

Document Review Record (DRR) & Comment and response form

Review Package:	Industry Guidance – 001 - Demonstrating SFAIRP - August 2022
Lead Reviewer:	Russell McMullan
Reviewers:	<p>Sent to Safe Systems Workstream:</p> <ul style="list-style-type: none"><input type="checkbox"/> Greg Hackett - Martinus<input type="checkbox"/> Darryn Robin – KiwiRail<input type="checkbox"/> Karen Fletcher - RMTU<input type="checkbox"/> Steve Saunders – Auckland Transport<input type="checkbox"/> Grant Craig – FRONZ<input type="checkbox"/> Ivor Smith – Transdev Wel<input type="checkbox"/> Peace Kutumbu – Hyundai<input type="checkbox"/> Dave Bellett – WorkSafe<input type="checkbox"/> Hans Boon – Waka Kotahi NZTA<input type="checkbox"/> Lynne Moreton – KiwiRail<input type="checkbox"/> Cameron Brodie – AOR <p>KiwiRail Reviewers (per DR's email)</p> <ul style="list-style-type: none">• Darryn Robin – Head of Systems Standards and Governance• Susannah Downing - Senior Corporate Counsel• Jonathan Earl- Group General Counsel• James House – Head of Regulatory• Alastair Cummings- GGM Zero Harm• Amanda Farmer – Head of Safety Risk Assurance• Stuart Martin – Group Risk and Assurance Manager• Ludwig Labuschagne – SHE Risk Advisor <p>Feedback received by</p> <ul style="list-style-type: none">• Link Alliance• KiwiRail• Martinus• AOR• TDW• RMTU
Review comments:	Comments to Russell.mcmullan@cityrailink.govt.nz by 05 February 2023.

Please enter only one comment per row and enter your full name – date against your comment. Please add more rows at bottom if necessary.

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
1.	Fundamental questions raised in association with the first round of feedback and the 1 st workshop	<p>Questions for the next NRIAF forum for all participants to contemplate?</p> <ol style="list-style-type: none"> 1) What are NRIAF members seeking from industry guidance? <p>Questions about industry guidance:</p> <ol style="list-style-type: none"> 2) Does industry created guidance need to be grounded in legal theory and only provide guidance within the boundaries set by case law? 3) What is the effect of the inclusion of 'legally untested' concepts (i.e. not tested in a court of law) within guidance? 4) Should clear guidance within any document that aligns to case law be clearly stated, and guidance that is outside of precedence be separated and clearly labelled? 5) Is industry created guidance closer to a legal document, a safety document, an institutional document, a contractual document, a regulatory instrument, a pamphlet with good advice, or some mix? <p>Questions for the regulator:</p> <ol style="list-style-type: none"> 6) In the absence of industry guidance, how does the regulator establish its ideas of 'what is good and bad'? 7) How will the regulator use published industry guidance in their regulation of industry? 8) What weight does the NRIAF hold as a group? NRIAF is essentially a meeting, it is not a formal society and has no formal affiliation with industry groups such as RISSB, RTSA, etc. <p>R. McMullan – 23 Sep 2022</p>	Important	<p>Have clearly separated guidance that is outside of case law / precedent label it as such.</p> <p>R McMullan 23 Sep 2022</p>	

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2.	Title page	<p>Should this be Industry Guidance, Code of Practice, Regulator guidance, NRAIF guidance, etc?</p> <p><i>Glenn Gowthorpe 22 AUG 22</i></p> <p>This can be closed</p> <p><i>Glenn Gowthorpe Jan 23</i></p>	Important	<p>Revised title to reflect intent.</p> <p>Have amended in revision – R. McMullan Sep 2022</p>	Closed
	Title/Description/Purpose	<p>Still to be determined whether this is a working group or Waka Kotahi guidance</p> <p>Title might be better expressed as “Practical guidance for duty-holders on approaches to carrying out safety assessments so as to ensure the safety of persons SFAIRP” or similar</p> <p>KiwiRail – 17.10.22</p>	Important	<p>Reflected in the document</p> <p>Have amended in revision – R. McMullan Jan 2023</p>	

