBE	Government Business Enterprise
GWh	Giga watt hours
hp	horsepower
HRL	High reliability level
HVDC	High voltage direct current, a system that allows power transmission between alternating (AC) transmission systems that are not synchronised
Hydro Tasmania	Hydro-Electric Corporation, a Tasmanian Government business enterprise which is the State's predominant electricity generator
ICA	Intercreditor agreement
KIT	Keppel Infrastructure Trust
MI	Major industrials
MLC	Member of the Legislative Council
MNSP	Market Network Service Provider
MP	Member of Parliament
NEM	National Electricity Market
NSA	Network Service Agreement
OTTER	Office of the Tasmanian Economic Regulator
PSL	Prudent storage level
ReCFIT	Renewables Climate and Future Industries Tasmania
RIT-T	regulatory investment test
TASCORP	Tasmanian Public Finance Corporation

¹ 'About the National Electricity Market (NEM)', <https://aemo.com.au/energy-systems/electricity/national-electricity-market-nem/about-the-national-electricity-market-nem> [Accessed 14 April 2022]

TasGovNet	Tasmanian Government Network
TEIS	Total energy in storage
the Act	<i>Public Accounts Committee Act 1970</i>
the Committee	Parliamentary Standing Committee of Public Accounts
TNSP	Transmission Network Service Provider

Executive Summary

On the 23 February 2022, the Committee resolved to inquire into the decision by Hydro Tasmania to terminate the Basslink Services Agreement (BSA) and the financial and other implications this may have for Hydro Tasmania and the State of Tasmania.

The Basslink electricity interconnector is the third longest submarine cable in the world linking the electricity grids of the states of Victoria and Tasmania in Australia and connects Tasmania to the Australian National Electricity Market. The Basslink interconnector was constructed between 2003 and 2005. The interconnector was officially enabled for commercial trading of energy on 29 April 2006.

On 28 April 2006, a 25-year term agreement commenced between Hydro Tasmania and Basslink Pty Ltd (BPL). On 20 December 2015, Basslink ceased operations as a result of a fault in the interconnector, approximately 100 kilometres off the Tasmanian coast. The interconnector services were not restored until 13 June 2016.

The cause of this failure was disputed by the parties. Hydro Tasmania and the State of Tasmania subsequently terminated the agreement following the 2020 arbitration concerning the cause of the 2015 major Basslink outage. The arbitration process found in the State and Hydro Tasmania's favour and confirmed the link could not meet the capacity requirements set out in the BSA, and that the owner of Basslink should pay compensation to the State of Tasmania and Hydro Tasmania.

These matters are detailed in this Report and also relate to the Basslink owners and operators being placed into voluntary administration on 12 November 2021.

On 10 February 2022, Hydro Tasmania terminated the BSA with Basslink Pty Ltd and the State of Tasmania and Hydro Tasmania terminated the Basslink Intercreditor Agreement. Concurrent with that termination, Hydro Tasmania made an offer for an interim arrangement under which the key elements of the BSA would be put back in place for one month whilst the parties discussed possible alternative arrangements to Basslink Pty Ltd's receivers. The receivers declined Hydro Tasmania's offer.

Legal proceedings related to these matters delayed the progress of this Inquiry to avoid the State of Tasmania and Hydro Tasmania prejudicing their respective legal and commercial positions. The Committee received confidential and commercially sensitive advice from the Minister on 16 June 2022 outlining the then current Federal Court proceedings related to the termination of the Inter-Creditor Agreement by Hydro Tasmania and the State of Tasmania, the ongoing administration and receivership of Basslink Pty Ltd and related entities, and the potential sale of Basslink.

The legal matters related to the breach of a number of key provisions in the BSA were resolved on or around October 2022. Of particular note, the State of Tasmania and Hydro Tasmania were successful in recovering most of the monies owing post-arbitration.

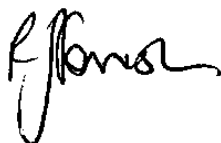
The arbitrator awarded the State approximately \$47 million including \$38.5 million under the Basslink Operations Agreement arbitration award, arbitration costs of \$7.2 million and interest

on the outstanding awards amount to 3 June 2022 of \$2.2 million. The State was also awarded post-insolvency costs and other adviser costs from the insolvency to 30 June 2022 of \$1.6 million, received in October 2022.

Hydro Tasmania recovered \$109 million of the \$135 million owed from Basslink Pty Ltd upon the completion of the transaction. APA assumed ownership of Basslink Pty Ltd comprising amounts owed following termination of the BSA, including a \$50 million security deposit, approximately \$11 million of inter-regional revenues that had accumulated prior to the transaction, a portion of accrued interest and \$25.25 million for the costs awarded to Hydro Tasmania from the 2020 arbitration. Approximately \$45 million of payments were made under the BSA for constrained operation of Basslink, from the date of the arbitration awards to termination of the BSA on 10 February 2022.

The new owners of Basslink Pty Ltd, APA, and Hydro Tasmania operate under a Network Service Agreement that operates in a similar way functionally to the BSA with the previous owners, with some differences to benefit Tasmania. This agreement terminates on 30 June 2025 or when the Basslink interconnector becomes a regulated link, whichever occurs first. This agreement can be extended with the agreement of both parties. Basslink Pty Ltd is currently progressing an application through the Australian Energy Regulator (AER) to convert Basslink from a Market Network Service Provider (MNSP) to a Transmission Network Service Provider (TNSP).

The Committee makes 25 Findings and notes the successful outcome financially for the State and Hydro Tasmania through the legal proceedings. The Committee makes no recommendations.



Hon Ruth Forrest MLC
Chair

17 June 2024

Summary of Findings

The Committee found:

Area	Finding
Outcome of Legal and Sales Process	<p>F1. In December 2020, Hydro Tasmania, Basslink Pty Ltd (BPL) and the State of Tasmania received a decision from the Arbitrator in respect of the disputes that were referred to arbitration in 2018. Of key importance, the arbitrations established that the Basslink facilities did not meet the minimum technical specifications, minimum megawatt rating capacity requirements within the Basslink Services Agreement (BSA), and as a consequence, BPL was in breach of a number of key provisions of the BSA.</p> <p>F2. The Arbitrator ordered Basslink Pty Ltd to undertake a number of actions to improve the operational performance of the cable, and to mitigate the risk of future cable failure.</p> <p>F3. Following the arbitrations, Hydro Tasmania, Basslink Pty Ltd (BPL) and the State of Tasmania agreed in good faith to enter into a standstill agreement, preserve the rights of the parties and create a framework for negotiations to take place on commercial and engineering matters, while BPL attempted to refinance its debt and meet its commitments arising from the arbitrations.</p> <p>F4. Prior to its expiry on 28 May 2021, Hydro Tasmania, Basslink Pty Ltd and the State of Tasmania agreed to extend the standstill agreement until October 2021.</p> <p>F5. Two major commercial agreements were of relevance to the dispute between Hydro Tasmania, Basslink Pty Ltd and the State of Tasmania: the Basslink Intercreditor Agreement and the Basslink Services Agreement.</p> <p>F6. In February 2022, Hydro Tasmania terminated the Basslink Services Agreement, and that the State of Tasmania and Hydro Tasmania terminated the Basslink Intercreditor Agreement.</p> <p>F7. Basslink receivers brought action before the Federal Court as a result of the termination of the Basslink Services Agreement by Hydro Tasmania and the termination of the Basslink Intercreditor Agreement by the State of Tasmania and Hydro Tasmania.</p> <p>F8. The legal matters related to the breach of a number of key provisions in the Basslink Services Agreement were resolved on or around October 2022.</p> <p>F9. The State of Tasmania and Hydro Tasmania were successful in recovering most of the monies owing post-arbitration.</p> <p>F10. APA assumed ownership of Basslink in October 2022.</p>
Timing and Rationale of the Decision	<p>F11. Basslink Pty Ltd were served with two default notices in November 2021 following their failure to pay certain amounts.</p> <p>F12. On 10 February 2022, Hydro Tasmania terminated the Basslink Services Agreement Basslink Pty Ltd when it failed to cure its performance and financial defaults, despite the time provided to do so.</p>

Area	Finding
Potential future impact on Tasmania's energy security and fibre optic telecommunications	<p>F13. Under current Hydro Tasmania water storage settings, a Basslink outage coinciding with very low inflows, the State could maintain energy supply security for a six-month period, before the 'early warning' Prudent Storage Level is reached.</p> <p>F14. Telecommunications would not be impacted by the termination of the Basslink Services Agreement.</p>
Post-June 2022 Developments	<p>F15. The State and Hydro Tasmania received positive financial and technical outcomes through the arbitration processes.</p> <p>F16. APA is progressing the regulation of the Basslink asset through Australian Energy Regulator.</p> <p>F17. The process for regulation of the Basslink asset appears to be on track to meet the designated timeline.</p> <p>F18. If/when Basslink becomes a regulated asset, Tasmania should experience the following benefits:</p> <ul style="list-style-type: none"> a. surety for electricity flow over the asset b. opportunity for community consultation and engagement as part of the process of regulating the asset c. better transparency and oversight of costs, and d. cost-sharing between Tasmanian and Victorian customers. <p>F19. Whilst the functional operations of the Network Service Agreement is similar to the Basslink Services Agreement, the Network Service Agreement is more beneficial to Tasmania.</p> <p>F20. The Network Service Agreement expires on 30 June 2025 noting there is an option to extend with the agreement of both parties.</p> <p>F21. After a dispute with the previous owner, the maximum thermal rating of the link is agreed and has been de-rated from a nominal 630-megawatt continuous rating to 500 megawatts.</p> <p>F22. Since taking ownership of the link, APA has undertaken engineering work on the link.</p> <p>F23. The opportunity to operate the Basslink dynamically continues to be investigated.</p> <p>F24. The Basslink Operations Agreement remains in place for the expected engineering life of the interconnector asset until 2046.</p> <p>F25. If/when the interconnector becomes a regulated asset, the Australian Energy Regulator will take on the insurance and decommissioning matters under the Basslink Operations Agreement.</p>

Summary of Recommendations

The Committee made no recommendations.

Background

The Basslink electricity interconnector is the third longest submarine cable in the world. This interconnector is a 370 km (230 mile) 500 MW (670,000 hp) high-voltage direct current (HVDC) cable linking the electricity grids of the states of Victoria and Tasmania in Australia. It crosses Bass Strait, connecting the Loy Yang Power Station in Victoria on the Australian mainland to the George Town substation in northern Tasmania. Basslink is bi-directional and enables Hydro Tasmania to supply some of the peak load capacity to the Australian mainland and take some of the excess power from the mainland when the generation on the mainland exceeds the demand.



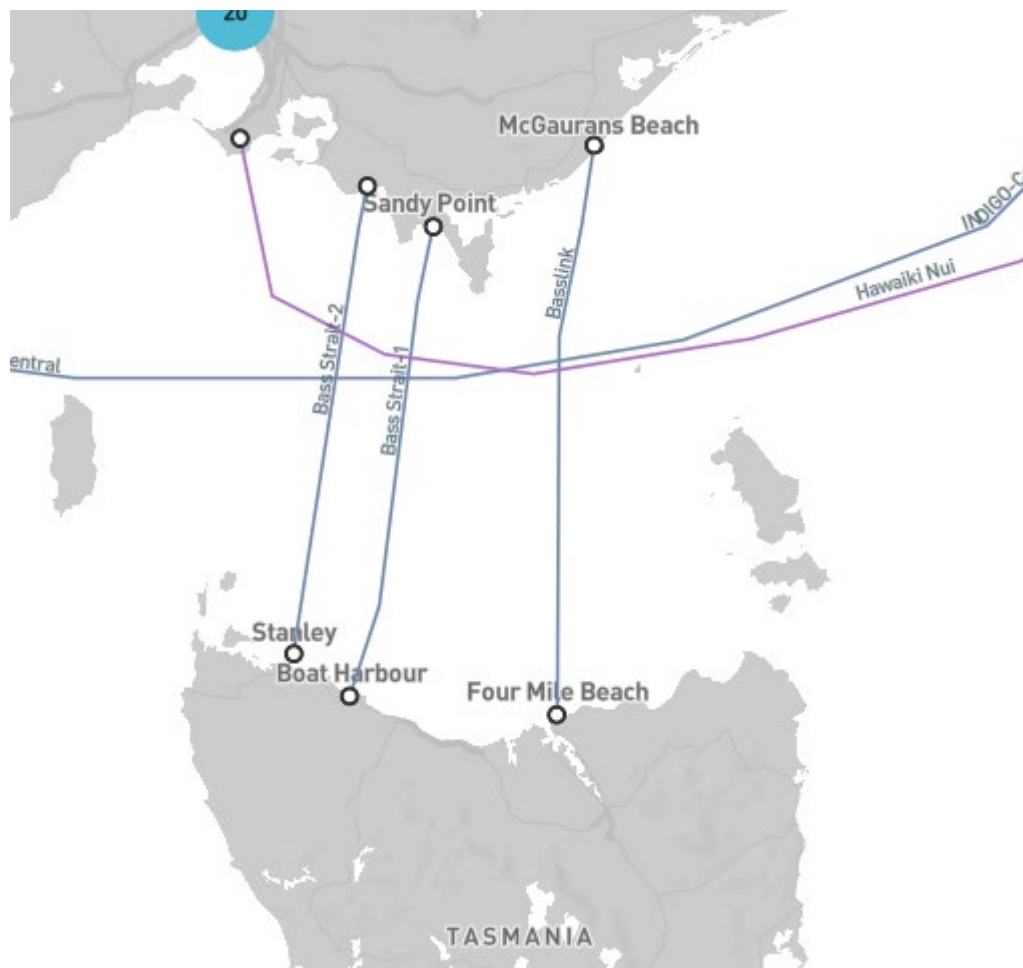
Basslink Sea Route Chart²

² Basslink Sea Route Chart, <http://www.basslink.com.au/basslink-interconnector/maps/> [Accessed 13 April 2022]

The Basslink interconnector was constructed between 2003 and 2005. The interconnector was officially enabled for commercial trading of energy on the Australian National Electricity Market on 29 April 2006.

On 28 April 2006, a 25-year term agreement commenced between Hydro Tasmania and Basslink Pty Ltd (BPL): whereby Hydro Tasmania paid Basslink interconnector a facility fee for the transport of the electrical energy of approximately AU\$70 million per annum.

The Basslink cable includes a 12-core fibre optic telecommunications cable, the first non-Telstra operated fibre cable crossing Bass Strait. The Tasmanian Government uses it, as well as the TasGovNet fibre backbone, as part of the then Connect Tasmania Core infrastructure laid down in 2006.³ The other two Telstra fibre-optic cables (Bass Strait 1 and 2) run from Boat Harbour (Tasmania) to Sandy Point (Victoria), and Stanley (Tasmania) and Inverloch (Victoria) respectively.



Infrapedia.com [Accessed 14 April 2022]

³ See <https://web.archive.org/web/20070901080608/http://www.tenders.tas.gov.au/domino/df/df.nsf/v-telco/home> [Accessed 14 April 2022]

Between 10 Dec 2014 and 23 February 2015 there were three transmission faults on the Tasmanian 220 kV system that did not result in a Basslink trip. These three trips were most likely caused by lightning.⁴

On 20 December 2015, Basslink ceased operations as a result of a fault in the interconnector approximately 100 kilometres off the Tasmanian coast. It was originally expected that Basslink would be repaired and returned to service by 19 March 2016⁵, however the link was not restored until 13 June 2016.⁶ For almost 36 hours, a separate non-cable fault caused another failure on 22 June 2016 and power was restored in the evening of 23 June 2016.⁷

During the intervening period there was claim and counterclaim between Hydro Tasmania and BPL as to whether the subsea outage was a *force majeure* event or not. [Appendix A](#) details a chronology of key developments between BPL and Hydro Tasmania related to the BSA disputes.⁸

On 12 November 2021, the companies that owned and operated the Basslink undersea power cable were placed into voluntary administration. The company owed \$40 million to the State.

A media release from Hon Guy Barnett MP (Minister for Energy and Emissions Reduction) dated 10 February 2022, noted the decision to terminate the agreement followed the 2020 arbitration concerning the cause of the 2015-16 major Basslink outage. The arbitration process found in favour of the State of Tasmania and Hydro Tasmania and confirmed the link could not meet the capacity requirements set out in the BSA and that the owner of Basslink should pay compensation to the State.⁹

According to the 16 February 2022 Hydro Tasmania media release, Hydro Tasmania terminated the Basslink Services Agreement (BSA) with BPL on 10 February 2022. Concurrent with that termination, Hydro Tasmania made an offer to BPL's receivers for an interim arrangement under which the key elements of the BSA would be put back in place for one month whilst the parties discussed possible alternative arrangements. The receivers declined Hydro Tasmania's offer. At that time Hydro Tasmania remained willing to discuss an alternative commercial arrangement with receivers that would provide funding during the receivership and help transition the asset to an alternative commercial model. As there was no longer a contract in place between Hydro Tasmania and BPL in relation to inter-regional revenues or bidding of the link, Hydro Tasmania no longer had the ability to issue bidding instructions to BPL.¹⁰

⁴ https://www.aemo.com.au/-/media/Files/Electricity/NEM/Market_Notices_and_Events/Power_System_Incident_Reports/2014/TAS/BASSLINK-INCIDENT-REPORT-FINAL-v2.pdf p.6 [Accessed 13 October 2023]

⁵ 'Basslink interconnector update', 27 January 2016: <http://www.basslink.com.au/wp-content/uploads/2016/01/Basslink-Interconnector-update-27-January-FINAL1.pdf> [Accessed 13 April 2022]

⁶ 'Basslink cable up and running, restoring power flow between Tasmania and Victoria', 13 June 2016: <https://www.abc.net.au/news/2016-06-13/basslink-cable-fixed-power-flowing-victoria-and-tasmania/7505264> [Accessed 14 April 2022]

⁷ 'Basslink back up and running again after 'mechanical failure' causes another outage', 24 June 2016: <https://www.abc.net.au/news/2016-06-24/basslink-back-up-and-running-again/7539178> [Accessed 14 April 2022]

⁸ Letter from Hon Guy Barnett MP Minister for Energy and Emissions Reduction (dated 25 March 2022), p.11-12

⁹ https://www.premier.tas.gov.au/site_resources/2015/additional_releases/government_and_hydro_take_next_steps_in_basslink_negotiations [Accessed 13 October 2023]

¹⁰ Further update on Basslink arrangements, 16 February 2022: <https://www.hydro.com.au/news/media-releases/2022/02/16/further-update-on-basslink-arrangements> [Accessed 22 February 2022]

As there was no longer a contract in place between Hydro Tasmania and BPL in relation to inter-regional revenues or bidding of the link, Hydro Tasmania would no longer be required to pay the Basslink Services fee.

