

# PAUL WICKS QC

12 December 2018

Robert Cahn  
Senior Legal Counsel  
Regulation Branch  
Commerce Commission  
PO Box 2351  
**WELLINGTON 6140**

Dear Robert

**RE: OPINION ADVICE – VECTOR LIMITED  
REQUEST TO RE-OPEN DEFAULT PRICE-QUALITY PATH**

1. I am asked, following receipt by the Commission of submissions in response to its draft decision, to review the submissions received and consider whether any of the points raised disturbs any of my conclusions in my advice to the Commission dated 22 August 2018.
2. I have reviewed the following:
  - (a) Vector Limited letter dated 2 October 2018;
  - (b) Opinion of R B Stewart QC dated 2 October 2018;
  - (c) North Power letter dated 2 October 2018;
  - (d) Electricity Networks Association letter dated 9 October 2018;
  - (e) Dupont report for Vector re: Live Line Work Policies;
  - (f) Wellington Electricity Lines Limited letter dated 2 October 2018; and
  - (g) Aurora Energy submission dated 2 October 2018
3. My opinion advice remains as set out in my letter to the Commission dated 22 August 2018.

4. The Independent Task Force on Workplace Health and Safety, by reference to the replacement of the then current “all practicable steps” test and the inclusion of the ‘reasonably practicable’ test as defined in section 22 of the Health and Safety at Work Act 2015 (“**HSW Act**”) stated the replacement of the ‘all practicable steps’ test under the Health and Safety in Employment Act 1992 (“**HSE Act**”) would ‘improve certainty, clarify that risk-based decision-making is required, and create a presumption in favour of health and safety’.
5. The HSW Act in my view has, as identified by the Task Force, improved the certainty of what duties and applicable standards are engaged for an employer or PCBU, and clarified the requirement for risk-based decision-making. That has not resulted in a new or changed legislative requirement.
6. Under the HSE Act in identifying hazards systematically it was inherent that the various risks giving rise to those hazards would be required to be identified.
7. The HSW Act has through the relevant definitional and technical changes in terms of duties and applicable standards clarified the required decision-making (which would need to have been exercised in any event to properly meet the identification of hazards under the HSE Act).
8. The HSW Act can properly be regarded as a re-alignment of the components required to meet the duties and standards in the HSE as opposed to being truly new or changed health and safety practices.
9. The shift to a risk-based approach did not require any substantial change in what an employer was required to do to address workplace hazards and their underlying risks under the HSE Act.
10. In respect of the submission made that a contrast exists between considering the cost of eliminating or minimising a risk (s. 22(e) HSW Act) and considering the cost of the means to achieve all practicable steps (s. 2A(1)(e) HSE Act) I disagree. The manner in which regard is had to cost under s. 22(e) of the HSW Act (and when that regard is had) is not materially different to that under the s. 2A (1)(e) HSE Act. Put simply, the regard to be had to cost under both Acts engages proportionality against the available ways of acting to ensure safety following identification of such available means.
11. The change in classification of duty holders under the HSW Act and significant increases in penalties evidence the intention behind the Act of improving compliance but they do not alter the position there has been no substantial change in what an employer was required to do to address workplace hazards under the HSE Act.

12. In the context of the re-opener provision in the input methodology relied upon by Vector the reliance on the inclusion of a purpose section and statements in Parliament during the passage of the Act do not alter my approach that as effectively the same obligations arise under the HSW Act as in substance existed under the HSE Act the new Act has not necessitated Vector's new policies.

Yours faithfully



**Paul Wicks QC**