		<p>To be effective as guidance, KiwiRail’s preference is that it is either high level, (e.g. Worksafe’s guidance on “reasonably practicable”), or it is more detailed by setting out different options/approaches that a duty holder may use, taking an approach similar to the ONSHR guidance.</p> <p>As the duty-holder must exercise its own judgement in assessing and managing its operational safety risk, the guidance needs to be balanced, suggesting for instance, alternative approaches such as use of qualitative or quantitative assessments of risk. The guidance should be consistent with NZ law, and care should be taken when referencing non-NZ documents or legislation, or introducing new concepts.</p> <p>In setting out different options or approaches, the guidance will not itself create a single, uniform approach for all rail participants to follow, so there are limits to what change the guidance can bring to the industry. Does the working group and Waka Kotahi appreciate this? With that in mind, does Waka Kotahi support a flexible, adaptable guidance, or is the primary objective to provide more prescriptive guidance that would bring uniformity? If Waka Kotahi doesn’t support the approach, it will be helpful for them to offer their view at this stage of the drafting process. In what follows, we’ve assumed the primary objective of the working group is for the guidance to offer the working rail participants, as duty-holders, various approaches to carrying out safety assessments for the purposes of demonstrating that their safety duties have been discharged <i>SFAIRP</i>. On that basis, KiwiRail makes the following high-level observations.</p> <ul style="list-style-type: none"> • Adherence to industry guidance will be <i>relevant</i> in any post incident investigation or prosecution and will provide a documented evidentiary basis for assessment of risk and controls. But adherence to guidance can never be <i>definitive</i> – i.e. it cannot guarantee that a safety regulator or a Court will accept (post incident) that legal duties have been met • In this context, we support the approach of setting out the legal framework with some explanation, before setting out practical, operational approaches to completing a safety assessment. • As a general point, the draft guidance is striving for a level of specificity which, unfortunately, the law does not provide (for example, in proposing a numerical factor approach to determine whether cost is 		<p>The following statement has been included to address this comment (refer para 8)</p> <p><i>“This guidance is provided as a tool to assist duty-holders in meeting their SFAIRP obligations as set forth in the Railways Act 2005. It is important to note that adherence to this guidance does not guarantee that legal duties have been met and may only be determined following an incident or investigation, and ultimately by the court. As such, duty-holders should exercise their own judgement when assessing and managing operational safety risks, taking into account the specific circumstances of their operations and the best practices in their industry.</i></p> <p><i>The options and approaches outlined in this guidance are not prescriptive and should be adapted to fit the specific needs of each duty-holder organisation. Judgement of compliance to the Railways Act can only be determined in the context of post-incident investigation by the Courts. There is always a level of uncertainty when assessing whether a duty has been fulfilled beforehand, and rail participants will need to adapt any guidance to their organisation’s specific needs.</i></p> <p><i>It is important to note that while this guidance focuses on the duty to ensure the safety of others ‘so far as is reasonably practical’ as defined by the Railways Act 2005, parties may also have other legal responsibilities and duties under other laws such as the Health and Safety at Work Act 2015. The assessment and management of safety risks should take into account all relevant legal responsibilities and duties, and parties should be aware that following this guidance does not necessarily guarantee compliance with other legal requirements.”</i></p> <p>R. McMullan Jan 2023</p>	
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		<p>“grossly disproportionate”). The Act says what the safety duty is (to ensure the safety of others <i>SFAIRP</i>) and requires that the duty-holder does what is “reasonably able to be done” providing non-exhaustive criteria which must be taken into account when assessing “reasonably practicable”. The Act is not prescriptive about the methodology to be applied and requires the duty holder to exercise its judgement about whether the risk of death or serious injury has been managed <i>SFAIRP</i>. The unfortunate reality is that the adequacy of the measures taken by a duty-holder is only tested following a safety incident or investigation, and then by the Court. Given that uncertainty, we should approach writing the guidance with caution, and duty-holders should have this in mind when seeking to rely on it.</p> <p>KiwiRail 17.10.22 (updated comments from the meeting)</p>			
3.	Title Page / Authority/Signature page	<p>Questioning who should issue and sign this NRIAF document as this links to the authority/guidance nature of the document. Should it signed as the NRIAF Chair or Regulator? Waka Kotahi letterhead?</p> <p><i>Glenn Gowthorpe 22 AUG 22</i></p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>Suggest removal of Waka Kotahi and replace with NRIAF logo</p> <p>Suggest NRIAF Chair signs</p> <p>Have amended in revision – R. McMullan Sep 2022</p>	
	Objective	<p>The objective needs to be reframed as to achieve a consistent approach by rail participants when carrying our safety assessments</p> <p>Needs to be made clear that this is general guidance for rail participants and not intended to expand or limit the Railways Act and is subject to decisions and findings of a court, and that it should not be relied on without legal advice etc;</p> <p>KiwiRail 17.10.22</p>	Important	<p>Updated purpose statement in Para 7 – Purpose</p> <p>Added Paragraph in Para 8 – Legal Obligations (see above)</p> <p>R. McMullan Jan 2023</p>	
	Pg 5 heading	<p>Needs to change, if working group not Waka Kotahi guidance and to reflect the new title</p> <p>KiwiRail 17.10.22</p>	Important	<p>Heading updated</p> <p>R. McMullan Jan 2023</p>	

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	Applicability	<p>As drafted, the guidance only applies to those persons caught by the duty to ensure the safety of others so far as is reasonably practicable. That is: rail participants under s7(1) and other persons (but not rail participants or rail personnel) under s9(1). "Rail participant" and "rail personnel" are defined terms under the Act. From what I can see, working group participants are either rail participants or rail personnel. The safety duty on rail personnel under 7(2) is different, and is subject to a <i>mens rea</i> test (knows or ought to reasonably to have known) but not the <i>SFAIRP</i> test. Note that all parties may also have duties as a PCBU under the Health and Safety at Work Act 2015. In practice, parties carry out safety assessments as a tool to manage and discharge all of their safety duties, not just those which are subject to the <i>SFAIRP</i> test, and we tend to use <i>SFAIRP</i> as shorthand for "compliant" – so care should be taken that this is not confused in the guidance. KiwiRail 17.10.22</p>	Important	<p>Updated applicability in Para 3.</p> <p><i>"This guidance is intended for those subject to the requirements of the Railways Act. For the avoidance of doubt this guidance is written to assist both licenced and non-licenced participants as defined in the Railways Act (2005) and Railways Regulations (2019).</i></p> <p>R. McMullan Jan 2023</p>	
	Meaning of reasonably practicable under section 5 of the Railways Act 2005	<p>Section 5 needs to be set out in full, with a short explanation of how it applies, in the context of the legal duty Kiwirail 17.10.22</p>	Important	<p>Refer to new Paragraph 8 (also see above).</p> <p>R. McMullan Jan 2023</p>	
	Safety assessment	<p>It would be helpful to introduce in this section the idea that safety assessments are tools for:</p> <ul style="list-style-type: none"> • documenting and identifying the health and safety risk of a particular rail activity • evaluating the controls to eliminate or mitigate those risks both separately and in aggregate so as to determine what is "reasonably able to be done" to ensure the health and safety of persons <i>SFAIRP</i>. <p>Then, as the guidance works through each of the elements of s5(a)-(e) in the following sections, practical examples and various methodological approaches which can be applied in a safety assessment can be explored more fully. This section is one we expect will expand as practical considerations about carrying out safety assessments are explored and discussed by the working group. KiwiRail 17.10.22</p> 	Important	<p>Para 7 has been updated:</p> <p><i>"The purpose of a safety assessment is to identify and document the health and safety risks associated with a particular rail activity, and to evaluate the effectiveness of the controls in place to eliminate or mitigate those risks. It is important to remember that a safety assessment is not an end in itself, but a tool to aid in determining what is reasonably able to be done to ensure the health and safety of persons so far as is reasonably practical (SFAIRP). This includes analysing each control separately, as well as considering their combined effectiveness. The ultimate goal of a safety assessment is to ensure that the risks are being managed appropriately, so that the health and safety of all parties involved is protected to the fullest extent possible"</i></p> <p>As the guidance works through each of the elements, examples are provided as footnotes. It is important to remember that each organisation and participant has a different context.</p> <p>R. McMullan Jan 2023</p>	