Conduct of Review

On 23 February 2022, the Committee resolved to inquire into the decision by Hydro Tasmania to terminate the BSA and the financial and other implications this may have had for Hydro Tasmania.

On 24 February 2022, the Inquiry Terms of Reference was made public and made available on the Committee's website:

To inquire into and report upon Hydro Tasmania's recent decision to terminate the Basslink Services Agreement with particular regard to the:

- *timing of the decision;*
- *rationale behind the decision;*
- *impact on Hydro Tasmania's financial position; and*
- *potential future impact on Tasmania's energy security and fibre optic telecommunications.*

Minister Guy Barnett, then Minister for Energy and Emissions Reduction, responded to the Committee's questions on 25 March 2022.

The Committee resolved to hold a public hearing.

With the then ongoing legal proceedings underway and the understandable reluctance of both the State of Tasmania and Hydro Tasmania prejudicing their respective legal and commercial positions, on 10 June 2022, the Committee wrote to the Minister for Energy and Emissions Reduction with the questions it wished to be answered at the scheduled public hearing.

Committee received advice from the Minister (confidential and commercially sensitive – 16 June 2022) outlining then current Federal Court proceedings related to termination of the Inter-Creditor Agreement by Hydro Tasmania and the State, and the ongoing administration and receivership of Basslink Pty Ltd (BPL) and related entities, and the potential sale of Basslink.

The Committee conducted a public hearing on Friday, 17 June 2022 in Committee Room 2, Parliament House, Hobart:

Friday, 17 June 2022 (Hobart)

Hon Guy Barnett MP
(Minister for Energy and Emissions Reduction)

Hydro Tasmania

Mr Grant Every-Burns (Chairman)
Mr Ian Brooksbank (Acting Chief Executive Officer)

Department of State Growth

Mr Anton Voss (Chief Executive Officer – Renewables Climate and Future Industries Tasmania)
(ReCFIT)

Noting matters were before the courts and commercially sensitive negotiations were ongoing, the Committee placed the Inquiry on hold until circumstances changed.

From the public record, it became evident the arbitration was settled and BPL was acquired by APA on 18 October 2022.

A further public hearing with the Minister for Energy and Emissions Reduction and Hydro Tasmania representatives was held on Friday, 9 June 2023:

Friday, 17 June 2022 (Hobart)

Hon Guy Barnett MP
(Minister for Energy and Emissions Reduction)

Hydro Tasmania

Mr Grant Every-Burns (Chairman)
Mr Ian Brooksbank (Acting Chief Executive Officer)

Department of State Growth

Mr Anton Voss (Chief Executive Officer – ReCFIT)
Mr Adrian Christian (Director – ReCFIT)

The Committee wrote to the Minister for Energy and Emissions Reduction on 15 June 2023 and 14 August 2023 with further questions on notice and received responses from the Minister on 30 June 2023 and 21 August 2023 respectively.

The work of the Committee was also delayed as a result of prorogation of Parliament and the passing of Her Majesty Queen Elizabeth II.

Premier Gutwein announced his retirement from Parliament and as the Member for Bass on Friday, 4 April 2022. Parliament was subsequently prorogued from Wednesday, 6 April 2022 and did not resume until Tuesday, 3 May 2022. By convention, all Parliamentary Committee activity ceased until the relevant Chambers (Legislative Council and the House of Assembly) reappointed the Committee.

On 12 May 2022, the Committee was re-established and noted the new Premier Hon Jeremy Rockliff MP and Hon Guy Barnett MP retained the portfolio of Energy and Emissions Reduction.

The Parliament was prorogued again between 1 and 16 August 2022 following the resignation of Hon Jacqui Petrusma MP on 25 July 2022.

Parliament was suspended from 13 to 27 September 2022 (following the passing of a condolence motion of both Houses in commemoration of the passing of Her Majesty Queen Elizabeth II).

On 3 October 2023 the Hon Nick Duigan MLC was sworn in as Minister for Energy and Emissions Reduction following the resignation of the Hon Elise Archer MP from Parliament.

On 14 February 2024, Parliament was prorogued and the House of Assembly dissolved pending the outcome of the early Tasmanian election called for 23 March 2024.

Upon resumption of the 51st Parliament of Tasmania, the reconstituted Committee resolved to finalise the Inquiry and table this Report.

Outcome of Legal and Sale Process

At the 17 June 2022 public hearing, the Hon Guy Barnett MP (Minister for Energy and Emissions Reduction), Mr Anton Voss (Chief Executive Officer – ReCFIT) and Mr Grant Every-Burns (Chairman, Hydro Tasmania) provided context as to why certain Committee questions could not be answered in the public domain at that time:

Mr BARNETT - ...We want to support the Committee's work. We've been working hard over a considerable period of time to protect Tasmania's interests in this matter. We think it is important that the community, through the PAC, gains an insight into how we have been doing that.

The Basslink situation is complex and the current positions including the Basslink Services Agreement (BSA) termination, which is the focus of the Committee's terms of reference, have a history.

... I would like to highlight some of the constraints that the State and Hydro Tasmania face in delving into some of the matters that will be central to the Committee's deliberations, particularly in an open forum like this hearing.

I have set this out in a confidential letter to the Committee earlier this week but it might be worth highlighting some of the issues in this public hearing.

It is public knowledge that in February [2022] this year, Hydro Tasmania terminated the BSA and that the State and Hydro Tasmania terminated the Basslink Intercreditor Agreement. It is also in the public domain that the Basslink receivers have brought action before the Federal Court on these matters. I also informed the Committee of these matters in my response to the committee's initial set of questions earlier this year.

Given these matters are now sub judice,¹¹ the State and Hydro Tasmania need to be very careful in how we can provide the Committee some insight into the context behind the State and Hydro Tasmania's decision to terminate the Intercreditor Agreement and Hydro Tasmania's decision to terminate the BSA, particularly in a public forum. It is in the State's and Tasmania's interests that we ensure that we don't prejudice those proceedings. As the Federal Court proceedings relate to Hydro Tasmania's termination of the BSA, it would be inappropriate for the State and Hydro Tasmania to offer extensive public commentary on the rationale and circumstances of the BSA termination and related decisions.

In addition to protecting the State party's legal position, a sale or recapitalisation of Basslink Pty Ltd is likely to occur this year. It is preferable to avoid disclosure of confidential and commercial-sensitive information outside this process, to avoid prejudicing any party's position.

Additionally, there is a reasonable possibility of negotiations between Basslink purchasers or BPL receivers in respect of new commercial arrangements with

¹¹ under judicial consideration and therefore prohibited from public discussion elsewhere

Hydro Tasmania to hedge or fix the market price risk of BPL operation as a market network service provider.

To the extent that new arrangements are negotiated, these may be relevant to an overall consideration of the financial consequences of terminating the BSA. The Committee's inquiry at this time may, in that regard, be premature.

Further, given the potential for such negotiation to provide intelligence to commercial counterparties negotiating with Hydro Tasmania, it may damage Hydro Tasmania's commercial negotiating position and returns to the State.

With these constraints in mind, it would be my and Hydro Tasmania's strong preference if questions relating to these matters are taken on notice and responses provided accordingly, rather than matters being progressed by way of a public hearing in the period which the commercial and legal matters are current.

The Committee has recently provided a list of 23 questions which I understand are to be the focus of today's hearing. That has been a very useful approach and I thank the Committee for so doing, as it enables us to provide considered answers to the Committee's questions and minimise the risk of firstly, inadvertently compromising the State party's legal position in relation to the Federal Court matters; secondly, compromising our commercial position in relation to any forthcoming sale or recapitalisation process; and thirdly, compromising Hydro Tasmania's position in relation to any new commercial arrangement with Basslink. It will also enable Hydro Tasmania and/or the State to communicate with relevant third parties in order to seek permission to disclose any responsive information over which it owes any obligations of confidentiality. Where the Committee has questions that don't touch on the legal or commercial matters to which I've referred, we'll do our best to answer them, Chair.

...

CHAIR - *Thank you, Minister, for explaining the process that we'll be undertaking here, and your agreement to do so. The Committee respects that request, and I'll take that approach.*

...

Mr VOSS - *... Before we dive into the recent history on matters central to the terms of reference, it's worthwhile to identify the commercial agreements in question. First is the Intercreditor Agreement. As part of financing the link, Basslink Proprietary Limited granted security interests over all its property in favour of its financiers, Hydro Tasmania, and the State of Tasmania. As is common in such situations, an intercreditor agreement was entered into between the parties which documents the rights and obligations of the parties with respect to the enforcement of their securities.*

The second key agreement is the Basslink Services Agreement - or the BSA - it was the key contractual agreement between Hydro and BPL that effectively funded the link. Under the BSA, BPL swaps the revenue it earns from transporting electricity across Basslink with Hydro Tasmania in return for the facility fee. The agreement also required Basslink to make all the link capacity available both northwards and southwards at a

zero price unless otherwise specified by Hydro Tasmania. The BSA also contained a set of key performance requirements that the link needed to meet.

Turning to the history and the current position. Current legal and commercial positions all arise out of the 2020 arbitration. In December 2020, Hydro Tasmania, BPL and the State of Tasmania received a decision from the arbitrator in respect of the disputes that were referred to arbitration in 2018. Of key importance, the arbitrations established that the Basslink facilities do not meet the minimum technical specifications, minimum megawatt rating capacity requirements within the BSA, and as a consequence, BPL was in breach of a number of key provisions of the BSA. In addition, the arbiter ordered BPL to undertake a number of actions to improve the operational performance of the cable, and to mitigate the risk of future cable failure.

Following delivery of the award, the arbitrator also awarded Hydro Tasmania \$22.25 million in costs, and also made an award to the State of around \$47 million. Following the arbitrations, BPL, the State, and Hydro Tasmania agreed in good faith to enter into a standstill agreement, preserve the rights of the parties and create a framework for negotiations to take place on commercial and engineering matters, while BPL attempted to refinance its debt and meet its commitments arising from the arbitrations. Prior to its expiry on 28 May 2021, the parties agreed to extend the standstill agreement until October 2021.

Throughout the standstill period, the State and Hydro Tasmania sought to reach a holistic resolution to the matters in dispute, but ultimately this was unsuccessful.

At the time of expiry of the standstill agreement in October 2021, BPL remained in breach of a number of key provisions of the BSA; BPL had not satisfactorily progressed the actions to improve operational performance as ordered by the arbitrator; BPL had not paid either the State or Hydro Tasmania the costs awarded by the arbitrator; and BPL owed Hydro Tasmania other amounts under the BSA as a consequence of the cable's ongoing operation at around 500 megawatts since the date of the arbitration award.

BPL's failure to pay Hydro Tasmania's costs and the other outstanding amounts constituted further breaches of the BSA. I do note there is a disagreement between Hydro Tasmania and BPL, and now the receivers, with respect to the calculation of the amounts BPL owes Hydro as a result of its underperformance. The State and Hydro Tasmania elected not to provide a further extension to the standstill agreement, and it expired on its existing terms.

Following its expiry, Hydro Tasmania issued BPL with default notices under the BSA in respect of BPL's breaches. On 12 November 2021 voluntary administrators were appointed by BPL's directors. The administrators are three partners at Ernst & Young. In parallel BPL's banking syndicate appointed receivers, namely three partners from KPMG.

Following the receiver's appointment, Hydro Tasmania and the State engaged directly in discussions with receivers and the finance trustee and the agents for BPL's lenders about

the matters still in dispute. However, no holistic resolution in respect of the outstanding breaches was reached.

Further, the finance trustee had a range of responsibilities under the intercreditor agreement that it failed to perform. Again, as this is currently before the courts, I'm reluctant to provide more specifics other than to say, these are very important obligations that in the State's and Hydro Tasmania's view, go to the heart of how the intercreditor agreement was supposed to function.

So, faced with the situation of, one, ongoing breaches under the BSA as a consequence of the Basslink facilities remaining unable to meet the minimum technical specifications; and two, ongoing breaches of the BSA arising from non-payments of amounts owed by BPL to Hydro Tasmania and a repudiation of the intercreditor agreement by the finance trustee, Hydro Tasmania and the State were in a position where they were not getting what they bargained for under either of these material contracts.

Despite efforts by the State and Hydro [Tasmania], no commercial resolution was reached with the receivers or the finance trustee in respect of these matters.

After careful consideration of the State and Hydro Tasmania's legal rights and with Hydro Tasmania assessing the commercial implications of terminating BSA, on 10 February 2022, Hydro Tasmania and the State terminated the intercreditor agreement and Hydro Tasmania subsequently terminated the BSA and related contracts.

Later in February [2022], BPL's receivers commenced proceedings in the Federal Court, challenging the validity of Hydro Tasmania and the State's termination of the intercreditor agreement.

Given this action fundamentally shifts the relative credit priority of the parties, it was possible that the receivers might seek to challenge that termination. The State and Hydro Tasmania are prepared to defend their course of action.

Also, in February [2022] this year, APA acquired control of Basslink's bank debt from its previous banking syndicate. It makes APA Basslink's single largest secured creditor and APA is on the public record as having an interest in being the owner of the link.

This week,¹² APA retired the three KPMG partners as receiver and has replaced them with principals from FTI Consulting.

In relation to the legal matters surrounding the termination of the BSA and the ICA, the next directions hearing has been set by the court for 1 August 2022. Currently, the parties to the dispute are finalising their pleas.

At the hearing in August [2022] it is expected the court will set a timetable for the exchange of evidence.

¹² Week commencing Monday, 13 June 2022

Finally, there is the matter of the sale or recapitalising of Basslink which will provide the funds available to satisfy outstanding debt BPL owes to its creditors, including the State and Hydro. As the appointed receivers, KPMG did not commence the sale process for BPL or its assets during the term of their appointment.

The State parties have been advised by the administrators of multiple approaches by interested parties with an interest in recapitalising the business. Accordingly, in mid-May [2022], the administrators sought an extension to the convening period from the court in order to provide time for them to conduct a competitive process, including the establishment of a data room to enable interested parties to undertake due diligence on the business.

The State party supported the establishment of the competitive process but did not take part in the legal proceedings. The Federal Court granted that application in mid-May [2022]. This week¹³ there was a further consideration of the matter by the court which did not reach a conclusion and a further hearing is set down for 1 July 2022.

...

Mr EVERY-BURNS - ... *Hydro Tasmania welcomes the opportunity to participate fully in this parliamentary process, seeking to inform the Committee and to assist in your deliberations.*

Hydro Tasmania exists to efficiently generate, trade and sell electricity in the national electricity market (NEM) thereby providing an essential service to the people of Tasmania.

Ensuring our ongoing sustainability and future prosperity is vital. This has been our focus for 100 years of our history. Our board and executive leadership team follow high standards of corporate governance, ethics and prudent financial management to deliver against their objectives and provide strong returns to the State.

All decisions made by the board are done with careful consideration and thorough analysis and risk assessments. Accordingly, the decision to terminate the Basslink Services Agreement was taken after careful consideration and commercial assessment by the board.

As has been outlined in detail in the previous remarks, this decision was preceded by three concurrent arbitrations between Hydro Tasmania, the State of Tasmania and Basslink Proprietary Limited and also unsuccessful commercial discussions between the parties.

This included provision by the State and Hydro Tasmania of a 10-month standstill of their respective legal rights emerging from those arbitrations to enable commercial approaches to be explored.

Hydro Tasmania carefully assessed the commercial implications of terminating the BSA and concluded that it was the most appropriate course of action in the circumstances.

¹³ Week commencing Monday, 13 June 2022

The rationale for terminating the BSA was that BPL had breached, and remained in breach, of the BSA in several respects, including the cable not meeting the minimum technical specifications required under the agreement and BPL had not paid costs awarded by the arbitrator and other amounts owed under the BSA. Further, BPL had not satisfactorily progressed actions to improve operational performance of the cable ordered by the arbitrator.

In good faith, Hydro Tasmania remained willing to discuss with receivers an alternate commercial model. We remain open to continuing discussions with the receivers about ongoing arrangements for Basslink and to whether a commercial resolution is possible in respect of ongoing matters of dispute.

However, since termination BPL's receivers have commenced Federal Court proceedings which will directly address and determine a range of matters, including the validity of the termination of the various contracts relating to Basslink, which include the Basslink Services Agreement. In light of this and as previously noted by the Minister, it would be imprudent to offer extensive public commentary on a rationale and circumstances of this decision to avoid the prospect of jeopardising matters before the court.

I do emphasise however, that it is Hydro Tasmania's intention to cooperate with this inquiry to the best of our ability within that context. I would also like to assure the committee that given the current strong storage situation and the ongoing operation of Basslink there are no material energy security considerations for Tasmania arising from the BSA termination.

There is also no direct impact on BPL's telecommunication business...¹⁴

At the 9 June 2023 public hearing, the Committee heard from Minister Barnett and Mr Ian Brooksbank (Acting CEO, Hydro Tasmania) as to the outcome of the legal proceedings between the State and Hydro Tasmania, and BPL:

CHAIR - ... *Have all of those legal matters now been resolved? ...*

Mr BARNETT - *Yes.*

CHAIR - *I think you said the State and Hydro received all the monies they had claimed were contested?*

Mr BROOKSBANK - *Almost all of the monies. There was a level of that dispute around the availability adjustment so the arbitrator didn't award the full amount of that. But in the context of the overall transaction, that's a relatively small amount. We always anticipated that there was some risk that that full charge would be agreed to by the arbitration.*

CHAIR - *Did each party pay their own legal costs in all of that?*

¹⁴ Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.1-6

Mr BROOKSBANK - *I can speak for Hydro. Yes, we paid our legal costs and the arbitration allowed us.*

CHAIR - *How much were the legal costs for Hydro?*

...

Mr BARNETT - *Chair, from the State's point of view, because we're talking Hydro Tasmania, we did receive all of the funds owing, \$49.6 million from the sale process comprised of the following: the Basslink Operations Agreement arbitration award was \$38.5 million. We were awarded arbitration costs of \$7.2 million. There was interest on the outstanding awards amount to 3 June 2022 of \$2.2 million. And post-insolvency costs, ... and other adviser costs from the insolvency to 30 June 2022 of \$1.6 million. That payment was received in October 2022.*

...