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	Likelihood/degree of harm/what is known/ways to manage risk/availability and suitability	<ul style="list-style-type: none"> • Where the guidance works through each element of the “reasonably practicable” test in s.5(a)-(e) of the Act it is helpful given the duty-holder is required to consider “all relevant matters” including those listed s.5(a)-(e). Suggest we review each of the subheadings to align with the subsections of the Act. • In the current draft, the guidance departs from the statutory test when it reaches s.5(e). Importantly, there are several aspects to s.5(e), and they are applied sequentially. It is only “<i>after assessing the extent of the risk and the available ways of eliminating or minimising the risk,</i>” that the duty holder can consider “<i>the cost associated with available ways of eliminating or minimising the risk</i>” and that consideration <u>includes</u> whether the cost is “<i>grossly disproportionate to the risk.</i>”. • We expect that each of these sections in the guidance will expand as the law is explained and practical considerations of completing a safety assessment and managing the risks of rail activities are discussed in light of the legal framework. <p>KiwiRail 17.10.22</p>	Important	<p>The headings do now align to the subsections of the act.</p> <p>Para 9-19 added to address this, as practical guidance.</p> <p>R. McMullan Jan 2023</p>	

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	Value of Harm Reduction	<p>Care should be taken when proposing ways to make and apply an assessment of the cost of a control relative to safety benefit, particularly if they are untested or unsupported by NZ case law or industry practice.</p> <p>The draft goes out on a limb in this section.</p> <ul style="list-style-type: none"> • The cross-referenced Treasury material provides guidance on how to carry out a cost benefit analysis to support government or investment decision making. It does not provide any clarity about valuing harm reduction in a safety context. The NZTA report considered the current “value of statistical life” (VoSL) metric in transport project business cases noting that it should not be applied in other policy settings without adjustment. • Regardless, such an approach is not part of any WorkSafe guidance on the equivalent provision and is not commonly used in NZ for operational safety and controls. • Some duty-holders might find it useful in some circumstances, but we note there is no legal precedent for using a VoSL approach in rail, or for applying gross proportionality “factors”, and the ONSHR guidance expressly acknowledges this. • Indeed, there is no NZ authority currently supporting explicitly actuarial approaches to the risk-benefit analysis. If a duty-holder wishes to proceed with a quantitative assessment using a VoSL metric, it should do so with that in mind. <p>KiwiRail 17.10.22</p>	Important	<p>Para 9-19 added to address this, noted as practical guidance.</p> <p>R. McMullan Jan 2023</p>	

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	Disproportionality	<ul style="list-style-type: none"> • There is little case law on the meaning of “grossly disproportionate to the risk.”. However, it is generally understood to mean that where an otherwise reasonably practicable step or control has been identified, the only justification for not taking that step would be if the cost would be grossly disproportionate to the risk. It goes without saying that if the activity risk cannot be safely eliminated or minimised, then it should be ceased. • Nor is there much NZ law or established guidance as to what “grossly disproportionate” means, but the analysis should be between the additional cost and the incremental safety improvement of the various options. • As a guide, a measure is likely to be disproportionately costly where the benefit is marginal or uncertain. Whilst budgetary constraints or capacity to pay are irrelevant given the statutory test is objective, in practice, a larger organisation will be expected to implement more costly controls. • One NZ case suggests, though this is not a definitive finding, that where there is a “high risk of death” no cost would be considered to be disproportionate. This is something to be borne in mind when the duty holder is seeking to apply a quantitative approach to valuing the risk and the relative proportionality of the cost of implementing the control, such as VoSL. <p>KiwiRail 17.10.22</p>	Important	<p>See Para 8 of revised document.</p> <p><i>8. Legal obligations & disclaimers</i> <i>This guidance is provided as a tool to assist duty-holders for undertaking safety risk assessments and their SFAIRP obligations as set forth in the Railways Act 2005. It is important to note that adherence to this guidance does not guarantee that legal duties have been met, as these may only be determined following an incident or investigation, and ultimately by the court. Judgement of compliance to the Railways Act can only be determined in the context of post-incident investigation by the courts. There is always a level of uncertainty when assessing whether a duty has been fulfilled beforehand, and rail participants will need to adapt any guidance to their organisation's specific needs.</i></p> <p><i>The options and approaches outlined in this guidance are not prescriptive and should be adapted to fit the specific needs of each duty-holder and rail participant. As such, duty-holders should exercise their own judgement when assessing and managing health and safety risks, taking into account the specific circumstances of their operations and what they understand to be best practices.</i></p> <p><i>It is important to note that while this guidance focuses on the duty to ensure the safety of others ‘so far as is reasonably practical’ as defined by the Railways Act 2005, parties may also have other legal responsibilities and duties under other laws such as the Health and Safety at Work Act (2015). The assessment and management of health and safety risks should take into account all relevant legal responsibilities and duties, and parties should be aware that following this guidance does not necessarily guarantee compliance with other legal requirements.</i></p> <p>Para 9-19 added to address this, noted as practical guidance.</p> <p>R. McMullan Jan 2023</p>	

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4.	Page 9	<p>Paraphrased: 'The document appears biased toward quantitative determination of harm and doesn't leave much room for qualitative assessment. While appropriate for projects, this might not suitably contemplate regular BAU rail operations. Suggest added sentences to allow for more qualitative assessment, such as what the ONRSR document suggests'.</p> <p>Johnathan Earl 21 Sep 22 (at workshop) Please read in conjunction with detailed comments above KiwiRail 17.10.22</p>	Important	<p>Para 9-19 updated to address this, noted as practical guidance.</p> <p>R. McMullan Jan 2023</p>	
5.	Page 9	<p>Paraphrased: 'Pointing toward the Treasury guidance for harm, the NZTA Statistical Value of Life (SVOL) may not be useful for participants'</p> <p>Johnathan Earl 21 Sep 22 (at workshop)</p> <p>Please read in conjunction with detailed comments above KiwiRail 17.10.22</p>	Important	<p>See updated para 8.</p> <p>Also</p> <p>Para 9-19 updated to address this, noted as practical guidance.</p> <p>R. McMullan Jan 2023</p>	

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6.	Page 10	<p>Paraphrased: 'You may have misinterpreted what the ONRSR is saying about multiplying factors for gross disproportionality. Suggest softening and revising the ONRSR statement.'</p> <p>Johnathan Earl 21 Sep 22 (at workshop) Please read in conjunction with detailed comments above KiwiRail 17.10.22</p>	Important	<p>Para 19 should address this. Along with Para 8.</p> <p><i>The following practical considerations are provided for determining the gross disproportionality threshold in a quantitative risk assessment outlined in step 6 above:</i></p> <p>1) <i>The threshold for gross disproportionality should be consistent with the risk appetite of the railway participant and take into account the level of risk that the organisation is willing to accept and the importance of safety in the rail industry.</i></p> <p>2) <i>The meaning of "grossly disproportionate to the risk" is not well defined in case law. It is generally understood that an otherwise reasonably practicable step or control would only not be taken if the cost is deemed to be significantly higher than the risk reduction achieved by it. There is also limited guidance on what constitutes "grossly disproportionate" in New Zealand law and associated regulations. There is no guarantee any court will adopt figures of gross disproportionality.</i></p> <p>3) <i>One New Zealand case suggested that when there is a significant risk of death, the cost of any control measure may not be considered disproportionate. This should be taken into account when determining proportionality of the cost of implementing the control measure.</i></p> <p>4) <i>As a general rule, a measure is likely to be considered grossly disproportionate to the cost if the cost is high and the benefit is minimal or highly uncertain. Two examples of gross disproportionality figures found in literature that may be of some practical use if organisations choose to take this approach include:</i></p> <p>a) <i>Factor of 3 for risks to workers, factor of 2 for low risks to public and passengers, and a factor of 10 for high risks to public and passengers [3],</i></p> <p>b) <i>Factor of 2 or less is considered proportionate, factor of 10 or greater considered grossly disproportionate and factors between 2 and 10 require explicit justification [2].</i></p> <p>5) <i>It is important to note that there is no test in law that provides legal certainty for any gross disproportionality figure used in quantitative safety risk assessments.</i></p> <p>6) <i>It is up to the rail participant to decide on the figures they choose to adopt, based on their risk appetite and the level of risk that the organisation is willing to accept and the importance of safety in the rail industry.</i></p> <p>R. McMullan Jan 2023</p>	

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7.	Overall	<p>Paraphrased: 'WorkSafe guidance on SFAIRP is more high level (only 2 pages) and leaves more room for interpretation, than this document.'</p> <p>Johnathan Earl 21 Sep 22 (at workshop) Please read in conjunction with detailed comments above KiwiRail 17.10.22</p>	Important	<p>Document has been updated.</p> <p>The document does need to balance its purpose as practical guidance, versus leaving flexibility for participants given their context. I believe it now does this. It should serve its purpose as allowing participants with few resources some idea on how to go about undertaking a risk assessment toward meeting their SFAIRP obligations as practical guidance.</p> <p>R. McMullan Jan 2023</p>	
8.	Engagement with workers	<p>Our union has agreements with KRG, Auckland One Rail and Transdev wellington (the 3 main providers). The agreements set out the right and functions of Health and Safety Reps, including the right to engage in determining the likelihood and consequence of risk (risk assessment).</p> <p>My proposed addition to the guideline is to insert the words "workers (and their representatives)" where the document refers to worker consultation.</p> <p>Karen Fletcher 21 Sep 22</p>	Important	<p>Captured in Para 17-20</p> <p><i>"Consult with workers, their representatives, and subject matter experts in the relevant area to review the controls, the risks, the assessed likelihood, the assessed consequence, and the proportionality of the cost of the control measures against the potential harm that could result from risks being addressed.</i></p> <p><i>Gather information on the potential harm that could result from the risk. This information should include consultation with workers, their representatives, and subject matter experts.</i></p> <p>R. McMullan Jan 2023</p>	