Mr BROOKSBANK - *Hydro Tasmania recovered \$109 million of the \$135 million owed from BPL upon the completion of the transaction which saw APA assume ownership of Basslink.*

The \$135 million comprised of amounts owed following termination of the BSA, including a \$50 million security deposit and approximately \$11 million of inter-regional revenues that had accumulated prior to the transaction, and there was a portion of accrued interest; \$25.25 million for the costs awarded to Hydro Tasmania from the 2020 arbitration; approximately \$45 million of payment under the BSA for constrained operation of Basslink from the date of the arbitration awards to termination of the BSA on 10 February 2022.

These payments were contested by BPL and BPL's receivers in the Federal Court litigation commenced with KPMG, who were the original receivers of Basslink in February this year. Hydro Tasmania considered it appropriate to discount the quantum payments in light of those disputes, the litigation risk associated with recovering the insolvency of BPL and the overall benefits from finally resolving all of these matters.

Mr BROOKSBANK - *I understand. If I might, I just want to add to my response to the question around legal fees. My response took us up to the point of 2020-21. In the financial year 2022 and a portion of 2023, we also incurred in total another \$8.8 million worth of legal and advisor fees.*

...

CHAIR - *What is still hanging over, if you like?*

Mr BROOKSBANK - *There was advice and negotiations during the receivership and post the receivership; it's just the flow of money across the financial years...¹⁵*

As to whether the State interests and Hydro Tasmania's interest were met with the outcome of the legal proceedings, the Committee heard from Minister Barnett and Mr Voss and Mr Adrian Christian (Director – ReCFIT):

¹⁵ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.25-26

Mrs ALEXANDER - ...Tasmania launched the legal action to recover \$70 million for outages that occurred in 2015-16 and then a settlement was arrived at in December 2020. That was around \$38.5 million. It was awarded. Are you comfortable with such a difference between what originally the Tasmanian government was planning to recoup and to get to \$38.5 million - was that a good outcome?

Mr BARNETT - ...There are two parts to that. There's the State's interest and there's Hydro Tasmania's interests. We put it to arbitration with former Chief Justice of the High Court Mr French. It went through an arbitration process. There was certainly a view that we wouldn't receive all that we were seeking and claiming, but all the advice I have is that we did, and we're pleased with the outcome ...

Mr VOSS - ... it went through an arbitration process and the outcome was the outcome. I think, from my perspective and the Government's perspective, it was a very good outcome going through the process we went, with the eventual purchase of the cable by APA, there was an enormous amount of work done, as you could imagine. As the Minister said in his opening Statement, there was, certainly when ReCFIT started and when I came back into government, there was not a high expectation that we would get an outcome like we got.
...

Mr VOSS - Well, I think there was no real expectation that we would get the outcome that we did, certainly in a commercial sense and, as we said at the outset, we recovered \$49.6 million and was a really good outcome. In fact, our lawyers won the insolvency and restructuring deal of the year in the Australasian Awards for the APA position of Basslink, so -
...

Mr VOSS - ...I think that was a very good outcome from the State's perspective.

Mrs ALEXANDER - Yes, so, there is no concern over the fact that you started with \$70 million and we ended up with slightly less?

Mr CHRISTIAN - If I just might make a contribution there, what Mrs Alexander is talking about is the original arbitration, not the sale. I think that was a very good outcome for us because if the counter-position put by BPL at the time was that the Basslink cable failure was a force majeure, nothing to do with them and they had no responsibility for the costs or consequences. We may have started from a different position from where we landed, but the alternative position was nothing. The money from the arbitration is important, and that is separate to the sale process, but probably the most important thing to come out of the arbitration was the clear establishment that the cause of the cable fold was thermal overloading and that the cable needed to be reinspected and the engineering done to work out what the safe thermal limits are, and that is now being resolved, thanks to an awful lot of work from Hydro.

The question about the arbitration, as opposed to the sale and the BSA termination, which is the terms of reference, that outcome was an excellent outcome for the State. Then when you overlay that, we won that and then the State allowed BPL and its owner KIT¹⁶ a period of time to position itself that it could make good on those arbitration

¹⁶ Keppel Infrastructure Trust

outcomes. They failed to do so, and then the State and Hydro provided them a further period of time to make good of the arbitration outcomes and they failed to do so. Then the Government took strong action to say 'enough is enough, we have to bring this to a head'; that is what led to Basslink going into insolvency because they could not make good on those award outcomes financially or technically.

CHAIR - *That is when the agreement was terminated?*

Mr CHRISTIAN - *No, not quite, but that strong action by the Government back in November 2021 to say 'we have given you one chance and a second chance, we don't have confidence that you can bring this to a conclusion; we need to go on a different course' set us on the course that we have arrived at. Most informed people had written off the State getting those award payments and we got every dollar we were owed, so that is why it is such a good outcome from the sale process.¹⁷*

Committee Findings

- F1. In December 2020, Hydro Tasmania, Basslink Pty Ltd (BPL) and the State of Tasmania received a decision from the Arbitrator in respect of the disputes that were referred to arbitration in 2018. Of key importance, the arbitrations established that the Basslink facilities did not meet the minimum technical specifications, minimum megawatt rating capacity requirements within the Basslink Services Agreement (BSA), and as a consequence, BPL was in breach of a number of key provisions of the BSA.
- F2. The Arbitrator ordered Basslink Pty Ltd to undertake a number of actions to improve the operational performance of the cable, and to mitigate the risk of future cable failure.
- F3. Following the arbitrations, Hydro Tasmania, Basslink Pty Ltd (BPL) and the State of Tasmania agreed in good faith to enter into a standstill agreement, preserve the rights of the parties and create a framework for negotiations to take place on commercial and engineering matters, while BPL attempted to refinance its debt and meet its commitments arising from the arbitrations.
- F4. Prior to its expiry on 28 May 2021, Hydro Tasmania, Basslink Pty Ltd and the State of Tasmania agreed to extend the standstill agreement until October 2021.
- F5. Two major commercial agreements were of relevance to the dispute between Hydro Tasmania, Basslink Pty Ltd and the State of Tasmania: the Basslink Intercreditor Agreement and the Basslink Services Agreement

¹⁷ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.22-24

- F6. In February 2022, Hydro Tasmania terminated the Basslink Services Agreement, and that the State of Tasmania and Hydro Tasmania terminated the Basslink Intercreditor Agreement.
- F7. Basslink receivers brought action before the Federal Court as a result of the termination of the Basslink Services Agreement by Hydro Tasmania and the termination of the Basslink Intercreditor Agreement by the State of Tasmania and Hydro Tasmania.
- F8. The legal matters related to the breach of a number of key provisions in the Basslink Services Agreement were resolved on or around October 2022.
- F9. The State of Tasmania and Hydro Tasmania were successful in recovering most of the monies owing post-arbitration.
- F10. APA assumed ownership of Basslink in October 2022.
-

Part 1 - Hydro Tasmania Responses

Timing and Rationale of the Decision

Response to Questions 1 and 2, referred to in evidence below–

Hydro Tasmania advised the Committee its Board took the decision to terminate the BSA on 10 February 2022 following careful consideration.¹⁸

The decision to terminate was preceded by three concurrent arbitrations between Hydro Tasmania, the State of Tasmania and BPL and unsuccessful commercial discussions between the parties, including the provision by the State and Hydro Tasmania of a ten-month stand-still of their respective legal rights emerging from those arbitrations to enable commercial approaches to be explored.

The matters in dispute between the parties largely related to the subsea cable fault and associated outage of Basslink, which occurred on 20 December 2015.

Hydro Tasmania advised the rationale for terminating the BSA was that BPL had breached, and remained in breach, of the BSA in several respects, including:

- the cable not meeting the minimum technical specifications required under the Agreement;
- BPL had not paid Hydro Tasmania the costs awarded by the Arbitrator (\$25.25 million in costs); and
- BPL owed Hydro Tasmania other amounts under the BSA as a consequence of the cable's ongoing operation at 500 MW since the date of the Arbitration Award (the calculation of these amounts is also under dispute between the parties).

In addition, BPL had not satisfactorily progressed the actions to improve operational performance ordered by the Arbitrator.

At the 17 June 2022 public hearings, the Committee was provided with further details by Mr Brooksbank (then Acting CEO, Hydro Tasmania):

***CHAIR** - ...The first question is, when did the termination formally occur and when was the notice to terminate given and on what day did or does the termination take effect?*

***MR BROOKSBANK** - ...The BSA termination notice was hand delivered to BPL at 4:41 pm on 10 February 2022.*

***CHAIR** - That took effect immediately?*

***Mr BROOKSBANK** - Yes.*

¹⁸ Letter from Hon Guy Barnett MP Minister for Energy and Emissions Reduction (dated 25 March 2022), p.1-2

CHAIR - *What were the grounds for termination, giving the nature of any performance defaults conveyed by the operator? ...*

Mr BROOKSBANK - *... The grounds for termination were set out in the termination notice. The termination was a result of certain ongoing performance defaults and financial defaults, as described in the BSA. The performance defaults were notified to BPL in a performance default notice, dated 29 October 2021, namely:*

- *breaches of the BSA in that BPL had failed to ensure and could not ensure that the Basslink facility met the minimum technical specifications set out in the BSA.*
- *secondly, BPL could not comply in any reasonable respects with the project's requirements.*
- *thirdly, the works are incapable of achieving and maintaining the operational requirements set out in schedule 7 of the Basslink Development Agreement for a design life of no less than 40 years.*
- *fourthly, BPL failed to and could not operate and maintain Basslink to undertake the Basslink operations in accordance with the Basslink Operations Agreement and the Basslink Development Agreement.*

The financial defaults were notified to BPL by default notices dated 11 and 22 November 2021 being firstly, BPL's failure to pay certain amounts when due and payable under the BSA, namely, outstanding arbitration costs, awards and commercial risk-sharing mechanisms and availability adjustments; and, secondly, an insolvency event occurring.

CHAIR - *... Was there provision in the BSA for the operator to cure the default in a given time? If so, was the operator unable to cure the default in that time to the satisfaction of Hydro? And is that what finally led to the termination notice?*

MR BROOKSBANK - *The BSA provided a process for addressing events of default. The process included the provisions of a cure plan, as conveyed to BPL in the termination notice in relation to the performance defaults under the BSA that were the subject of the performance defaults notice. BPL did not provide a draft cure plan. BPL did not provide details of the performance defaults. BPL had not cured or rectified the performance defaults or all of them. BPL was not curing or rectifying the performance defaults or all of them. BPL had not diligently pursued and was not diligently pursuing rectification of those performance defaults or all of them. BPL had evidenced an intention not to cure or rectify those performance defaults or all of them. Those performance defaults, or one or more of them, were or had become incapable of being cured in the sense of rectification. And/or BPL otherwise did not have the financial capacity to cure or rectify those performance defaults or any of them.*

Furthermore, the financial defaults that were the subject of various financial default notices were not satisfied, cured or otherwise remedied.

*Hydro Tasmania consequently terminated the BSA, pursuant to clause 12.6 of the BSA on 10 February 2022, with immediate effect.*¹⁹

Committee Findings

- F11. Basslink Pty Ltd were served with two default notices in November 2021 following their failure to pay certain amounts.
- F12. On 10 February 2022, Hydro Tasmania terminated the Basslink Services Agreement Basslink Pty Ltd when it failed to cure its performance and financial defaults, despite the time provided to do so.
-

¹⁹ Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.7-8

Response to Question 3 – Impact on Hydro Tasmania’s financial position

Hydro Tasmania advised that ahead of taking the termination decision, it assessed the commercial implications of terminating the BSA and concluded it made commercial sense to terminate the contract in the circumstances.

Hydro Tasmania stated that it remains open to continuing discussions with the Receivers about ongoing arrangements for Basslink, and in relation to whether a commercial resolution is possible in respect of ongoing matters of dispute. Accordingly, any commercial resolution may result in changes to the financial impacts arising from the BSA termination.

As at 17 March 2022, approximately \$134 million was estimated to be owed by BPL to Hydro Tasmania, which would be subject to recovery following the conclusion of the BPL administration and receivership arrangement. It was noted by the Committee, a reasonable proportion of that amount was under dispute between the parties.

The Committee also noted the published financial assets and liabilities of BPL as published in the 2020-2021 Annual Report:

As at 30 June 2021, the Group’s Basslink financial assets totalled \$409.23m and Basslink financial liabilities totalled \$903.29m.²⁰

At 17 June 2022 public hearings, the Committee heard from Mr Brooksbank with respect to the financial impact to Hydro Tasmania subsequent to the termination decision:

CHAIR - ... *Once the termination had taken effect, (a) does Hydro no longer pay the facility fee to Basslink; and (b) is Hydro no longer entitled to inter-regional revenues earned by Basslink?*

Mr BROOKSBANK - *From termination of the BSA, Hydro Tasmania no longer pays any fees under the BSA to BPL. Secondly, inter-regional revenues accruing to BPL from its operation in the NEM, National Energy Market, reside with BPL.*

CHAIR - *Does Hydro expect the outcome, that's in response to the question you've just answered, will mean Hydro is better off? And will Hydro be forgoing future profits by terminating? In other words, will Hydro be better off as a result of this?*

Mr BROOKSBANK - *Prior to exercising its contractual rights, Hydro Tasmania assessed the commercial implications of termination of the BSA and related contracts, and concluded that it made commercial sense to terminate the BSA and related contracts, taking into effect all of the circumstances. It is not accurate to state that Hydro Tasmania will be forgoing future profits.²¹*

With respect to whether future inter-regional revenues were estimated to be less than the future expected facility fees, Hydro Tasmania was not prepared to comment.

²⁰ Hydro Tasmania Annual Report 2021, https://www.hydro.com.au/docs/default-source/about-us/our-governance/annual-reports/hydro-tasmania-annual-report-2021.pdf?sfvrsn=261f9028_5, p.98

²¹ Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.7-8

At 17 June 2022 public hearings, the Committee heard from Mr Brooksbank the expectations with respect to Basslink being able to continue to trade electricity post termination:

CHAIR - ... *[As assured by the] the Minister publicly, or Basslink communicating [that Basslink will keep trading] electricity across Basslink: (a) when exporting, is it likely Basslink will be acquiring electricity from what Hydro offers into the NEM?; and (b) are Hydro's offers likely to change due to the fact that we no longer receive the benefit of inter-regional revenue when Basslink exports into the Victorian market?*

Mr BROOKSBANK - *Hydro Tasmania is not able to comment on how BPL will operate Basslink into the future. With respect to sub-question (a), it is based on a false premise.*

Basslink is a market network service provider. It does not procure electricity from either Victorian or Tasmanian regions, nor from the generators directly. Basslink merely makes its services available to transport energy from one region to another. The energy dispatched in each region is determined by AEMO's - the Australian Energy Market Operator's - dispatch algorithms. BPL receives inter-regional revenues from AEMO when there is a price separation between the regions. These revenues are based on differences in price and the quantum that flows across Basslink.

In regard to sub-question (b), it is not appropriate for Hydro Tasmania to discuss its offers because it may place Hydro Tasmania at a competitive disadvantage. The NEM is a complex market.²²

The Committee was informed at the 17 June 2022 public hearings that Hydro Tasmania were unable to answer a number of questions being that the 2021-22 financial accounts were still to be audited. Those questions were:

- If Hydro Tasmania is no longer entitled to inter-regional revenues that it banked previously, will the asset listed as Basslink financial asset at \$409 million at 30 June 2021 be written off? If so, how will this be shown in financial accounts, as a loss or fair-value loss, or other means?
- If Hydro Tasmania no longer has to pay the facility fee will the liability listed under Basslink Services Agreement, \$583 million as at 30 June 2021 be written off? If so, will this be shown in the financial accounts as a loss or fair-value loss, or other means?
- If Hydro Tasmania no longer has to pay the facility fee will any of the liability listed under Basslink Facility Fee Swap (BFFS) (\$320 million as at 30 June 2021) be written off?
- What is the nature of those parts of the BFFS which will be written off and how much will be retained as a liability?
- Given that Basslink liabilities currently exceed Basslink assets will the BSA termination result in Hydro Tasmania improving its balance sheet, and if so, what is the likely level of improvement?
- Will the end of the BSA have any other effect on Hydro Tasmania, for example, will its generation asset need to be revalued?

²² Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.9

The above questions, related to the 2021-22 audited financial results, are available on the Hydro Tasmania website.²³

At 17 June 2022 public hearings, the Committee heard from Mr Brooksbank about Hydro Tasmania's ability to finance more debt in the interim:

CHAIR - ... Given that the Basslink liabilities are a significant proportion of the Hydro's liabilities, how will TASCORP assess the termination of the BSA and subsequent revised balance sheet and what will it mean for Hydro's ability to finance more debt?

Mr BROOKSBANK - Hydro Tasmania's borrowings are funded by TASCORP under the borrowing limit, currently supported by a guarantee provided by Treasury. Although the termination of the BSA is expected to improve Hydro Tasmania's net equity position and the capital adequacy ratio, it is not expected to have any direct implications on the borrowing capacity of Hydro Tasmania.²⁴

The Committee heard from Mr Voss (Chief Executive Officer, ReCFIT) as to the status of the Basslink Operations Agreement (BOA) between BPL and the State of Tasmania:

CHAIR - ... What is the status of the Basslink Operations Agreement (BOA) between Basslink and the State of Tasmania?

...

Mr VOSS - The Basslink Operations Agreement remains on foot and it's not impacted by any of the recent developments.²⁵

With respect to Basslink becoming a regulated asset, the Committee heard from Mr Voss at the 17 June 2022 public hearing:

CHAIR - ... When Basslink becomes a regulated asset, which seems likely, does this mean that whatever price determination as awarded by the AER will result in the new [owners of] Basslink [receiving] income [from the] NEM [for the] newly regulated asset? If so, will the increase in cost need to be paid for by higher electricity prices? How will the new arrangement work?

Mr VOSS - Whether Basslink is converted to a regulated interconnector is a matter for the owners of the asset and the Australian Energy Regulator (AER). The receivers appointed to BPL have indicated they intend to pursue regulation. APA has expressed an interest in purchasing Basslink, as I said earlier, and said that if it is successful in securing Basslink, it would seek to convert it into a regulated asset.

Basslink is currently the only non-regulated interconnector in the National Energy Market (NEM), as the Committee is probably aware. All other interconnectors in the NEM are regulated under the National Electricity Rules administered by the AER and it's the AER that determines the allowable revenue for the use of their assets. Any application by the owner of Basslink to convert the interconnector to a regulated link will go through

²³ See Hydro Tasmania Annual Reports: <https://www.hydro.com.au/about-us/our-governance/annual-report>

²⁴ Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.9-10

²⁵ Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.11

a robust assessment and consultation process which is led by the AER. It's a public process: it's a complex process and obviously, we're not in a position to express views on the likely outcomes of that.

As an unregulated interconnector, BPL retains the revenues received when price separation occurs between Victoria and Tasmania and electricity is flowing across the link. When the BSA was in place, BPL swapped that income in return for the facility fee with Hydro Tasmania. Now the BSA is terminated, that swap is no longer in place. If Basslink was to become a regulated interconnector, its primary source of income would be by way of regulated customer charges, which is the case for transmission assets generally. However, in the case of regulated interconnectors there is another stream of income, that being inter-regional revenues created through price separation between the NEM regions that the link connects to. The rights of these revenues are sold through a regular AEMO auction process, with proceeds being applied to reduce the costs of the interconnectors to end-use consumers.

CHAIR - *... If and/or when Basslink becomes a regulated asset, does this mean electricity prices for Tasmanian consumers are likely to rise, and if not, can you please explain why not? If prices may fall, could you please explain how that would occur? ...*

Mr VOSS - *The process for regulation is up to the asset owners, and how it proceeds is up to the AER, and it's obviously not even commenced at this stage, so it's premature to speculate on the nature of the price outcomes that could be experienced by Tasmanian customers as a result of regulation being approved - if it is approved. Ultimately, the impact of Basslink regulation on Tasmanian transmission charges will be a function of three things: value of the regulated asset base for Basslink as determined by the AER; the allocation of the annual revenue requirement between Victoria and Tasmania under the national rules; and the value of the inter-regional revenues accruing to the link and sold through the auction process, which offsets the revenue from the above factors.²⁶*

The Committee also heard from Mr Voss in relation to electricity prices should the proposed Marinus Link²⁷ come into being:

CHAIR - *...if Marinus does subsequently come online and it too becomes a regulated asset or partially regulated, doesn't this mean necessarily that whatever is extracted from wholesale sales in the NEM and paid to the overall regulated asset, that higher retail prices must result? If not, could you please explain why not?*

Mr VOSS - *Similar to the previous answer, commentary about matters which have yet to be determined or are not forecast to occur for some years into the future - with regard to Marinus - there remains considerable work ahead on the funding of Marinus and how any regulated cost would be distributed across, and in, jurisdictions. It is hard to provide*

²⁶ Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.11-12

²⁷ A proposed fourth connector, Marinus Link will be an underground and undersea electricity and data cable that will further connect Tasmania and Victoria. The cable will run 255km undersea from North West Tasmania to Waratah Bay in Victoria, then a further 90km underground to the Latrobe Valley (see <https://www.marinuslink.com.au/overview/> [Accessed 3 June 2023])

*any definitive advice to the committee at all on Marinus. It would be speculative. It's a long way into the future, if it occurs.*²⁸

At the public hearings held 17 June 2022, the Committee heard from Mr Voss as to the then status of Hydro Tasmania and the State as secured creditors of Basslink:

CHAIR - *...In the GBE hearings completed, Hydro and the State rank as secured creditors for Basslink. Where exactly in the rankings do the State and Hydro sit?*

Mr VOSS - *...The State and Hydro are secured creditors of BPL. As part of financing the link, BPL granted security interest over all its property in favour of the financiers, Hydro Tasmania and the State of Tasmania.*

*As is common in such situations, an intercreditor agreement was entered into between the parties which documented the rights and obligations of the parties with respect to the enforcement of their securities. The State and Hydro both terminated the intercreditor agreement in February [2022]. The State's position is that the consequence of that action is that general law applies to the ranking of secured credit priorities, which in summary is that the earliest dated security has the first ranking. The State's charge, which secures Hydro Tasmania's outstandings as well, pre-existed to the security of Basslink's financiers. Given the ICA is currently the centre of the current legal matters, it's difficult to provide much more information than that*²⁹

The Committee noted that The Mercury 9 March 2022 edition ran an article where a former Hydro Tasmania director said when talking about APA having acquired the rights to procure all Basslink's debt and converting Basslink to a reclaimed asset:

*through this regulation process Tasmanians can look forward to bearing something less than half of the ongoing cost of Basslink. Its costs are finally shared with Victorian consumers, rather than fully borne through Hydro Tasmania.*³⁰

At the 17 June 2022 public hearings, the Committee heard from Minister Barnett and Mr Voss as to whether they shared the same aforementioned view:

CHAIR - *... Does the Minister or Hydro agree with this, that half of the cost of Basslink as a regulated asset will be borne by Tasmanian consumers, whereas the Basslink deal all was borne by Hydro?*

Mr VOSS - *...I'll just refer to my answer [previously]. The regulation process hasn't commenced, it's premature to discuss that and as outlined earlier, there's a range of things that are considered in the impact on transmission charges in Tasmania.*

CHAIR - *The question was, does the Minister have an opinion on that?*

²⁸ Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.12

²⁹ Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.12

³⁰ See 'King Coal's Final Days' The Mercury; Hobart Town, Tas. 9 Mar 2022, p.18.

Mr BARNETT - ... I do not wish to add to the answer provided by Anton Voss.³¹

At the 17 June 2022 public hearings, the Committee heard from Mr Voss in relation to the connection between Hydro Tasmania's profitability and Tasmanian retail electricity prices:

CHAIR - ...As Hydro is a generator which trades on the NEM and is probably otherwise a factor in determining Tasmanian retail prices and if half the cost of Basslink can be shifted onto consumers in other jurisdictions, won't the same apply with Marinus?

Mr VOSS - Hydro's profitability or otherwise is not a matter that feeds directly into Tasmanian retail prices. Hydro Tasmania offers regulated wholesale contracts and the price of these contracts is a key input into retail prices.

Those prices are determined in accordance with the regulatory model under the wholesale contract regulatory instrument. The instrument has been subject to a series of independent reviews by the Tasmanian Economic Regulator with the latest review concluded in March 2021 last year. Broadly, that methodology references Victorian prices and inflows as well, amongst other things.

Regulated retail and wholesale pricing methodologies do not refer in any way to Hydro Tasmania's profitability. Regulated retail prices are determined by the Tasmanian Economic Regulator through a process which takes into account the retailers' wholesale costs, network costs, metering costs and other retailing costs. In determining the wholesale cost component, the regulator refers to pricing published under that Tasmanian wholesale regulatory instrument which is all available on the regulator's website.

With regard to Marinus, again, I think I will refer to the previous answer about the uncertainties around Marinus and talking about things that are going to happen potentially in the future.³²

The Committee notes that the 2023 Legislative Council Government Scrutiny Committee 'A' were provided further evidence on this matter.³³

³¹ Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.12-13

³² Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.13

³³ See in general Legislative Council Government Scrutiny Committee 'A' transcripts: [Hydro Tasmania Pty Ltd](#)

Response to Question 4 – Potential future impact on Tasmania’s energy security and fibre optic telecommunications

Through the Minister, in relation to the implications for energy security, Hydro Tasmania advised Basslink had not played a material role in being a source of supply required to meet Tasmania's electricity needs.³⁴

Over the past three years, inflows into the Tasmanian system have been higher than the amount of hydro generation needed to fulfil the State's electricity needs, given other sources of on-island generation (wind, gas and embedded generation).

Tasmanian consumption, inflows and non-hydro generation, by water year' (GWh)	FY 2018-19	FY 2019-20	FY 2020-21
Tasmanian electricity consumption	10 582	10 672	10 825
Total non-hydro generation (wind, gas and embedded generation)	1 798	1 716	2 182
Share of consumption met by non-hydro generation	17.0 %	16.1%	20.2%
Consumption needed to be met by hydro generation or imports	8 784	8 956	8 643
Inflow into storages	8 873	9 238	10 037
'Excess' inflows available to build storages or export	89	282	1 394
'Excess' inflows as a share of total inflows	1.0%	3.1%	13.9%

Under section 3A of the *Energy Co-ordination and Planning Act 1995*³⁵, the relevant Minister may (by order) specify in respect of each month, a level of energy in storage to be the prudent storage level (PSL) and the high reliability level (HRL).

The HRL is set such that mainland Tasmania could withstand a six-month Basslink outage, coinciding with very low inflows to energy in storage. If storage levels fall below the HRL, there would be concerns about Tasmania's energy security over the medium-term. The PSL allows for an additional reserve above the HRL such that there is a low likelihood of the level of energy in storage falling below the HRL under 'normal operating conditions'.

At present the *Energy Co-ordination and Planning Order 2021* provides for the following from the first day of the relevant month:³⁶

³⁴ Letter from Hon Guy Barnett MP Minister for Energy and Emissions Reduction (dated 25 March 2022), p.6-10

³⁵ *Energy Co-ordination and Planning Act 1995*, <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1995-047#GS3A@EN> [Accessed 14 April 2022]

³⁶ *Energy Co-ordination and Planning Order 2021*, <https://www.legislation.tas.gov.au/view/whole/html/inforce/current/sr-2021-068> [Accessed 14 April 2022]

Month	Prudent Storage Level (%)	High Reliability Level (%)
January	37.7	31.8
February	33.9	26.8
March	30.7	23.7
April	28.2	20.0
May	26.9	19.0
June	28.4	19.3
July	29.7	21.7
August	32.8	23.9
September	37.1	29.8
October	39.5	32.0
November	40.8	32.5
December	39.5	31.6

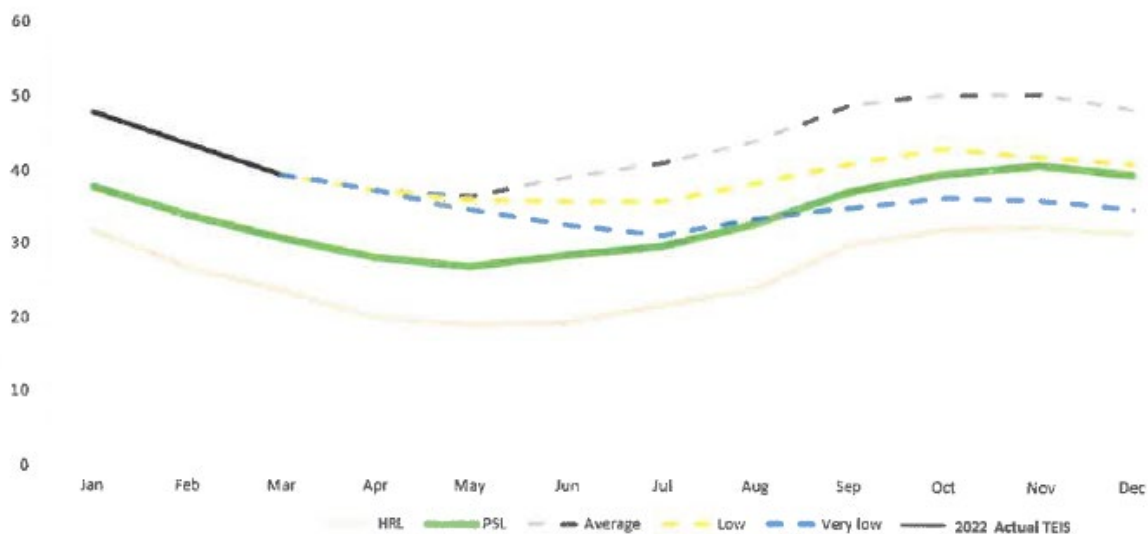
Hydro Tasmania advised the Committee that based on a scenario whereby there are:

- no flows across Basslink at all; and
- no change in on-island demand; and
- no change in the supply of non-hydro generation in Tasmania,

the projected total energy in storage (TEIS) for Hydro Tasmania systems of dams will remain well above the PSL (with average inflows from April 2022 onwards).

Under a very low inflow sequence, and assuming there are zero flows across Basslink, there is a six-month runway before the 'early warning' PSL is reached (and the HRL is not reached at all). Under a very low inflow scenario, mitigating strategies would be employed as required.

Figure 1: Projected TEIS with zero Basslink flows



In relation to telecommunications, Hydro Tasmania advised that Basslink's telecommunication business is operated by a separate business (Basslink Telecoms Pty Ltd) and there are no linkages between the BSA and BPL's commercial arrangements in relation to telecommunications. Therefore, the termination of the BSA will have no direct impact on BPL's telecommunication business.

At the 17 June 2022 public hearings, the Committee heard from Mr Brooksbank with respect to Hydro Tasmania's rights to control Basslink bids post termination:

CHAIR - ... Did the BSA give Hydro certain rights to control the way in which Basslink bids its interconnector capacity, either flowing in or flowing out of Tasmania? If so, with the end of the BSA, what does this mean for the way Basslink will operate the cable without any input from Hydro and how is this likely to change?

Mr BROOKSBANK - ... The BSA did not provide Hydro Tasmania with any rights to control the operation of Basslink. The BSA required Basslink to make all the link capacity available, both northwards and southwards, at a zero price, unless otherwise specified by Hydro Tasmania. Basslink is no longer under that contractual obligation. Hydro Tasmania is not able to comment on how BPL will operate Basslink into the future.³⁷

In addition, the Committee heard from Mr Brooksbank as to whether there were any constraints being put on Hydro Tasmania as a virtual monopoly generator by NEM regulations:

CHAIR - ... As a virtual monopoly generator in Tasmania, what constraints are put on Hydro by NEM regulations? Will any of these constraints change with Basslink operating another regulated asset under its own account in a market dominated by a monopoly supplier?

³⁷ Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.9

Mr BROOKSBANK - The NEM regulations provide a framework for dispatch and settlement of the market by AEMO. The Australian Energy Regulator, AER, monitors the market and may take enforcement action should there be a breach of the NEM rules. The premise of the question appears to be grounded on the basis that the NEM rules govern how parties should conduct themselves in the market. This is only partly correct and it is important to note that the NEM does not operate in isolation of other key laws, including the Competition and Consumer Act 2010.³⁸

Committee Findings

- F13. Under current Hydro Tasmania water storage settings, a Basslink outage coinciding with very low inflows, the State could maintain energy supply security for a six-month period, before the ‘early warning’ Prudent Storage Level is reached.
- F14. Telecommunications would not be impacted by the termination of the Basslink Services Agreement.

³⁸ Transcript of evidence [Public Hearings \(17 June 2022\)](#), p.9-10

Part 2 – Post-June 2022 Developments

After the 17 June 2022 public hearing, a number of significant events occurred, namely the:

- sales process around Basslink Pty Ltd (BPL) to APA
- the future regulation of Basslink
- the revised network services agreement between Hydro Tasmania and BPL
- the status of the ongoing Basslink Operations Agreement (BOA), and
- the establishment of Basslink technical performance characteristics.

These events in the synopsis of events summary tabled by Minister Barnett at the 9 June 2023 public hearing (see [Appendix B](#)).

At the 9 June 2023 public hearing, Minister Barnett further highlighted the key points covered in the synopsis:

Mr BARNETT - ... I would like to highlight some of the key points in the synopsis to frame today's discussion. At last year's hearing we briefed the Committee on the events that led to the termination of the Basslink Services Agreement on the 10 February 2022. As you know the State chose to pursue our collective rights, which ultimately resulted in the sale process.

Last time we appeared before the Committee legal proceedings were on foot and we sought to satisfy the Committee's questions in a way that didn't risk compromising our legal position. Just prior to the hearing the first receivers had been replaced by FTI Consulting and they were sending signals that they intended to proceed with the sale on a tight time frame.

I would now like to outline for the Committee what has transpired between June 2022 and now. The State prepared for the sale process by setting seven objectives for the sale recapitalisation process because we wanted to ensure that FTI and bidders were clear about the outcomes the State wanted to achieve. These seven criteria are set out in the synopsis.

The sale process was managed by the receivers, not the State and Hydro Tasmania. Nonetheless both State parties participated in the process by having discussions with bidders with the objective of securing our respective objectives of the process. On 7 September 2022, FTI announced that it had selected the APA bid as the preferred proposal from the shortlisting process to move forward to final documentation, with a view to it being put to BPL creditors for a vote.

During September and October 2022 there were negotiations between the State, Hydro Tasmania and APA in relation to a number of contractual arrangements that aimed to secure the State's and Hydro Tasmania's interests in the sale and to secure long-term outcomes in relation to the link consistent with the State's objectives. These negotiations were successfully concluded. As a result, APA finalised a deed of company arrangement that was accepted by BPL creditors on the 18 October 2022. APA acquired

Basslink for \$773 million. APA's purchase of BPL delivered a very good result for the State financially, legally and in relation to Basslink's technical performance for this State and Hydro recovering all the moneys owed. Importantly, it will continue to remain a key element of Tasmania's energy security arrangements. APA's clearly stated business model is for Basslink to become a regulated link under the jurisdiction of the Australian Economic Regulator from 1 July 2025. Underwriting outcomes from the regulatory process remain at APA's risk.

There are some very good outcomes for Tasmania that could come from Basslink becoming a regulated interconnector. Another key agreement resolved through the sale process was the commercial model that would apply to Basslink, ahead of it achieving regulation. Those arrangements are captured in the Network Service Agreement between Hydro Tasmania and BPL in October 2022. The NSA is a commercially confidential agreement and did not involve the State. Importantly, the NSA does not deliver a long-term commercial model for Basslink: it has been designed with APA's objective of Basslink regulation in mind and accordingly has been negotiated to terminate on the earlier of either the regulation of Basslink by AER or the 30 June 2025.

Finally, I'd like to update the Committee on where matters are in relation to the arbitration technical outcomes. One of the key requirements from the 2020 arbitration was the actual physical performance characteristics of the link to be clearly established, as the 2015-16 outage and subsequent investigation clearly established the link was not able to perform to its design specifications. I am pleased to report to the Committee that agreement was reached on these matters - a credit to the Hydro Tasmania team. There is no longer any dispute about the continuous rating of Basslink between the State parties and BPL which is 462 megawatts in August to December and 447 megawatts in January to July. Importantly, BPL has also delivered the fault ride-through solution which was one of the Government's key objectives for the sale process. This was resolved in March 2023 and it means Basslink is more able to withstand faults on the Tasmanian network without it self-tripping.

To close, the Government and Hydro Tasmania took hard stances in November 2021 and in February 2022 to progress our legal rights and protect Tasmania's best interests. These actions culminated in the sale of BPL to APA which saw the State and Hydro Tasmania receive their full entitlements - both financial and technical, from the arbitration process, something that many parties had considered very unlikely.