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9.	1 Legal Utility	<p>Concerns have been raised about the role of guidance in regard to enforcement and compliance actions by the regulator. See comments above We note the document is guidance only at this time and the user may apply an alternate approach but any alternate approach which deviates from NZTA guidance maybe likely be subject to much easier challenge by the regulator.</p> <p>Darren Robin 21 Sep 22</p>	Important	<p>This is not NZTA guidance. This is guidance created by the industry, for the industry.</p> <p>A regulator can use <u>any</u> published document in existence, including any rail participants internal guideline, international guidelines, and previous consultant reports to set their expectations.</p> <p>There is benefit with the rail industry having clear visibility, and ownership of a guidance document, and where people choose to align those benefits sought to overcome the NRAIF identified issues are able to be realised.</p> <p>Suggest no change to the document arising from this comment, unless suitable wording or amendments provided.</p> <p>R. McMullan Jan 2023</p>	
10.	Application and Suitability	<p>See comments about legal framework above. Concerns have been noted as to the specific application of the instrument and in particular where it is most suitably applied. The <i>SFAIRP</i> test is applicable to rail participants under s7(1) and, as I understand it, at all levels of Hazard and Risk Management however the document does not limit the extent where aspects such as safety assessment and system under review start and stop. Where the guidance proposes approaches and methodology, it needs to take into account lower level risk assessment to ensure appropriate resourcing in balance with the nature and extent of risk .</p> <p>Darren Robin 21 Sep 22 Response noted and agreed Darryn Robin 17/10/22 Perhaps change the wording from system under assessment to “ assessment of the arrangements which make up the agreed system or hierarchy of control concerning the specific risk or risks”. This allows a more pointed approach, maybe even use the words you say in your response the system boundaries are defined by the participant? Darryn Robin 17/10/22</p>	Important	<p>You have raised conflicting statements. You state that SFAIRP applies at all levels, and you correctly point out that the document doesn't define which level to apply it. That is the intent. Irrespective of the document, the obligations to eliminate and minimise risk exists.</p> <hr/> <p>Updated para 10 to reflect the recommendation, and also pointed toward the ISO 31000.</p> <p>R. McMullan Jan 2023</p>	

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	ALARP	Section on ALARP should be deleted as it is not the statutory test. KiwiRail	Important	The statement mentioning ALARP is specifically stating that ALARP is not the statutory test. That is the purpose of the statement. No changes suggested. R. McMullan Jan 2023	
	HSWA	Section referencing HSWA should also be deleted as out of scope of the paper KiwiRail	Important	Refer Para 7. This now includes: <i>"It is important to note that while this guidance focuses on the duty to ensure the safety of others 'so far as is reasonably practical' as defined by the Railways Act 2005, parties may also have other legal responsibilities and duties under other laws such as the Health and Safety at Work Act 2015. The assessment and management of safety risks should take into account all relevant legal responsibilities and duties, and parties should be aware that following this guidance does not necessarily guarantee compliance with other legal requirements."</i> R. McMullan Jan 2023	
11.	Wording and Definitions	Concerns were noted regarding some aspects of terms and definitions in the document including the mixing of hazard and risk without appropriate clarity. These terms are often used interchangeably however there is opportunity here to use agree balance of terms in context wit the guidance. Other terminology used also leads to some level of interpretation, such as "foresight activity", "judged as competent and experienced "etc. Response noted and agreed Darryn Robin 17/10/22 Darren Robin 21 Sep 22 Needs to follow the statutory defintions KiwiRail 17.10.22	Important	Terms and definitions have been updated. Hazard and risk are both used in the act. They are not interchangeable and have their own specific meaning, as defined. Foresight is plain language term. "the ability to predict what will happen or be needed in the future" Competency is a plain language term: "the ability to do something successfully or efficiently." "courses to improve the competence of staff" As with all functions in the rail industry is up to the participant organisation to define how their people are determined competent. It is an important duty holder function they are satisfied with the capability of the people undertaking risk assessments in the context of their organisation. R. McMullan Jan 2023	

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12.	References	<p>There are many reference links in the document which may or may not be helpful in terms of giving broad ranging optionality in the use of say risk measurement models etc, while relevant to some extent in terms of comparative methods, allowing wide ranging reference can in some cases add some complexity of choice and inappropriate application, particularly in less experiences hands.</p> <p>Suggest a discussion with the working group please Darryn Robin 17/10/22</p>	Important	<p>IEEE referencing format now used. Reference provided at the end along with bibliography.</p> <p>Future reviewers are encouraged to read this material as to grow their understanding.</p> <p>You will note there is a 'risk practice' objective within NRAIF</p> <p>R. McMullan Jan 2023</p>	