The outcomes we have delivered for Tasmania through the steps taken over the past year will see Basslink move to a sustainable footing and continue to play an important role in energy security and provide trading opportunities for Hydro Tasmania.³⁹

³⁹ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.1-2

Committee Findings

F15. The State and Hydro Tasmania received positive financial and technical outcomes through the arbitration process.

The Future Regulation of Basslink

At the 9 June 2023 public hearings, the Committee heard from Minister Barnett and Mr Christian in relation to the impacts of Basslink potentially becoming a regulated asset:

Mr WILLIE - The other question I had was on the asset becoming a regulated asset. I heard the Minister talk about there may be some benefits to the State of Tasmania under that arrangement. I am interested in what they are and also whether any economic modelling has been done by the State?

Mr BARNETT - ... In terms of the regulation of Basslink, that is an independent process that has to go through the Independent Regulator and that is a decision of APA which we have an agreement with them on that to provide an opportunity for the Government to monitor and assess that process. It does and can provide good and positive outcomes for Tasmania and Tasmanians noting it is an independent process and very much transparent process. The objectives of APA are clear that they want to get moving with that process and we support that process. They are seeking to have that in place by 1 July 2025.

The energy market is changing rapidly and, as a Government, we cannot pre-empt any particular outcome because there is a process involved...

Mr WILLIE - If we could do that but also the benefits in your overview, if you talked about those.

...

Mr CHRISTIAN - ...Tasmania is best served in having Basslink available on a sustainable basis for electricity flows to and from Tasmania as opportunities present or needs must, in terms of Hydro, availability and energy security. That is really starting right from the beginning, that is what Basslink is about and Tasmania's best interests are served by having Basslink available on an open basis.

Mr WILLIE - So more stability is a benefit?

Mr CHRISTIAN - It's surety that it's going to be there and be able to flow electricity as need requires from our perspective and as opportunity presents from Hydro's perspective. That's number one and regulation delivers that outcome. The alternative of a merchant link doesn't present that because the whole model of a merchant link is to actually restrict flows between Tasmania and Victoria so that they can make money.

...

Mr CHRISTIAN - The second thing is we want the owner to operate efficiently and effectively and to continue to invest in the link so that it's available. Regulation provides an open, transparent process around driving those outcomes. If the link is left

unregulated and operates as an MNSP⁴⁰, how the owner chooses to invest in that and make it available is a matter for the owner and there is no oversight of that by anybody.

Thirdly, Tasmania as a collective - Tas Inc., if you like - has been paying for Basslink since 2006. That has been met by Hydro through the BSA and currently through the NSA.⁴¹ What regulation provides is the opportunity for, other than Tasmanians, Victorians to pay for a share of the link. Now, the quantum of that will be determined in the future and we don't know what that is, but that's a benefit as well. If we move the costs in service [inaudible] from Basslink to Victoria, that is in Tasmania's interest.

CHAIR - *Just on that point, if I might, if or when it becomes a regulated link, the AER will make the determination about the pricing and Victorians will pay some, but ultimately the cost of any price rise is effectively passed on to consumers normally in that arrangement. I'm not saying it's any better the way it is, I'm just making that point. Can you comment on that? In terms of the Government's position here, which is what I read out to you in the interests of Tasmanian consumers, through a regulated link process, how do we protect Tasmanian consumers?*

Mr CHRISTIAN - *Again, starting from first principles, if you think of Tasmania as a collective, Tas Inc., passing some of the costs to Victoria is a positive outcome. The issue you're raising is the change in the incidence of the costs within Tasmania as a collective. At the moment, Tasmania, through Hydro Tasmania, is paying for 100 per cent of the link and going forward we'll pay less than 100 per cent of the link, so from Tas Inc.'s perspective, we're better off.*

As to the question you've identified, it is plain that whatever the eventual outcomes of the AER to determine the share of maximum allowable revenues that's to be paid by Tasmanian customers, there will be some costs for Tasmanian customers and the quantum isn't known. How that is dealt with is a policy matter for the Tasmanian Government and there's no policy on that at the moment, it's not something the Government has been advised on or something they've formed a view on, because at the moment we have no facts and on the current timeline it's two years away.

CHAIR - *Two years is not very long, anyway.*

Mr CHRISTIAN - *There's a lot of time to get more facts. ...The next part of why Basslink regulation might be good - and I'm not advocating Basslink regulation, it's their proposal, but I thought about why this might be in Tasmania's interests - is that the AER's processes are very customer-centric and what you will find as that process evolved over the next two years is that customers, both in Tasmania and Victoria, will get to have a say. They'll get to have a say on how they see the benefits of reliability versus price, there will be open questions about that. They'll be able to participate in the discussion's insurance, for example, whether they prefer to have a higher bill for the link effectively to be fully insured for events, or whether customers would prefer to have a lower bill and be exposed to a larger deductible for insurance.*

⁴⁰ Market Network Service Provider

⁴¹ Network Service Agreement

With Basslink not regulated, those customers don't get a say. Customers will get a say now. There are many stakeholders that have had questions and issues about Basslink being a private commercial transaction and regulation. That puts all of this into the public domain.

The flip side of this, what is not in Tasmania's interests, is to have this link operating as a commercial monopoly able to choke off supply, and that's effectively the counter fact if Basslink's not regulated, the NSA is on foot for two years and its model, by default, would become an unhedged market network service provider and they would determine how much electricity flows to Tasmania when we need it and how much electricity can flow north when Hydro wants to make money.⁴²

The Committee also heard evidence from Mr Christian and Mr Every-Burns as to the current situation under the new Network Service Agreement and what that might mean for the Tasmanian energy market:

CHAIR - ...*Why would you sign an agreement, all other agreements aside that we can think of, that puts you in a position where you could have your supply cut off unless you paid through the nose?*

Mr CHRISTIAN - *That's what the Basslink services agreement did from 2006 until it was terminated in February [2022], and that's what the network service agreement does for the duration that it's on foot.*

CHAIR - *So we're looking at the same situation under the NSA. There is no real change between the provisions in the Basslink Services Agreement, the BSA, and basically it's the same as the NSA.*

Mr CHRISTIAN - *They're different agreements and they're Hydro's agreements, so it's not for me to talk about them, but the core operating regime for the NSA is the same as the BSA in that without the agreement, the link can be bid as the owner sees fit. What the NSA does, as the BSA did, is require the owner to bid it in at its full capacity all the time. It keeps the link open. The agreement still works that way.*

...

CHAIR - *I'd also ask the Minister to tell us what happened between those two agreements, because there was a period where there was no agreement on foot ...*

Mr EVERY-BURNS - ... *I think it's fair to say that the NSA operationally replicates the BSA. You as a consumer, and we as a user, that's standing: it's a step-less arrangement. That's quite important. The other issue is that Hydro being a very large generator in a circumstance where it happens to have access to a network cable like this, is subject very clearly to the competition laws. There's just no way a director would tolerate offending any of that law.*

⁴² Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.7-9

Hence, the agreements that say that the link will be bid by our operators at full capacity, or fully available capacity, is most important to us and will be bid at no cost, is most important. That allows the free transfer of power. That's the way it will be.

What might happen if it was just a merchant link, is really, it's not a merchant link. It is a link that is being carefully governed by BSA and now carefully governed by the NSA, and the network services agreement will transition into the regulation arrangements when that happens. The link is never going to be left naked. It's going to be governed by proper arrangements.

Dr BROAD - *It was for a period, wasn't it?*

CHAIR - *During February and October [2022] there was a period when there was no agreement.*

Mr EVERY-BURNS - *Yes. That's true.*

CHAIR - *What happened in that period?*

Mr EVERY-BURNS - *...Two very key effects were that Hydro Tasmania was no longer required to pay the facility fee on an ongoing monthly basis, and the operator of the link, ... had the choice at times, because it wasn't Hydro calling the price on it, it was the operator.*

They were available to put limits on the link. They did that. The two countervailing forces that operated in that period were Hydro benefitting by not having to pay an ongoing facility fee and then -

CHAIR - *They're getting hammered another way. Financially.*

Mr EVERY-BURNS - *Yes and no. For months on end, you'd have to say no. For Hydro it was all benefit one-way.*

CHAIR - *You didn't have to pay anything to access the link, is that what you're saying?*

Mr EVERY-BURNS - *Yes, that's right.*

CHAIR - *You didn't get the inter-regional revenues though, because they were sold in the market.*

Mr EVERY-BURNS - *No, because they went to the owner of the link. But at that point, that's a very risky business for the owner of the link, because they've essentially capitalised hundreds of millions of dollars sitting there with a return that could be nothing or it could be interesting from their point of view on high price days.*

You stand back from it and yes, there was a period there where it was transitioning from one agreement to the other. But over the period, I'm sure the CEO will support me, that it was a neutral effect for us, and in effect we didn't get away with paying nothing for that

six- or seven-month period. There were costs that went with the transfer of energy, particularly during that high-price period. But overall, it was neutral to us.

CHAIR - So it was a net zero, basically?

Mr EVERY-BURNS - Yes.

CHAIR - In a question on notice, you talked about this under the NSA being effectively the same as the BSA in terms of the way it works.

Mr EVERY-BURNS - I said functionally, I think.

CHAIR - Functionally, yes. You also said that Hydro Tasmania may only instruct the operator to bid at a price other than zero in pre-arranged circumstances. Can you explain to me when that would occur?

...

CHAIR - ... Making Basslink available at zero price, except in certain circumstances. I'm interested in these certain pre-arranged circumstances, what they actually are.

Mr EVERY-BURNS - I might refer you for detail. That's a very little-used situation. I think the last time it was used was 2013. It would be related to physical need. From our point of view, it's not a day-to-day operational matter at all. It's quite [in]consequential.

CHAIR - I'm assuming that's the case, because it's the exception rather than the rule. I'm just trying to understand what it actually means.

...

Mr BROOKSBANK - Under the network services agreement, as we have discussed, Basslink Propriety Limited is obliged to make Basslink available to the market at its safe, continuous capacity at a price of zero dollars, unless otherwise instructed by Hydro.

The process, should we wish to instruct Basslink and BPL otherwise, and the Chair is correct - that has only occurred once back in 2013 under the old BSA - we would only instruct other than zero in extremely limited circumstances and they're set out and agreed in a Transport Bidding Protocol⁴³.

...

Mr BROOKSBANK - ... 'transport' being the transport of energy. That would happen very rarely. As I say, last time was in 2013. We would publish a notice on our website of that and the protocol is also published on our website.

Dr BROAD - What were the circumstances in 2013 to trigger that?

...

Mr BROOKSBANK - ... As you know, networks can get constrained and that would be a circumstance in which bidding other zero occur - if the network in Tasmania was constrained.

⁴³ See <https://www.hydro.com.au/about-us/our-governance/esi-compliance-plans>

CHAIR - When you say - 'other than zero', what would it be?

Mr BROOKSBANK - That would be a highly hypothetical question based on the circumstances we were facing at the time.

...

Mr CHRISTIAN - Effectively, there is a Transport Bidding Protocol which is all set out there. This used to be set out in a regulatory instrument that was published by the Government and originally this all the way back to the Australian Competition and Consumer Commission (ACCC) authorisation and our entry arrangements. It's got a long history and the thrust of it is to make sure the Basslink is bid in at zero, apart from these specific circumstances which are rather detailed but we'll give you the link and it's publicly available. ... If those circumstances do arise and Hydro can instruct BPL to issue a positive bid and in very limited circumstances a negative bid which means -

...

Mr CHRISTIAN - ... What it means is that effectively Hydro, to deal with these technical circumstances which are published, can control the link to avoid technical issues.

CHAIR - Like a failure of the link?

Mr CHRISTIAN - I would describe them as unintended consequences of having the link freely available - not to do with thermal overheating of the link - not that sort of failure because that's dealt with by having the agreed technical limits that we've already spoken about - making sure that the link operates within those thermal limits. So, what it would mean if these limited circumstances happen, Hydro has the opportunity to say to Basslink, rather than bid in your capacity into AEMO at zero, which is what Basslink has to do every five minutes, we want you to bid the Basslink capacity in at a positive price difference in which case if the price difference between Victoria and Tasmania is not equal to that amount or more, no flows will happen on the link; that's what it means.⁴⁴

In responding to a question on notice in relation to the particular circumstances in 2013 that triggered Hydro Tasmania to instruct BPL under the Transport Bidding Protocol to make Basslink available to the market at its safe, continuous capacity at a price other than zero dollars, Minister Barnett submitted that 'the 2013 market event was caused by a fire at Yallourn Power Station control room'.⁴⁵ The specific circumstances from 21 June 2013 are detailed on the Hydro Tasmania website.⁴⁶

At the 9 June 2023 public hearings, Mr Brooksbank explained the difference between the BSA and the NSA:

CHAIR - ... What you've told us is that the BSA and the NSA are the same sort of agreement, there's very little difference? So, why did you make the decision to terminate the BSA if the situation hasn't changed in the nature of the agreements?

...

⁴⁴ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.9-13

⁴⁵ Letter from Hon Guy Barnett MP Minister for Energy and Emissions Reduction (received 30 June 2023), p.2

⁴⁶ See https://www.hydro.com.au/docs/default-source/about-us/our-governance/esi-compliance-plan_notices/enhancement-compliance-plan-notice_21-june-2013.pdf [Accessed 4 August 2023]

Mr BROOKSBANK - While the functional operation of the NSA is similar to the BSA, there are a number of important changes to Tasmania. One, the facility fares different. Two, the NSA is structured around the effective capacity of the asset rather than the BSA, which was structured around the original dynamic overload capacity of the asset.

There are a couple of technical things around some reduced availability charges. If the availability's set to what its effective thermal capacity is, then there isn't a challenge there. There are a couple of other things related to the engineering and the operation of the asset. The NSA has addressed a lot of the concerns we had with the operation of the BSA.

CHAIR - You said the fee's different, what is the fee?

Mr BROOKSBANK - The fee is commercial-in-confidence. It's with a third party, APA, and therefore not something we would discuss.

CHAIR - It'll probably appear in their financial reports won't it?

Mr BROOKSBANK - The impact of the net assets and liabilities, just like they did for the BSA, will appear in our annual report at the end of this financial year.

CHAIR - So then why can't you at least inform the Committee of it?

Mr BROOKSBANK - First, our financial year hasn't ended yet, so our accounts aren't drawn and our annual report hasn't been tabled. Second, it's a commercial agreement with a counter party and therefore commercial-in-confidence.

CHAIR - In your financial reports you consolidated some of the fees. It will appear as part of that fee in your annual financial reports?

Mr BROOKSBANK - My expectation is that we will report the NSA in a similar fashion to the way we reported the BSA in prior years.

CHAIR - How is the fee paid?

Mr BROOKSBANK - The fee is paid as a monthly charge.

CHAIR - Regarding the recording of it in the financials, will we see future liabilities recorded or just the fee paid?

Mr BROOKSBANK - You will see a future asset and a future liability, remembering that the NSA is only on foot until 30 June 2025. The BSA is a much longer term.

CHAIR - If there is a delay in that process, for whatever reason, and we go back to the situation where there isn't an agreement, because it will terminate, whichever happens first -

Mr BROOKSBANK - *If I could step in for one piece, there is an option to extend the agreement after 30 June 2025, if both parties agree.*

CHAIR - *For how long?*

Mr BROOKSBANK - *That would be a discussion to be had at that time dependent upon the circumstances which caused it to be extended.*

CHAIR - *So, the BSA is now redundant?*

Mr BROOKSBANK - *The BSA is terminated.*⁴⁷

At the 9 June 2023 public hearings, the Committee heard from Mr Brooksbank and Mr Voss about whether there was any impact to major Tasmanian electricity users with respect to the NSA and if the Basslink were to be a regulated asset in the future:

Dr BROAD - *You have the NSA for two years. What impact does that have on recontracting with your customers, particularly the major industrials? Would that have an impact on the negotiations seeing as there's a risk, I suppose, because you don't know exactly how that regulation process will end up?*

Mr BROOKSBANK - *... I won't go into the details of conversations and negotiations we're having with major industrials. The answer to the question is really something they would have to answer in terms of their modelling and understanding of what their energy costs will be for the time ahead, remembering that that charge wouldn't be something that Hydro would be incurring and, therefore, passing through to the major industrial customers.*

Dr BROAD - *The major industrials would be, in effect, dealing with the regulated link themselves? Is that what you're saying?*

Mr BROOKSBANK - *No, the regulated link charges will pass through the transmission network service provider and be part of their charges into the system. So, no, I don't believe the MIs would be directly engaging with the link.*

Dr BROAD - *What you're saying is that it would be up to the major industrials to model that?*

Mr BROOKSBANK - *Yes, as they model out their position for the negotiations ahead, unless I stand to correct myself.*

Mr VOSS - *I'm just getting clarity from your question, Dr Broad. Are you asking about the transfer of the pricing through to major industrials as a result of the Basslink regulation, or are you asking a different question, around when the link becomes regulated around the contracting and Hydro's ability to provide energy? I wasn't quite clear.*

⁴⁷ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.14-15

Dr BROAD - I think there's some uncertainty as the regulation process hasn't occurred, is occurring. I'm questioning what that means for contract negotiations with major industrials.

Mr VOSS - Again, the contract negotiations of Hydro's negotiations - I don't know if there's a specific Hydro answer and I'm not sure -

Dr BROAD - One way of dealing with that is to extend current contracts until you know or there are always ways of mitigating that risk. I'm inquiring what it means for the recontracting process - the fact that it's unknown how the link is going to be regulated specifically.

Mr BROOKSBANK - From Hydro's perspective, we're providing the MIs with energy. We're not providing the MIs with the network or the interconnection service. That's, obviously, Basslink/APA's responsibility for the interconnection, then the transmission is TasNetworks'. From our perspective, I doubt that it would play any real role in our negotiations whatsoever because it's not a charge we are charging the MIs.

Mr VOSS - ... The transmission part and the implications of regulation will arise through TasNetworks, so it's a separate outcome that will be done through the regulatory process. Hydro is just dealing with the wholesale energy component, so the regulatory process and how that plays out shouldn't have an impact on how Hydro contracts on their wholesale energy renegotiations.⁴⁸

The Committee also heard from Mr Christian and Mr Voss with respect to the drawbacks should Basslink not become a regulated asset in the future:

Mr CHRISTIAN - ...To clarify, ... we had a BSA and an NSA that's on foot and that's scheduled to terminate. We are either in regulation or we're not. If we're not then that was where I was going in terms of the owner of the link having the capacity to bid. That's the design of how NEM works. That has been mitigated, ... with the BSA and the NSA. If we didn't have regulation all we have on the table is a two-year transaction. The default position after that is it becomes a merchant link. That would be particularly bad for Tasmania in times of hydrological stress when it becomes more profitable for the interconnector to withhold capacity because when we need it prices in Tasmania would be going higher and higher to try to attract the electricity from Victoria. Then the link owner is in control.