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13.	Interpretations and questions	<p>The document attempts to be complete and thorough and contains quite a lot of sections and information, however in attempting to be thorough the level of information, and in some cases specificity, leaves the reader with questions and options, many of which may or may not be judged as applicable/ suitable in the eyes of the user and or perhaps judged differently by say a regulator.</p> <p>Gross disproportionality guidance, challengeable in terms of the way it's articulated</p> <p>Response noted and agreed this does need more discussion at NRIAF Darryn Robin 17/10/22</p> <ul style="list-style-type: none"> - Aspects of methodology in regards to size scale and application of safety assessments <p>(See my note above re application and suitability)</p> <p>Darryn Robin 17/10/22</p> <ul style="list-style-type: none"> - Authorisations and acceptance of competent and qualified people - No good examples used <p>response noted and agreed Darryn Robin 17/10/22</p> <ul style="list-style-type: none"> - Foresight activities (subjective v objective) balance and suitability in related SFAIRP defence cases. <p>Response noted I understand the intent of this section now</p> <ul style="list-style-type: none"> - The use of the word "may" is used 20 times, gives rise to who deems what "may or may not" apply or be appropriate. response noted and agreed Darryn Robin 17/10/22 <p>Darren Robin 21 Sep 22</p>	Important	<p>What amendments does the document need to alleviate your concerns? How will this achieve the NRIAF aims?</p> <p>The focus on 'how they might be judged by the regulator' is either the core of the problem, or a distraction.</p> <p>NRIAF need to resolve this as a core concept before any more guidance is created or suggested.</p> <p>Examples are not provided as this then lends to being more prescriptive, which goes against what Jonathan Earl from KiwiRail is suggesting.</p> <p>It would be useful to have a consistent view from KiwiRail. Do you want examples? If we include examples, how does Kiwi Rail reconcile the idea that the regulator will then have a new set of expectations? It would be useful to have a consistent view from KiwiRail.</p> <p>The term 'may' (may/may not) is intentional specifically to allow the participant to decide – which is what Jonathan Earl from KiwiRail is suggesting needs to be expanded. It would be useful to have a consistent view from KiwiRail.</p> <p>Suggest no change to the document arising from this comment, unless suitable wording or amendments provided.</p> <p>----</p> <p>The document has been updated can these comments be closed?</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
14.	Summary	<p>In summary we do agree we need a document to provide greater consistency in building assessments that appropriately demonstrate SFAIRP however the document has the potential in its current form to cause more uncertainty in that context and could also add onerous, costly and unnecessary burden on business. Its application in the hands of non-risk experts would be very limited if not void.</p> <p>Response noted not conflicted now understand the balance of application will be user based Darryn Robin 17.10.22 Darren Robin 21 Sep 22</p>	Important	<p>The reviewer's statement appears to hold two conflicting perspectives: 'we encourage prescription to reduce uncertainty, and we don't want it to be prescriptive because we desire flexibility'.</p> <p>Please clarify how you want the document changed to meet this balance.</p> <p>Suggest no change to the document arising from this comment, unless suitable wording or amendments provided.</p> <p>----- Closed R. McMullan Jan 2023</p>	Closed
15.	Regulator Guidance 001 / Page 4, para 1	<p>Missing a word. 'This guidance is applicable to those subject to the requirements of [insert 'Section'] 5 of the Railways Act, including:</p> <p><i>Glenn Gowthorpe 22 AUG 22</i></p> <p>Reviewer response to Author <i>[Review Name – Date]</i></p>	Grammar / Spelling	<p>Updated</p> <p>R. McMullan Jan 2023</p>	
16.	Whole Document	<p>Consider applying 'section, chapter, paragraph' numbering to the document to enable easier referencing.</p> <p><i>Glenn Gowthorpe 22 AUG 22</i></p> <p>Reviewer response to Author <i>[Review Name – Date]</i></p>	Layout	<p>Updated</p> <p>R. McMullan Jan 2023</p>	
17.	Page 5, System under evaluation definition	<p>The 'system' generally includes ongoing operations and maintenance, or for projects it might include all elements of the lifecycle including concept, procurement, construction/manufacture, commissioning, operations, maintenance, refurbishment, decommissioning, disposal.</p> <p><i>Glenn Gowthorpe 22 AUG 22</i></p> <p>Reviewer response to Author <i>[Review Name – Date]</i></p>	Grammar / Spelling	<p>Updated</p> <p>"In order to ensure a comprehensive and accurate safety risk assessment, it is important to understand the scope, context, and criteria of the organisation and the boundaries of the risk assessment"</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
18.	Page 3 Objective	<p>Fully noted as guidance only, I would like to see words added here as to the limitations of this instruments' legal utility by regulators in pursuing actions against organisations.</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>Added paragraph 8 which states:</p> <p><i>8. Legal obligations & disclaimers This guidance is provided as a tool to assist duty-holders for undertaking safety risk assessments and their SFAIRP obligations as set forth in the Railways Act 2005. It is important to note that adherence to this guidance does not guarantee that legal duties have been met, as these may only be determined following an incident or investigation, and ultimately by the court. Judgement of compliance to the Railways Act can only be determined in the context of post-incident investigation by the courts. There is always a level of uncertainty when assessing whether a duty has been fulfilled beforehand, and rail participants will need to adapt any guidance to their organisation's specific needs. The options and approaches outlined in this guidance are not prescriptive and should be adapted to fit the specific needs of each duty-holder and rail participant. As such, duty-holders should exercise their own judgement when assessing and managing health and safety risks, taking into account the specific circumstances of their operations and what they understand to be best practices. It is important to note that while this guidance focuses on the duty to ensure the safety of others 'so far as is reasonably practical' as defined by the Railways Act 2005, parties may also have other legal responsibilities and duties under other laws such as the Health and Safety at Work Act (2015). The assessment and management of health and safety risks should take into account all relevant legal responsibilities and duties, and parties should be aware that following this guidance does not necessarily guarantee compliance with other legal requirements.</i></p> <p>R. McMullan Jan 2023</p>	
19.	Page 3 Objective	<p>agree</p> <p>KiwiRail (JH) 16/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	N/A	<p>Closed</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