I go back to the key point of what is in Tasmania's interest, which is the open flow. This is where I started. We want open flows across Basslink, effectively at a zero price difference. It's what we've seen since 2006, apart from the six months, or however long that period was. It's what we would see in regulations and the open flows. To your question about what are the down sides, I'm hard pressed to see any down sides.

Dr BROAD - The regulation compared to something like an NSA-type agreement.

⁴⁸ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.16-17

Mr CHRISTIAN - That is not a scenario that's on the table.

Dr BROAD - No, but we are playing it out. What are the differences between having an NSA and a regulated link that may not be in Tasmania's benefit? You can't think of anything?

Mr CHRISTIAN - There's no commercial model past the NSA. It's entirely hypothetical.

Mr WILLIE - My understanding is this is the only non-regulated interconnector in the country. Way back when Basslink was implemented it was a merchant link with an agreement, not a regulated asset, and that was because of the owners and that was what their model was. It wasn't the State of Tasmania preferring a regulated asset.

Mr CHRISTIAN - I happened to be around back then. The Government went through a competitive process with multiple phases. All the bidders running through the process wanted to pursue a non-regulated asset. That was principally because back then the perceived risk of bidders going through what preceded the regulatory investment test (RIT-T) that currently exists by the AER, none of the bidders wanted to go through what then existed for the RIT-T. They saw that as too risky. All the proposals coming through from Basslink, the national grid was the eventual winning proposal, were all for an MNSP.

Mr WILLIE - That's good to understand the history. Has there been any economic modelling or have you just looked at the benefits and you would be able to understand the economics more when there is more detail?

Mr CHRISTIAN - Correct, that is for the AER process.

Mr VOSS - I'll elaborate a little bit. The [APA] will be putting up modelling around how they think the cost allocation will play out. I think what you're asking is, has the State done any modelling? We have not done any modelling at this stage. I wouldn't rule in or out us doing modelling. We'll look to what APA puts up and we'll take a position at that point if we need to.⁴⁹

The Committee also heard from Minister Barnett, Mr Voss and Mr Christian as to whether the process to regulate Basslink had commenced:

CHAIR - Can I clarify that the process to regulate Basslink has started now, or you don't know whether it has or not?

Mr BARNETT - No, my understanding is July this year. APA has advised the Government of its intention to apply to the Australian Energy Regulator, so that would be when it commences with that vision to conclude by 1 July 2025...

⁴⁹ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.13-14

Mr VOSS - I might read out, for the benefit of the Committee, what the expectation of APA is on the timetable.

...

Mr VOSS - ... This is what APA thinks might happen, but ultimately this is up to the AER, but just as an indication to the Committee. The submission of the revenue proposal and the pricing methodology is expected around mid-July, again not to the Government but that's just to give the Committee an understanding. They've also got to do a submission in support of the conversion application, ... The AER will issue an issues paper and stakeholder consultations, they deal with all these types of matters, and that will probably be around September [2023].

CHAIR - Will the Government participate in that?

Mr VOSS - Yes, we have an option to participate in that, and we will through the APA consultation more broadly. There's a public forum that will also be around September/October [2023]. Then you'll have stakeholder submissions through that period, probably at the end of October [2023], the AER draft decision by 24 March [2024] - again, just to be clear, this is how APA thinks things might play out - Basslink revised proposal by 24 May [2024], and the AER final decision on both those determination[s] towards the end of 2024, so it's close.

Mr CHRISTIAN - Like all things in energy, it's slightly complicated. BPL is not a TNSP⁵⁰ regulated interconnector yet and there's a little complication in the rules about how they actually get into the process to start the process, so there's a minor bit of detail on top of the Minister's answers. They have written to the AER and put the key in the lock, if you like, to start the process. There's a little cycle that has to happen, but the process starts in full effect in July [2023].

There are two things that are going to happen in July [2023]. You'll see there's two submissions, because the AER has to decide two things. The first thing is should Basslink move from an MNSP to become a regulated interconnector? The rules provide for that to happen, they are the determinant of that. Then if the answer to that question is yes, what are its allowable revenues? They're two different processes and our understanding is that the AER will conduct those things together in parallel.

CHAIR - So you've got to have the answer yes to one to go to the next?

Mr CHRISTIAN - They're doing them simultaneously, so what will happen in mid-July is that BPL will make its full application for conversion and at the same time it'll put in a revenue determination submission as well. That will look rather like what we see with TNSP's TasNetworks regulatory proposal and Transgrid's and so on. So, there are two things that are happening, but the process has started in that they've initiated to become an intending TNSP to commence the process in July.

⁵⁰ Transmission Network Service Provider

***CHAIR** - I know this is a question for the AER, but do you know how they engage with the stakeholders? I assume the MIs⁵¹ all know this is going on and they'll participate in the process. How does that happen?*

***Mr CHRISTIAN** - The AER's got a heavy focus on consultation. APA's already started the consultative process ahead of starting the formal AER process. They've established a regulation reference group that's got representatives from Tasmania and Victoria. That group has been active for some time and they've been consulting on the shape of the regulatory proposal they intend to put to the AER. That work's underway. The way in which wider consultation happens as part of the AER process is obviously for the AER, and it'll have a shape, like Mr Voss has just read into the process.⁵²*

Since the public hearing the AER has commenced the formal process as outlined on the AER website⁵³: this is detailed below.

On 19 May 2023, the AER received an application from APA Group to commence a process to assess an application to convert the Basslink interconnector from a Market Network Service Provider (MNSP) to a regulated Transmission Network Service Provider (TNSP) and revenue determination under rule 6A.9 of the National Energy Rules.

On 14 July 2023, the AER published a Commencement and Process Paper that established the process for assessing APA Group's conversion application and revenue determination.

On 10 November 2023 the AER released an Issues Paper for the Basslink interconnector conversion application and revenue determination.

This Issues Paper set out the key issues relating to APA Group's application to convert the Basslink interconnector from a MNSP to a regulated TNSP.

Stakeholder input was sought on related issues, including:

- consumer interests in the operation of Basslink and the impact of consumer engagement by APA Group in developing the regulatory proposal
- the costs and benefits of conversion to a regulated TNSP, including consideration of the most plausible counterfactuals to regulation
- the opening Regulated Asset Base (RAB) for Basslink, including the proposed value and methodology applied to calculate
- how costs should be allocated between consumers in Tasmania and Victoria should Basslink convert to regulated asset, and
- the prudence and efficiency of proposed expenditure should Basslink convert to a regulated asset.

Feedback from stakeholders was sought by 16 February 2024.

⁵¹ Major industrials

⁵² Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.26-28

⁵³ <https://www.aer.gov.au/news/articles/communications/aer-releases-issues-paper-basslink-conversion-application-and-revenue-determination> (accessed 3 December 2023)

The Committee notes the following:

- on 19 May 2023, APA submitted an application to the AER to commence and set out a process for establishing a revenue determination for the Basslink Interconnector
- on 14 July 2023 the AER published its decision to commence a revenue determination process for the Basslink interconnector and the Commencement and Process Paper applying to that determination process
- on 15 September 2023, APA submitted additional information in support of its application to convert the Basslink interconnector from a market network service provider to a prescribed transmission service. APA also submitted its revenue determination proposal, and
- on 17 May 2024, the AER released a Consultation Paper seeking stakeholder views on proposed amendments to the Basslink Commencement and Process Paper. The call for written submissions closed on 31 May 2024.⁵⁴

Committee Findings

- F16. APA is progressing the regulation of the Basslink asset through Australian Energy Regulator.
- F17. The process for regulation of the Basslink asset appears to be on track to meet the designated timeline.
- F18. If/when Basslink becomes a regulated asset, Tasmania should experience the following benefits:
- a. surety for electricity flow over the asset
 - b. opportunity for community consultation and engagement as part of the process of regulating the asset
 - c. better transparency and oversight of costs, and
 - d. cost-sharing between Tasmanian and Victorian customers.
- F19. Whilst the functional operations of the Network Service Agreement are similar to the Basslink Services Agreement, the Network Service Agreement is more beneficial to Tasmania.
- F20. The Network Service Agreement expires on 30 June 2025 noting there is an option to extend with the agreement of both parties.

Establishment of Basslink Technical Performance Characteristics

At the 9 June 2023 public hearing, the Committee heard from Minister Barnett, and Messrs Brooksbank, Every-Burns and Christian with respect to the physical improvements undertaken to the Basslink since being taken over by APA:

⁵⁴ See in general AER Basslink – Determination 2025-30, <https://www.aer.gov.au/industry/registers/determinations/basslink-determination-2025-30>

CHAIR - ...You talk about the physical performance of the link, Minister, and that was, as I understand it, a fairly key component of some of this dispute. Has extra work been done at APA's expense - I assume - to shore it up because the reliability of your link is pretty crucial?

Mr BARNETT - Yes, is the answer. The work undertaken is very significant. It is certainly an operational matter and more than happy to pass to the CEO of Hydro Tasmania to outline the nature of that work and what has been achieved.

Mr BROOKSBANK - APA committed to a number of engineering fixes, for example ride-through. They have worked diligently across those items and have delivered the majority of those they promised to do. The operation of the link itself has become more stable from our perspective. Certainly, the relationship with APA is much stronger than the relationship we had with the previous owners.

CHAIR - There is obviously, the expectation on access and reliability as part of the agreement?

...

Mr CHRISTIAN - A couple of points are relevant. Coming out of the arbitration, because the original design performance of the link, the contracted level of performance of the link, was proven not to be there -

Dr BROAD - By how much? What quantum?

Mr CHRISTIAN - I've got the numbers. The Minister just read them into Hansard. It varies depending on the temperature of the water.⁵⁵

...

Mr CHRISTIAN - I don't have the design characteristics in front of me. They're contained in the Basslink operation agreement. I'll come back to the Basslink operation agreement.

Coming out of the arbitration, one of the key tasks was for BPL to establish what the maximum thermal rating of the link actually is. There was very slow progress with BPL under its former ownership. Hydro had done a power of work to undertake investigations of a whole range of factors that determine that thermal rating, and under the previous ownership of Basslink, we couldn't reach agreement on the modelling.

Very soon after the sale of Basslink to the APA, APA had gone through all of that work, and those matters have now been resolved pretty much on the basis of the numbers that Hydro had produced. That's a bit more detail on the numbers. They're not in dispute anymore. They're now agreed, to the point of output availability.

Dr BROAD - What was it supposed to be, though? You're talking about what it is. What was the rating supposed to be?

⁵⁵ See Minister Barnett 'There is no longer any dispute about the continuous rating of Basslink between the State parties and BPL which is 462 megawatts in August to December and 447 megawatts in January to July', Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.2

...

Mr BROOKSBANK - *The nominal rated capacity of the link is 630 megawatts.*

CHAIR - *To clarify, that was the expectation when Basslink owned it? When the previous owners owned it?*

Mr BROOKSBANK - *Yes. That is the engineered as-built capacity. With the failure that occurred in 2016, it became clear with all the investigative work Hydro did that 630 megawatts, subject to the loss factors across the line, wasn't achievable as a result of the thermal loading on the cable itself.*

Dr BROAD - *Was it achievable before the breakdown?*

Mr BROOKSBANK - *I don't know the answer to that.*

Mr EVERY-BURNS - *The rating of Basslink was defined to have sort of a dynamic element to it. It wasn't correct to say that it had a 630-megawatt continuous rating. It actually had a rating that was related to how hard it had been operated for how many hours. It was called a dynamic rating.*

What's happened is, as we work through these particular issues, the engineering studies sort of said, if you could put in a new system that could emulate what the cable is doing, you could operate it dynamically. That is still in the future for us. The more conservative thing to do was to make it a 500-megawatt cable at the sending end, for example, which is where the numbers of 462 I think has come from. So, yes, it has been conservatively de-rated to make sure that it can operate continuously safely, and it appears to be doing that very effectively from our point of view. There is still the 'blue sky' future ahead, to get a dynamic element back to it.

CHAIR - *Essentially, the rating when the agreement was first struck was higher, or considered to be higher? I'm just trying to paraphrase this, correct me if I'm wrong. It wasn't found to be reliable or possible because of the nature of the link. Now it's been revised down, and you're saying that, at the current rating, we should see very reliable transmission.*

Mr EVERY-BURNS - *That's our view. The ratings now are designed to maintain the thermal element of the cable for a very long period - so much so that it would get all of its remaining life, probably without question.⁵⁶*

APA: The New Basslink Owner

During the course of the 9 June 2023 public hearings, the Committee heard from Minister Barnett, and Messrs Brooksbank, Voss and Every-Burns about the improved position for the State with the new Basslink owner, APA:

⁵⁶ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.3-4

Mr YOUNG - Minister, you're obviously satisfied with the end result of the negotiations, which to me also includes a good or improved commercial and stakeholder relationship with the new operator, APA. Are you able to talk about that and how good APA is as the new operator?

Mr BARNETT - There are many positive features in the relationship and the answer is, yes, in terms of a very good outcome for Tasmania and, once having our monies owed returned, the technical fixes fixed in a short amount of time. So, APA has really stood up. They are a multi-billion-dollar infrastructure and transmission entity and they are an incredible organisation. They are great to deal with as a State. Hydro can speak for themselves but I know they have the same view.

They have plans to continue to operate the link efficiently in a safe and reliable manner and are working in partnership with Hydro Tasmania to achieve a good outcome for Tasmania. We are very pleased with that relationship. And the main thing is that it's on a sustainable footing. That's their vision and it's our vision, and we are pleased with that position. ...⁵⁷

...

CHAIR - ... During the period where there was no contract, from February 2022 to October 2022, can you tell us what the revenues were over that period?

Mr BROOKSBANK - The wholesale trading revenues?

CHAIR - Yes.

Mr BROOKSBANK - I don't have that number to hand and that would be something that we would hold commercial with our results that are being published at the end of the year. I can say that that was also the period where we weren't paying the Basslink services facility fee and that netted off against those revenues as a result of the link being operated the way it was.

CHAIR - As I understand it, OTTER⁵⁸ does publish these revenues.

Mr BROOKSBANK - OTTER publish the revenues from the flows through the NEM, they do not have or publish the revenues from our wholesale trading activities, the hedging arrangements we enter into and the like.

CHAIR - Okay. Basically, what you have seen is we are actually better off under this arrangement?

Mr BROOKSBANK - Yes, that is correct.

CHAIR - That is the arrangement with the NSA in place. Minister, how do you see it in terms of being better off for the people of Tasmania, because, we own Hydro. How will we be better off? Mr Christian talked a bit about this. How do you see this as we being

⁵⁷ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.17-18

⁵⁸ Office of the Tasmanian Economic Regulator

better off in terms of pricing and that sort of thing under a regulated link, when APA have a pretty highly priced asset sitting there. One would assume they will put a pretty tidy case to the regulator if their regulated asset base is assessed against the value they have put on it, it is going to be hard to keep prices down.

Mr BARNETT - ... *It is a bit of a two-part question and I do think Mr Christian has responded very well in terms of the positive potential benefits for Tasmania of reliability, efficiency, serviceability and providing a sustainable link for the two-way flow of energy which can deliver benefits for Tasmania to put downward pressure on prices.*

To the second part of your question, it will need to go through independent process that is very transparent. The Australian Energy Regulator will be looking at all of those issues very carefully. It will depend a lot on what APA puts forward and then the feedback from the various stakeholders, consumers and other groups will have input to the independent regulator, that will take some time. There is a two-year window there for that process to progress. ...

That is certainly the AER as I understand it. We will be looking at the AER in terms of the regulated maximum revenues for the link. They will be looking at things like the Basslink's efficient and prudent operating costs, the regulated asset base for the link, efficient and prudent capital expenditure over the period, the return on capital, including the application of the AER's standard rate of return, the return on capital appreciation and performance incentive regime. I think there is also a reference earlier to insurance.

There is a whole range of matters the independent regulator will work through, get feedback on. It is very transparent and we will be monitoring that very carefully. At the end of the day, this State Government will do what is in the best interests of Tasmania and Tasmanians.

To Adrian Christian's earlier point, at the moment, as you know, it is 100 per cent paid through Hydro Tasmania since 2006 and there will clearly be a net significant improvement for Tasmania Inc. As a Government, we will ensure it is in the best interests of Tasmania and Tasmanians.

Mr VOSS - *As the Minister outlined, the AER's role is on setting fair and efficient prices. It is not on the commercial decisions at APA.*

CHAIR - *APA would not have paid what they did if they did not think they were going to get a return.*

Mr VOSS - *They have a view to what they think the regulated asset base might be, but that is a decision of the AER. The AER's mandate is to set fair and efficient prices. Our view is they will not take a lot of weight to what APA did commercially. They go through their processes, as the Minister said, on efficient operating costs and et cetera and working out the regulated asset base. The risk of getting a different regulatory outcome such as a low regulated asset base, or a lower return verses the price they pay is entirely APA's risk. It is not the State's risk, it is the risk they have taken on purchasing that asset.*

CHAIR - *I get that and that sits behind this. We could find ourselves back here again if the AER determine the regulated asset base is significantly less than \$800 million, which is what APA are notionally evaluating it at.*

Mr VOSS - *On what basis would we be back here?*

CHAIR - *If they find themselves struggling financially because they become unsustainable financially.*

Mr VOSS - *One of the benefits of APA being the owner of this link is they are a very large company. They own the other interconnectors in Australia, they have a very large portfolio across the country.*

CHAIR - *Keppel did set Basslink. They put them off as one they could cut loose.*

Mr VOSS - *They are a very different company to Keppel Infrastructure Trust. As Adrian said before, one of the benefits of going through this process and having APA as the owner of the link and going through the regulatory process is it gives us confidence they are a sustainable commercial entity. A much different position to where we were a few years ago.*

...

Mr EVERY-BURNS - *... APA is a sophisticated investor. They understand how to power energy transport very well. It puts themselves in a position to do this. Adrian Christian went to it very well, Tasmania currently pays the entire cost, in effect, of Basslink, the financial costs any way you look at it. They pay the entirety of it. In the future, the vision, the light on the hill is that other people who are beneficiaries as the power flows across Basslink will contribute to those costs.*

Patently, as power is flowing into Victoria it is happening because Hydro Tas or Tasmania is providing power into Victoria at a better price than their market would otherwise give it to them. The beneficiaries of the power flows, half the time, are on the other side and yet the payment at the moment is being fully funded by Tasmania.

CHAIR - *It was a bit of a dodgy deal signed all that time ago.*

Mr EVERY-BURNS - *No, not at all.*

CHAIR - *I think all the hedging wasn't all that successful.*

Mr EVERY-BURNS - *... at the time the deal was put in place it was the only way it could be done. With the passage of time, it is the only interconnector funded by one group, which happens to be Tasmania and beneficiaries are sitting very well. It is self-evident to me, where we are now, that link should be regulated and it should have its costs distributed across the beneficiaries. Standing back from it, Tasmania will not be paying as much as it was.⁵⁹*

⁵⁹ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.18-21

The Committee also heard from Mr Voss and Mr Brooksbank in relation to a statement APA had made about ‘predictable revenues’:

Mrs ALEXANDER - ...In a statement APA said in relation to the acquisition about entering into contract with Hydro and the State Government to provide 'predictable revenues'. Revenues, as much as they're predictable, but there's no reference to what happens with fees and sort of a cap on fees or more of a structure on fees, because we know in the previous agreement at times Hydro actually paid more in fees than it obtained in revenues. Are we comfortable, Minister, that this 'predictable revenue' they're referring to also has the other side, which is far more controlled fees?

...

Mr VOSS - I think you're referring to two different things there. The fee question that you're asking about I think relates to the fees Hydro's paying currently under the NSA and previously under the BSA. In the regulatory framework, it'll be a very different outcome. The Minister went through some of those previously. The revenue determination in the AER makes a determination on their maximum allowable revenue based on a range of things around, as we said before, the prudent costs, what the regulated asset base is going to be, return on capital, return of capital, et cetera. Those things can vary a little bit from year to year, potentially based on performance incentive type regimes that the AER has and on standard processes with transmission infrastructure. Once that is set, it is set for a five-year period, but it is not sort of set and forget, as I said, it is five years and then they go through another process every five years.

So, the regulatory revenues that APA will receive is based on that AER process. There is potentially some variability that it will be based on the AER determination, but it is different to what I think you were describing with regard to the fees that Hydro pays under a contractual commercial arrangement.

Mr BROOKSBANK - I will not speak to the regulation piece, but the fees that APA are referring to would, I suspect, be the fees under the network services agreement. APA, as the Committee knows, is an extremely large Australian infrastructure operator investor. They have regulated links already on their asset book, so from their shareholders' perspective and their investors perspective, they are investing in the stable returns that an infrastructure organisation like APA would deliver and that is the point they are making, that they have moved into an agreement that guarantees a stable return, if you like, a stable revenue to APA, that is the point they were making, I believe.⁶⁰

Committee Findings

- F21. After a dispute with the previous owner, the maximum thermal rating of the link is agreed and has been de-rated from a nominal 630-megawatt continuous rating to 500 megawatts.
- F22. Since taking ownership of the link, APA has undertaken engineering work on the link.

⁶⁰ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.28

F23. The opportunity to operate the Basslink dynamically continues to be investigated.

Future Interconnections

At the 9 June 2023 public hearing, the Committee heard as to whether there were any expectations for future interconnections to the mainland through Minister Barnett and Mr Brooksbank:

***Dr BROAD** - Obviously APA is a different beast than the previous owner and they operate a number of links and have certain capacity. Is there any possibility that they may seek to establish another link across Bass Strait?*

***Mr BARNETT** - I think that's a question for APA. I understand where you're coming from and it's a fair question, but we are not APA.*

***Dr BROAD** - But you must have some insight if that's a discussion point or a probability? It's not purely a question for APA because Tasmania and Hydro would be major stakeholders.*

***Mr BARNETT** - It's certainly outside the terms of reference, but I'm happy to indicate that as a government we'll do what's best for Tasmania. We obviously have plans for Marinus Link, Battery of the Nation. We can see the benefits of interconnection: it was raised at the energy conference yesterday in Devonport. I think they are important discussions, but in respect of what APA may or may not wish to do, that's a matter for APA. We've had some discussions and they have ongoing relationships with Hydro Tasmania, but they're very good questions for APA. We'll certainly keep all those sorts of questions under active consideration as and when they fall due.*

***Dr BROAD** - So there haven't been any discussions on that topic?*

***Mr BARNETT** - We don't go into private conversations with private entities. We're happy to talk about what's best for Tasmania and that's what we will continue to focus on. We have a renewable energy future. We support the benefit and merit of interconnection, which is why we're progressing Marinus Link which is supported by the Federal Labor government, subject to a financial investment decision by the end of next year. We're continuing on that track with a policy to grow our economy and create more jobs, put downward pressure on prices, make energy security improvements for a cleaner world. There are a lot of benefits from Marinus Link and Battery of the Nation and that does touch on your question to some degree with respect to interconnection.⁶¹*

The Committee also heard through Minister Barnett and Mr Christian with respect to how multiple interconnections are regulated in Australia:

⁶¹ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.26

Dr BROAD - Do some States have multiple links and how are they regulated? This would be relevant, like, Marinus comes into the picture, so are multiple links regulated, like they are competition between each other? I'm not sure, just trying to get some clarity on that.

Mr BARNETT - ... I think Adrian Christian has outlined that every other link in Australia goes through an independent process that is regulated, maximum allowable revenue. It's independently assessed, it's transparent, it is open, subject to submissions. ...

Mr CHRISTIAN - Yes, other jurisdictions have multiple links, and they are all regulated and so the way they actually work is that AEMO as the market operator takes the bids of generators in each region and where there is a transmission capacity under the regulator model, effectively, but they are not bid, but think of them as bid in at 0, they are available for AEMO to manage, dispatch that so that electricity will flow.

So, they do not compete with one another, they are effectively in the system as pieces of transmission kit, and as AEMO is managing the market, they will take a generator here and so there's some load over there, and the algorithm that AEMO uses to do dispatchable, so can we get this generation across the interconnector to where that load is or do we need to get generation in the same region where the load is if we cannot get it through the link because it is constrained.

So, that is how it works, it works by AEMO managing dispatch, the links being open and available, and electricity will flow according to the engineering.

Dr BROAD - So, in effect, AEMO manages the distribution between the different links.

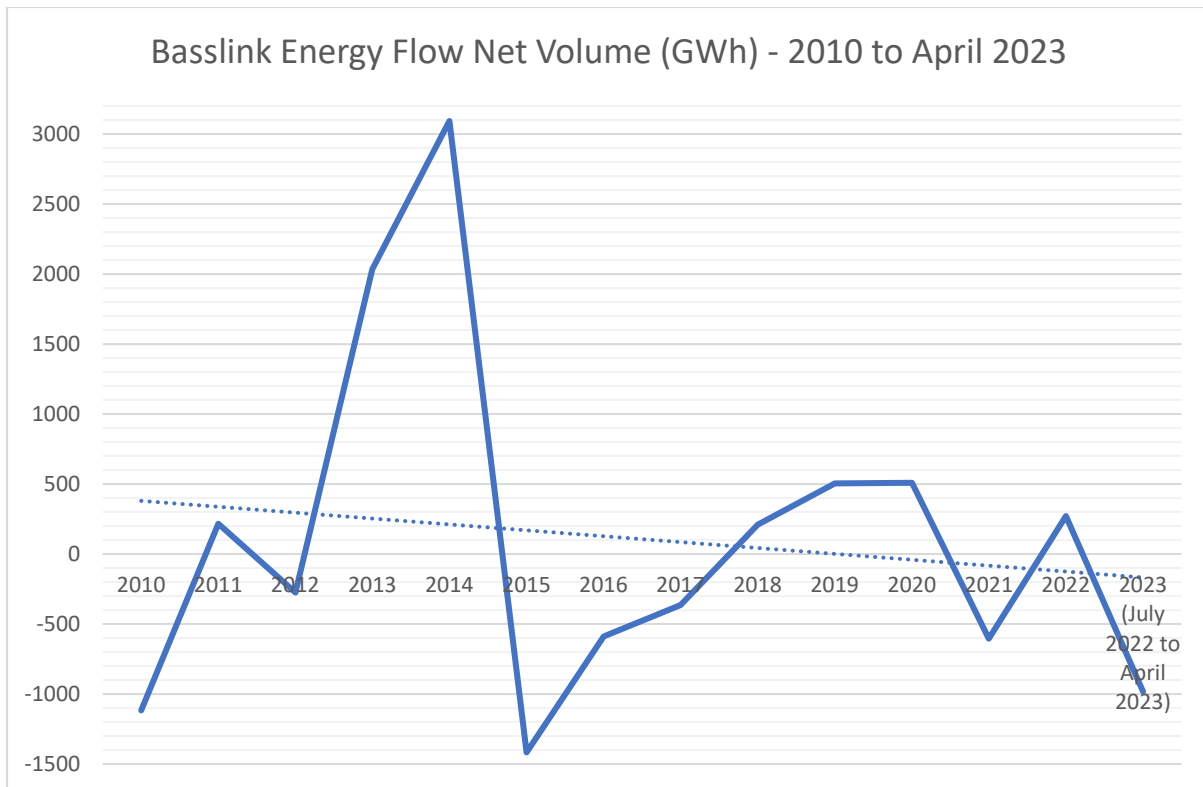
Mr CHRISTIAN - By dint of which generators they call on.⁶²

Basslink Import and Export Energy Flows

In response to a question on notice, Minister Barnett provided a comparative graph of the annual Basslink import and export energy flows from 2010 to April 2023 (see [Appendix C](#)).⁶³ The Committee noted that on average the net energy flow for the period 2010 to 2022 was in the order of 190 GWh and that this had been decreasing steadily overtime.

⁶² Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.28-29

⁶³ Letter from Hon Guy Barnett MP Minister for Energy and Emissions Reduction (received 30 June 2023), p.1-2



At the 9 June 2023 public hearing, Mr Brooksbank provided an explanation as to why the then current energy flow figures for the year ending 2023 indicated a high import figure:

Dr BROAD - *That just seems like a lot of import for up to this point. I wouldn't have thought it was a low rainfall year, given the amount of rainfall into the Great Lake catchment and so on. I'm just wondering what the reasoning is for having to import 1,000 gigawatt hours in this financial year.*

Mr BROOKSBANK - *There are a couple of reasons. It has been a year of variable rainfall. It was quite dry at the start of the financial year, and therefore there was a need to balance our inflows and our storage catchment.*

We had severe storms and rainfall in the October and November [2022], which resulted in a 22 kV line falling down for some time. That meant the island became essentially two networks, north and south. That therefore changed the way we would run our portfolio of assets.

Thirdly, the opportunity to arbitrage across the link is becoming significant, if you like, with the variable renewable penetration on the mainland. The link provides both an energy security for Tasmania as well as an opportunity to sell energy into the mainland market at high prices and import energy at low prices. Part of our commercial operation is to do that.

Dr BROAD - *Is that arbitrage opportunity driven largely by the impact of solar, or wind, or a combination?*

Mr BROOKSBANK - It's a combination with the variable renewable energy that exists in the mainland, particularly in Victoria, because that's obviously where the link's connected. So yes, it's a combination of those variable renewable energy sources.⁶⁴

Basslink Operations Agreement

At the 9 June 2023 public hearing, Mr Voss and Mr Christian described the ongoing application of the BOA:

CHAIR - ...The Basslink Operations Agreement is still on foot?

Mr VOSS - Yes.

CHAIR - That will cease once the Basslink is regulated?

Mr VOSS - No.

CHAIR - Can you explain to me how that works after the [regulated] link?

Mr VOSS - Briefly, that is an important commercial agreement from the State's perspective. It goes to 2046, which goes back to the commentary earlier around the expected engineering life of the cable. The BOA is between APA and the State. It has a range of things in there on performance standards, curing defaults and it is an important agreement. That agreement will stay on foot. Part of the negotiations we had with APA was to keep that going. ...

...

Mr CHRISTIAN - There are always two separate agreements with two separate parties.

CHAIR - There was one in place with Basslink.

Mr CHRISTIAN - It is the same agreement that continues, but there were some modifications made to the agreement given the likelihood of regulation. It provides for only two changes if Basslink becomes regulated otherwise, it continues on its terms.

CHAIR - ... how does that agreement alter once the link becomes regulated?

Mr CHRISTIAN - There are only two elements that change. First, the BOA has always dealt with decommissioning of Basslink when it does get to the end of its useful life, which happens, the first contract period is 2046, as we discussed.

CHAIR - I understand that the previous owners, for the depreciation purposes, put it out to 60 years.

Mr CHRISTIAN - I couldn't comment one way or another. I don't know.

CHAIR - According to their financials, anyway.

⁶⁴ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.5

Mr CHRISTIAN - The BOA, when it was prepared on the basis of the link being at its peak, had a set of arrangements around decommissioning and a process by which the owner of the link would deal with the government around decommissioning elements. If the link becomes a regulated interconnector, that will be part of the AER's framework, and the AER will set the arrangements for decommissioning and the costs associated with that. That clause, which remains as it is now, because an MNSP at the moment, when it comes regulated, that of course will change to reflect it's going to be a regulated interconnector and the AER will step into that.

CHAIR - So it effectively becomes redundant for our purposes?

Mr CHRISTIAN - There's another adjudicator of the decommissioning arrangements once we've moved to the AER, which is the AER. The only other change to it is that currently there are some arrangements around insurance. The State wants to ensure that the link is insured. If the link becomes regulated then the nature and costs and the form of that insurance - this is the point I was making to Mr Willie earlier - become a part of the AER's domain. Interestingly, it will get to involve customers. What is the customers' view about insurance on the link? Customers will get a voice.

At the moment, under the BOA, because the State wants to ensure the thing is regulated, we've got clauses around insurance, and they fall away because, again, the AER will be in control of that, otherwise the full BOA continues on foot.

Mr WILLIE - Just on the AER determinations, if they make a determination that the State of Tasmania is unhappy with, what recourse is there to challenge that decision?

Mr CHRISTIAN - They'll produce a draft determination, just as they do with all of their decisions: the State gets the opportunity - as does anybody, including you - to make further submissions on the regulator's determination, but once that determination is made, by the design of the rules, they're the independent regulator.⁶⁵

Basslink Projected Lifespan

With respect to the projected lifespan of the current Basslink, the Committee heard the following from Mr Every-Burns and Mr Christian:

Mr WILLIE - What is the life of Basslink?

Mr EVERY-BURNS - The design life is 40 years.

CHAIR - Do you mean 40 years from the start?

Mr EVERY-BURNS - Yes, 40 years from the start.

CHAIR - I read that it was 50?

⁶⁵ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.21-22

Mr CHRISTIAN - The original design life for the link is 2046. It started in 2006. That's not to suggest that in 2046 the link is completed, but the original design life is 2046.

Mr WILLIE - If there's better management of the link, would you be able to extend past that time, in terms of the loads? It sounds like you've got a better handle on it.

Mr EVERY-BURNS - Well, whether it's better management or not, in the engineering sense, if you loaded a cable very lightly, it might last much, much longer. So, you have a design life because you want to utilise the power transfer as best you can, for an economic return of the security.

If you operated above its design capability, or above its actual capability, you will shorten its life - but in the engineering sense, every hour you operate any cable, any insulator, you reduce its life a little. There is no combination that lasts for ever. The right combination is that timeframe. At the moment it is more than just the current flow, it is also the time that you switch from one direction of current to the other. There is a whole lot of elements that are now understood much better than they were decades ago. The operation is conservative to keep the cable fit.

Dr BROAD - You have greater understanding of the operation of this cable, is that because of your understanding of this cable or understanding of cables across the world, it is a relatively new technology. Is that fair to say? Or is it specific to this cable?

Mr EVERY-BURNS - ... We have [a] far more detailed comprehension about this cable that we, as Hydro and the operators of that cable, because of the engineering studies that were done and the work that was done in Bass Strait to understand the geology of [what] it is laid into, the sand beds and so on. Generally, I would say worldwide, yes, there is more knowledge available now. There is more computing power available and the growth of engineering knowledge over that 20-year period is quite substantial.⁶⁶

Committee Findings

- F24. The Basslink Operations Agreement remains in place for the expected engineering life of the interconnector asset until 2046.
- F25. If/when the interconnector becomes a regulated asset, the Australian Energy Regulator will take on the insurance and decommissioning matters under the Basslink Operations Agreement.

⁶⁶ Transcript of evidence [Public Hearings \(9 June 2023\)](#), p.5-6

Appendix A – Chronology of Key Developments between BPL and Hydro Tasmania related to the BSA Disputes

Date/s	Commentary
20 Dec 2015	The Basslink interconnector fails.
Apr – Jun 2016	Failure inspections were carried out on retrieved sections of cable occurs in Milan, Italy and Kent, UK. The inspections were attended by representatives and consultants from BPL and Hydro Tas.
May – Jun 2016	BPL delivers two reports from Cable Consulting International (CCI) covering the failure examinations in Milan
10 Jun 2016	The Basslink interconnector returns to service.
Aug 2016	Hydro Tas rejects BPL's claim that the subsea outage was a force majeure event under the BSA.
5 Dec 2016	BPL delivers a further report from CCI and issues a media statement that its experts (CCI) were not able to identify the cause of the cable fault and that this should provide Hydro Tas and State sufficient evidence to demonstrate cable outage was a force majeure event.
Dec 2016 until Aug 2017	Hydro Tas sets off amounts owed in respect of the outage against facility fee payments due under the BSA. Hydro Tas agrees to make good faith payments to BPL in order to cover BPL's financing and operation costs, without prejudice to Hydro Tas's rights.
20 Dec 2017	Hydro Tas delivers three expert reports prepared by international engineering consulting firm DNV. Hydro Tas issues a media statement that DNV had identified that the probable cause of the cable failure was thermal overstressing caused by BPL's operation of Basslink. DNV's reports include a recommendation that the cable's capacity be limited to 500MW and identified other actions to mitigate the risk of a future cable failure.
22 Dec 2017	BPL limits Basslink capacity to 500MW, but expressly rejects the findings in the DNV reports.
22 Mar 2018	The State delivers a notice of dispute to BPL under the Basslink Operations Agreement (BOA). BPL issues media statement rejecting the State's claims.
26 Apr 2018	The BOA dispute is referred to arbitration.
14 Sep 2018	BPL delivers a notice of dispute to Hydro Tas under the BSA claiming repayment of approximately \$31 million.
8 Oct 2018	BPL's dispute under the BSA is referred to arbitration.
19 Oct 2018	Hydro Tas delivers a notice of dispute to BPL under the BSA for breaches by BPL of the BSA including in relation to Basslink's failure to meet the Minimum Technical Specifications and to follow Good Electricity Industry Practice.
Nov 2018	Hydro Tas's dispute under the BSA is referred to arbitration. The parties agree the three arbitrations would be heard together.
30 Nov 2018	BPL issues CCI report ER 990 to the State and Hydro Tas, rejects the findings of the DNV reports, and issues a media statement that the outage was 'cause unknown' and was therefore a force majeure event.
Jan 2019	Hydro Tas engaged Fugro to undertake a survey of the subsea cable route in the Bass Strait. The survey was commissioned because BPL refused to undertake its own subsea survey despite the lack of available information about the environmental conditions surrounding the subsea cable.