20.	Page 3 Objective	<p>Noted however The SFAIRP test is an objective test at law. I Fully acknowledge the rail regulators enforcement and monitoring role here, however. My fear is that this guidance may cause unnecessary burden on participants if not applied in a very pragmatic way.</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>This comment appears related to the nature of the Act than the guidance provided in this document.</p> <p>Suggest this comment is closed.</p> <p>R. McMullan Jan 2023</p>	
21.	SVoL	<p>KiwiRail — Should VoSL be used? Note comments by SD KR and agree would like further discussion with group. Darryn Robin 17.10.22 At workshop.</p>	Discussed	<p>Updated Para 17-20 to address this and other comments raised.</p> <p>Suggest this comment is closed.</p> <p>R. McMullan Jan 2023</p>	
22.		<p>Workers and representatives consultation</p> <p>RMTU</p>	Discussed	<p>Updated Para 17-20 to address this and other comments raised.</p> <p><i>“Consult with workers, their representatives, and subject matter experts in the relevant area to review the controls, the risks, the assessed likelihood, the assessed consequence, and the proportionality of the cost of the control measures against the potential harm that could result from risks being addressed.</i></p> <p><i>Gather information on the potential harm that could result from the risk. This information should include consultation with workers, their representatives, and subject matter experts.</i></p> <p>R. McMullan Jan 2023</p>	
23.	Page 3 Objective	<p>We also need to be clear when this is applied? At what level of the organisation or project etc? AF</p> <p>KiwiRail (DR) 29/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>This is up to each organisation to decide. See Para 10</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
24.	Page 5 Applicability	<p>NOTE that the qualification SFAIRP doesn't apply to persons falling within 5(ii) so not sure that it is relevant to refer to them here at all</p> <p>KiwiRail (SD) 14/09/2022</p> <p>Reviewer response to Author [Review Name – Date]</p> <p>See more detailed response above Kiwirail 17.10.22</p>	Important	<p>Unclear which section of the Act you're referring to.</p> <p>This may have now been covered with Paragraph 8 – legal obligations and disclaimers.</p> <p>The document more broadly states that if you're doing a SFAIRP risk assessment here is practical advice.</p> <p>R. McMullan Jan 2023</p>	
25.	Page 5 Applicability	<p>ALSO NOTE – none of these personnel are persons who conduct activities within the definition of "rail activities" under the act and therefore are not subject to section 5(i) or (ii);</p> <p>S 7 refers to other persons who also have duties qualified SFAIRP, but [query] whether this guidance is intended to include them? If it does, we should work that through.</p> <p>KiwiRail (SD) 13/09/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>This may have now been covered with Paragraph 8 – legal obligations and disclaimers. Or the applicability section.</p> <p>The document more broadly states that if you're doing a SFAIRP risk assessment here is practical advice. it aims to be less specific on who (duty holder vs persons) hold the responsibilities for risk assessment.</p> <p>R. McMullan Jan 2023</p>	
26.	Page 6 Definitions	<p>For ease of reading, suggest definitions be moved to the end</p> <p>KiwiRail (SD) 13/09/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Layout	<p><i>Done</i></p> <p>R. McMullan Jan 2023</p>	
27.	Page 6 Definitions	<p>This may require better definition to distinguish the difference between hazard and risk. E.g I don't believe its helpful to have a collective definitions here. Risk is a function of likelihood and defined consequence related to the source hazard.</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>All updated to more consistent terms, follows ISO 31000 definitions.</p> <p>Definitions updated – now para 24.</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
28.	Page 6 Definitions	<p>agree</p> <p>KiwiRail (JH) 16/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	N/A	<p>Closed</p> <p>R. McMullan Jan 2023</p>	
29.	Page 6 Definitions	<p>What is optional here ?? risk controls or system elements etc ... ? who decides if we have included all the necessary system elements ??</p> <p>Response noted and agreed Darryn Robin 17.10.22</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>The word 'options' should be 'operations'. There is a grammatical error in the document.</p> <p>This definition removed.</p> <p>R. McMullan Jan 2023</p>	
30.	Page 6 Definitions	<p>Agree, the sentence appears out of context. You could assume that they are referring to the system under review, but greater clarity is required to ensure no misinterpretation of 'options'</p> <p>KiwiRail (SM) 23/08/2022</p> <p>Response noted and agreed Darryn Robin 17.10.22</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>The word 'options' should be 'operations'. There is a grammatical error in the document.</p> <p>This definition removed.</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
31.	Page 7 "Reasonably practicable" in relation to a duty to ensure health and safety or to protect property is defined in the Act and means:	<p>As to costs, the question is whether the cost is proportionate to the harm that could result. Expensive engineering and technology controls are not required where the relevant hazard or risk is low and a cost-effective and simple solution is likely to be effective.</p> <p>But choosing a low-cost option that provides less protection simply because it is cheaper is unlikely to satisfy the requirements of the SFAIRP obligation.. AF</p> <p>KiwiRail (DR) 29/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p> <p>See more response on legal framework above KiwiRail 17.10.22</p>	Important	<p>Updated Para 17-20 to address this and other comments raised.</p> <p>Suggest this can be closed.</p> <p>R. McMullan Jan 2023</p>	
32.	Page 7 Safety Assessment	<p>It is important in the section that follows to be clear about what the NZ law says the words used in s5 / definition of "reasonably practicable" mean, and how the legal tests are to be applied,</p> <p>As the law provides a clear set of criteria, this should guide the discussion about completing safety assessments and the methodology to be adopted below.</p> <p>We should make it clear when we are [borrowing] concepts from other sectors or jurisdictions which we consider useful for the purposes carrying out a safety assessment</p> <p>KiwiRail (SD) 13/09/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>Updated Para 17-20 to address this and other comments raised.</p> <p>Suggest this can be closed.</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
33.	Page 8 Safety Assessment	Just safety not health? KiwiRail (JH) 16/08/2022 Reviewer response to Author [Review Name – Date]	Important	Comment relates to the heading “safety assessment” whether it should be called “health and safety assessment” Document title changed to ‘practical guidance for conducting health and safety assessments’. R. McMullan Jan 2023	