Date/s	Commentary
18 Oct 2019	Following advice from DNV that the Basslink cable may be at risk of exceeding its temperature design limits if operated without constraint, Hydro Tas commences instructing BPL to price capacity above specified flow levels at the market price cap in order to reduce likelihood of Basslink being dispatched above those levels. Hydro Tas issues a media release addressing this issue.
Sep to Oct 2020	The arbitration hearings take place.
2 Dec 2020	The arbitration awards are delivered to BPL, State and Hydro Tas.
23 Dec 2020	Hydro Tas, the State and BPL enter into a standstill agreement in respect of the Awards with expiry date 28 May 2021. The Standstill Agreement preserved the parties' respective rights arising from the arbitration awards and provided a platform for commercial negotiations.
26 May 2021	The standstill agreement is extended by agreement to 27 October 2021.
8 Jun 2021	The owner of BPL, Keppel Infrastructure Trust (KIT), advises Hydro Tas and the State that it had received a conditional, unsolicited proposal from APA to purchase BPL and requested that Hydro Tas and the State support the potential sale including by meeting with APA and making available certain information in relation to the BSA. The APA proposal ultimately does not proceed.
27 Oct 2021	<p>The standstill agreement expires. Hydro Tas issues a media release noting that:</p> <ul style="list-style-type: none"> • Hydro Tas and BPL have been unsuccessful in reaching agreement on a resolution with respect to certain outstanding matters related to the arbitrations; • BPL has not satisfactorily progressed the actions required to improve the cable's operational performance and BPL has failed to pay Hydro Tasmania the costs awarded by the Arbitrator; and • following expiry of the Standstill Agreement, Hydro Tasmania will now progress its legal rights.
29 Oct 2021	Hydro Tas issues BPL with a default notice in respect of persisting performance defaults.
11 Nov 2021	Hydro Tas issues BPL with default notices in respect of persisting financial defaults.
12 Nov 2021	Voluntary administrators and Receivers appointed to BPL and related entities.
22 Nov 2021	Hydro Tas issues BPL with a default notice in respect of BPL's insolvency.
15 to 22 Nov 2021	Hydro Tas issues BPL's financiers with enforcement notices in respect of the above events of default.
10 Feb 2021	Hydro Tas terminates the BSA and related contracts.

Appendix B – Synopsis of Events (Tabled 9 June 2023 Public Hearing)

The following synopsis was tabled by Minister Barnett at the 9 June 2023 public hearing.

Background

At last year's hearing, the Committee was briefed on the events that led to the termination of the Basslink Services Agreement (BSA) on 10 February 2022, which is the core focus of the Committee's Terms of Reference. The Committee was also briefed on events and matters that arose between the termination and the date of the hearing. The detail of this previous briefing can be found in Hansard.

The Committee's questions at last year's hearing were related to the following matters:

- *the circumstances underpinning the termination of the BSA;*
- *the consequences of that termination for Hydro Tasmania's participation in the NEM and for its accounts;*
- *implications for the operation of the link;*
- *questions relating to Basslink's potential regulation; and*
- *questions in relation to the regulation of retail prices in Tasmania.*

The situation that existed in mid-June last year can be summarised as:

- *the BSA and related arrangements had been terminated by Hydro Tasmania, as had the Intercreditor Creditor Agreement between the State and the Finance Trustee.*
- *the Basslink receivers, KPMG, had initiated action against the State in relation to the termination of the Intercreditor Agreement, and there were counter-claims also being pursued through the Court.*
- *during their appointment as receivers, KPMG failed to commence any process for the sale or recapitalisation of Basslink Pty Ltd (BPL).*
- *APA had acquired the bank debt owed by BPL, replacing its former banking syndicate. The face-value of that debt was around \$650 million, and APA had announced that it had acquired the debt at a discount to that face value.*
- *shortly before the hearing, APA, as sole debt holder, retired KPMG as receivers and replaced them with FTI Consulting (FTI).*

Major developments since June 2022 are summarised below, and this provides the overall context for the current hearing.

The Sale Process

From the time of its appointment as receiver, FTI was strongly driven to deliver a sale or recapitalisation of BPL. While the legal matters were being progressed by the parties according to the timetable established by the Federal Court, the principal focus of FTI had switched to bringing the administration and receivership of BPL to a timely end. This was a welcome change from the perspective of the State parties.

In late June, FTI commenced an expression of interest process for BPL, working with BPL's administrators in implementing the sale process. In commencing the EOI process, FTI directly approached a range of parties in relation to the opportunity, inviting them to participate in a two-stage shortlisting and bidding process. The State was not involved in the structuring or conduct of the sale process itself -this was a matter for the receivers.

In preparing for the sale process, the Government established a set of criteria to clarify the State's objectives for any sale.

These were important because it was evident that the sale process would involve negotiations with the State in its capacity as a secured creditor for BPL, and because of the State's enduring interest in the future of the link. The Government wanted to ensure that FTI and bidders were clear about the outcomes the State wanted to achieve from the sale process.

Seven (7) criteria were set for any sale or recapitalisation of BPL:

- 1. the State's and Hydro Tasmania's secured debt to be repaid in full, including the arbitration awards payable and associated costs to the State and Hydro Tasmania, the BPL security deposit and Hydro Tasmania's outstanding claims pursuant to the BSA;*
- 2. the mitigating actions arising from the French Arbitration be implemented to the satisfaction of the State parties;*
- 3. a fault ride-through solution for Basslink be implemented as a priority;*
- 4. the future Basslink owner and operator to be well-capitalised, financially stable, and the operator preferably having demonstrated experience in operating transmission infrastructure, including interconnectors;*
- 5. that the commercial model for the link provide high confidence to the State that Basslink will be available to meet the State's energy security needs, particularly in the period before Project Marinus is commissioned;*
- 6. if a future owner wishes to pursue the regulation of Basslink, that the cost outcomes for Tasmanian electricity customers are minimised; and*
- 7. the future owner supports the co-ordination reasonably required to facilitate any future additional interconnection across Bass Strait.*

FTI selected a number of bidders to progress to a final offer phase in July 2022. As part of the process, the State and Hydro Tasmania held discussions with the bidders to enable them to finalise their bids to FTI. Through those discussions, the State's objective was to secure outcomes that aligned with our criteria.

Once the bidding process was finalised, the Government considered the competing offers against the criteria established for the sale process. The APA bid was considered the superior bid by the Government, but the Government was not in control of the sale process, so could not determine which bid would be put to creditors for voting.

On 7 September 2022, FTI announced that it had selected the APA bid as the preferred proposal from the short-listed process to move forward to final documentation, and to be put to BPL creditors for a vote.

At that time, APA was seeking to enter into a package of binding agreements to deliver the sale outcome on the terms of its bid. During September and October, negotiations took place between the State, Hydro Tasmania and APA in relation to a number of contractual arrangements that aimed to secure the State's and Hydro Tasmania's interest in the sale, and to secure longer-term outcomes in relation to the link.

Those negotiations were successfully concluded, and APA finalised a Deed of Company Arrangement that was put to BPL creditors 18 October 2022 and accepted. APA acquired Basslink for \$773 million.

APA's purchase of BPL delivered a very good result for the State -financially, legally, and in relation to Basslink's technical performance. Importantly, this secured the outcomes from the 2020 Arbitration which had not been achieved via the lengthy standstill arrangements.

The sale to APA:

- resulted in the State recovering all monies owed to it by BPL arising from the Arbitration - around \$50 million and Hydro Tasmania recovering all monies owed to it following the arbitration;*
- ensured the settlement of all outstanding legal disputes between BPL, BPL's lenders and the State and Hydro Tasmania, including a financial settlement in relation to disputed amounts owed to Hydro Tasmania;*
- delivered the path for technical improvements to Basslink, including implementation of the mitigating actions arising from the 2020 Arbitration;*
- resulted in ownership and operations of Basslink transitioning to a well-resourced and robust Australian infrastructure business; and*
- provided the path for Basslink to be placed on a sustainable commercial basis that provides confidence that it will remain a key element of Tasmania's energy security arrangements.*

Basslink Regulation

APA's clearly stated business model is to move Basslink from its current operation as a Market Network Service Provider to become a regulated link under the jurisdiction of the Australian Economic Regulator (the AER). APA's intention is that Basslink would commence operations as a regulated interconnector on 1 July 2025.

The concept of Basslink becoming regulated was the subject of some of the Committee's questions at its previous hearing.

The decision to seek regulation is a matter for APA, as the owner and operator of the cable, and the Government is not leading or sponsoring the regulatory application. Nonetheless, the Government sees that there are some very good outcomes that would come from the conversion of Basslink to a regulated interconnector.

Given APA's regulatory conversion objective, as part of the sale process, the State and BPL entered into the Regulatory Conversion Deed (RCD). The RCD provides a no-surprises approach between the parties in relation to Basslink's regulatory process,

noting that it is APA's proposal to seek regulation, not the State's, and the process is controlled by the AER.

In broad terms, the RCD provides a mutual obligation on the State and BPL to keep each other informed regarding materials that either party intends to make to the AER in relation to the conversion, and give due consideration to any feedback received from the other party on those matters prior to providing such material to the AER.

Importantly, the RCD contains no arrangements in relation to the State financially underwriting any outcomes from the regulatory process. These remain at APA's risk.

The Government understands that BPL has formally commenced its application with the AER to commence the regulatory conversion process. The timetable for the process will ultimately be a matter for the AER to determine. I understand BPL's proposed timetable is as follows:

- *mid July 2023 - BPL will lodge its full submissions - both in relation to the conversion process, and in relation to its revenue proposal;*
- *mid September 2023 - the AER releases an issues paper and undertakes stakeholder consultation, including a public forum;*
- *end October 2023 - submissions from interested parties close;*
- *end of March 2024 - AER releases its draft decisions on the conversion and Basslink's revenue determination,*
- *November 2024 - AER releases its final determination*
- *1 July 2025 - assuming that the AER approves regulation. Basslink to commence as a regulated interconnector.*

The Network Services Agreement (NSA)

Another key agreement resolved through the sale process was the commercial model that would apply to Basslink ahead of it achieving regulation, in light of the former framework delivered through the BSA ceasing to apply from February 2022.

Those arrangements are captured in the NSA between Hydro Tasmania and BPL. The NSA has been on-foot since 20 October 2022.

The detailed commercial terms in the NSA were negotiated at arm's length between Hydro Tasmania and APA (as the prospective purchaser of BPL). The NSA is a commercially confidential agreement, and did not involve the State. I am briefed that the terms differ in certain respects from the BSA but it includes the following obligations which are similar to those under the previous BSA:

- *BPL swaps all the inter-regional revenues it earns from the market with Hydro Tasmania for a facility fee (with the facility fee being renegotiated from that which applied under the BSA);*
- *BPL is obliged to make Basslink available to the market at zero price, unless otherwise instructed by Hydro Tasmania (with the same restrictions on those instructions that applied under the regulatory framework that applied to the BSA);*
and

- *the fee paid by Hydro Tasmania under the NSA to BPL has regard to the availability of Bass link, however the impact of unavailability on the fee under the NSA is different to what the impact would have been under the BSA.*

The NSA does not deliver a long-term commercial model for Basslink. It has been designed with APA's objective of Basslink regulation in mind, and accordingly, has been negotiated to terminate on the earlier of either the regulation of Basslink by the AER, or 30 June 2025.

The Basslink Operations Agreement

The Committee might recall that the Basslink Operations Agreement was one of the foundation Basslink agreements between the State and National Grid.

That agreement was not terminated in February, it remains on-foot with BPL for its original term, that is until 2046. Importantly, the State continues to hold security over BPL's obligations under the Basslink Operations Agreement, which was the basis of our rights as a secured creditor through the recent process.

Basslink Technical Performance

One of the key requirements from the 2020 arbitration was for the actual physical performance characteristics of the link to be clearly established, as the 2015-16 outage and subsequent investigations clearly established the link was not able to perform to its design specifications.

When BPL was under its former ownership, there was difficulty in progressing this matter, notwithstanding considerable efforts applied by Hydro Tasmania. I am pleased to report to the Committee that very soon after the sale concluded, BPL and Hydro Tasmania reached agreement on these matters, on the grounds advanced by Hydro Tasmania. This outcome is a credit to the Hydro Tasmania team. There is no longer any dispute about the continuous rating of Basslink between the State parties and BPL, which is 462MW in August to December and 447MW in January to July.

Another requirement from the arbitration was the commissioning of a cable load protection system. This system enables the link to operate to a dynamic rating, where it is able to transmit higher levels of electricity than its continuous rating for defined periods. Again, progress on the protection system was very slow under BPL's former ownership, and things are moving in the right direction between Hydro Tasmania and BPL on the CLPS under APA's ownership. Once the CLPS has been designed and installed, Basslink will once again be able to operate dynamically.

Last, but not least on technical matters, BPL has also delivered the fault ride-through solution, which was one of the Government's key objectives for the sale process. This was resolved in March 2023. As a result, Basslink is more able to withstand faults on the Tasmanian network without itself tripping. Prior to these changes being made, Basslink's inability to ride through faults on the Tasmanian network resulted in limitations on some ancillary services being supplied over the link, which led to higher costs being faced by Tasmanian electricity users. That situation has been resolved by the fault ride through, and those ancillary services can once again be procured across Basslink.

Summary

In conclusion, the Government and Hydro Tasmania took hard stances in November 2021, when the State parties did not agree to further extend the standstill arrangement that was in place with BPL in relation to pursuing our rights arising from the 2020 arbitration process.

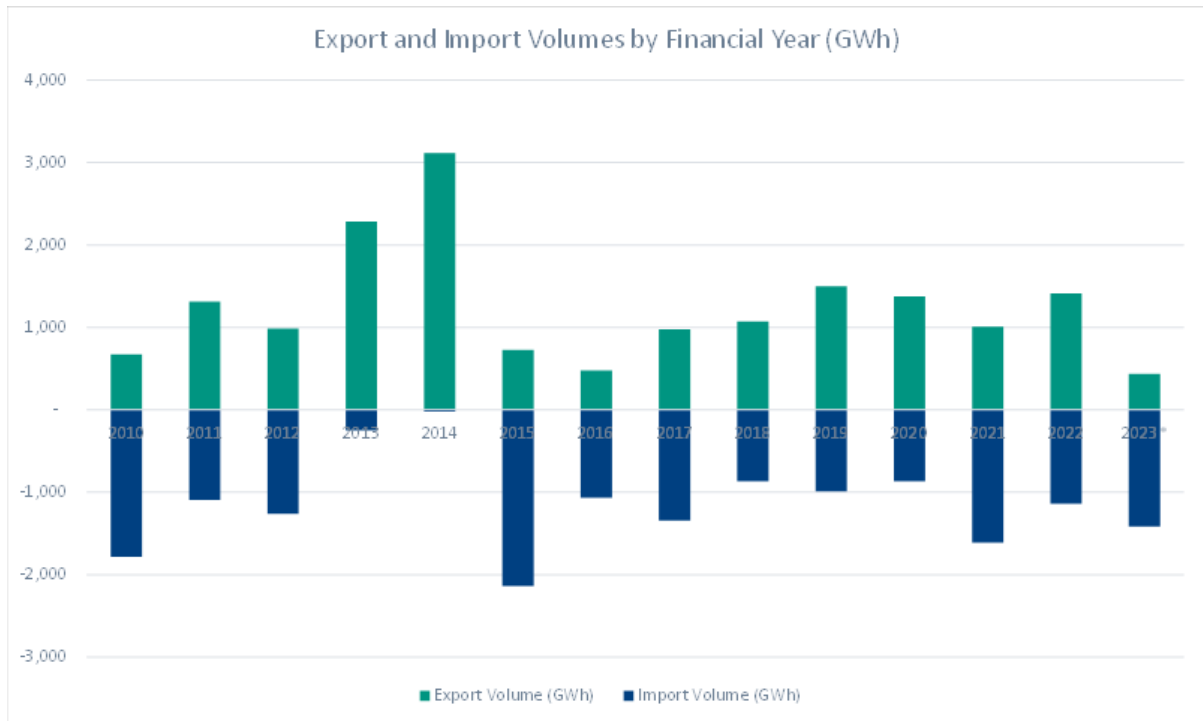
We knew that this would result in BPL going into administration and receivership, but we were convinced that we had provided Basslink's former owners with sufficient time to remedy their situation and make good the State Parties position emerging from the arbitration.

An equally hard stance was taken in February 2022, when the State terminated the Intercreditor Agreement, and Hydro Tasmania terminated the BSA. As was explained in the June 2022 hearing, the State parties were not getting what they bargained for under those arrangements, and our view was that the best interest of Tasmanians would be served by pursuing the State Parties rights outside those agreements.

These actions culminated in the sale of BPL to APA, which saw the State and Hydro Tasmania receive their full entitlements - both financial and technical - from the Arbitration process, something that many parties had considered very unlikely indeed.

The outcomes we have delivered for Tasmania through the steps taken over the past year will see Basslink move to a sustainable footing and continue to play an important role in energy security, as well as providing trading opportunities for Hydro Tasmania.

Appendix C – Annual Basslink Import and Export Energy Flows (GWh)



Financial Year Ending	Export Volume (GWh)	Import Volume (GWh)
2010	669	1785
2011	1311	1095
2012	986	1262
2013	2284	250
2014	3113	20
2015	724	2141
2016	479	1067
2017	978	1343
2018	1074	865
2019	1496	991
2020	1376	867
2021	1007	1612
2022	1411	1141
2023 (July 2022 to April 2023)	436	1418