34.	Page 8 Safety Assessment	1) Does this explicitly exclude the rail regulator from making determination or judgement on who is or could be deemed competent and or experienced. KiwiRail (DR) 15/08/2022 Reviewer response to Author [Review Name – Date]	Important	This comment relates to the following text: <i>“The assessment of ‘SFAIRP’ is a specialist area and so it is important that these assessments are undertaken by people judged as competent and experienced by the rail participant organisation “</i> Refer to new Para 20 about competency. R. McMullan Jan 2023 Suggest no change to the document arising from this comment.	
35.	Page 8 Safety Assessment	2) Does this negate any counter opinions that may be tendered by the rail regulator or its advisors in areas where competence and or technical experience is relevant to the material outcome of the SFAIRP test. Response noted and agreed Darryn Robin 17.10.22 KiwiRail (DR) 15/08/2022 Reviewer response to Author [Review Name – Date]	Important	Meaning of reasonably practicable states <i>“what the person concerned knows, or ought reasonably to know, about— (i) the hazard or risk; and (ii) ways of eliminating or minimising the risk; and”</i> One of the requirements of the SFAIRP test is about knowledge of ‘what you ought to reasonably know’ and so there will always be discussion when people hold different knowledge about risks and safety controls. Most guidance suggests people look beyond their own local environment / organisation, etc and see what others are doing to manage the risk, and consider those ways. “is it reasonable to look at what others are doing?” Suggest no change to the document arising from this comment. R. McMullan Jan 2023	
36.	Page 8 Safety Assessment	Good point KiwiRail (JH) 16/08/2022 Reviewer response to Author [Review Name – Date]	N/A	N/A	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
37.	Page 8 Safety Assessment	<p>Is there an existing body in place such as the UK's Rail Delivery Groups ADR scheme that could be deemed "competent and experienced" to handle these matters to avoid litigation/significant legal costs?</p> <p>KiwiRail (SM) 23/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p> <p>Response noted and agreed Darryn Robin 17.10.22</p>	Important	<p>The wording in the proposed guideline is aimed to bring attention that undertaking a SFAIRP assessment is not trivial. It also seems like a normal and reasonable thing for an organisation to judge someone as competent to undertake a safety risk assessment / SFAIRP analysis that aims to protect duty holders and makes recommendations about spending money to manage risk.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p>	
38.	Page 8 Notes	<p>1) This needs more specific guidance, as it goes directly to the inference of likelihood and defined consequence for the given risk event context.</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p> <p>Response noted and agreed Darryn Robin 17.10.22</p>	Important	<p>Updated Para 17-20 to address this and other comments raised.</p> <p>.</p> <p>The revised wording provides a fairly standard approach to undertaking risk assessments.</p>	
39.	Page 8 Notes	<p>2) This creates very significant burden on the assessor to analyse and predict emergency and degraded circumstances and scenarios, some of which may be arguable as to their credibility. Can we please perhaps clarify system interfaces , maybe Darryn Robin 17.10.22</p> <p>How is this to be appropriately determined and by whom. ? and to what extent e.g. probabilistic analysis etc... recent scenarios have been challenged by the rail regulator or certainly at least misunderstood in regards to this.</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>This comment is in relation to the following text: <i>"Due consideration for normal, degraded, and emergency situations is required, and the assessment should include hazards that arise from the failure of assets, equipment, human error, and system interfaces."</i></p> <p>The meaning of reasonably practicable includes the following words: <i>"what the person concerned knows, or ought reasonably to know, about— (i) the hazard or risk; and (ii) ways of eliminating or minimising the risk; and"</i></p> <p>The risk assessor needs to determine what is relevant – hence why such assessments are not trivial.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
40.	Page 9 Likelihood	<p>Or is it likelihood of the risk occurring from the hazard?</p> <p>KiwiRail (JH) 16/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Grammar	<p>This comment relates to “<i>The safety assessment should document the estimations of likelihood of the hazard occurring, along with causes,</i>”</p> <p>Updated Para 17-20 to address this and other comments raised.</p> <p>.</p> <p>R. McMullan Jan 2023</p>	
41.	Page 9 Likelihood	<p>Agree</p> <p>KiwiRail (DR) 16/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	N/A	<p>Closed</p> <p>R. McMullan Jan 2023</p>	
42.	Page 9 Likelihood	<p>“Estimation” would seem to exclude quantitative assessment, what form of estimation methodology is to be deemed appropriate and by whom ?</p> <p>Response noted and agreed Darryn Robin 17.10.22</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>Updated Para 17-20 to address this and other comments raised.</p> <p>They specify ‘whom’ should be involved.</p> <p>This is fairly standard.</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
43.	Page 9 Likelihood	<p>Do foresight activities include subjective opinions of relevant knowledgeable people?</p> <p>KiwiRail (DR) 15/08/2022 Response noted and agreed Darryn Robin 17.10.22</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>This comment is in relation to undertaking risk assessments and using <i>“foresight activities undertaken by experienced personnel.”</i></p> <p>The purpose of the statement is to draw attention to the idea that BAU risks and historical accidents (using a ‘frequency of events approach’) may not uncover catastrophic events that exist outside of historical accident databases. For example, a specific natural hazard may not be in a historical database and the risks might only be uncovered through consultation and ‘foresight’ – that is, thinking about the nature of the world and what might happen. The example for bridges – lack of maintenance and repair can lead to catastrophe, but there is unlikely to be a history of bridge catastrophe in database of previous events – it requires some ‘foresight’ to consider these. This is a standard function of risk management – to think about what might happen in the future, work through the uncertainties, and then see how they can be managed.</p> <p>Foresight include opinions. What is the difference between a subjective opinion of a layperson and ‘professional subject matter expert opinion.... This is the sort of thing an experienced risk manager can negotiate when undertaking the risk assessment. It is not the purpose of this document to teach laypersons about the basics of risk.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
44.	Page 9 Likelihood	<p>it may be appropriate but is [it] required, e.g credible worst case vs multiple variants of other low consequence, high likelihood events. When is this necessary?</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p> <p>Response noted and agreed Darryn Robin 17.10.22</p>	Important	<p>This comment is in relation to whether the risk assessment looks at various levels of harm. "It may also be appropriate to establish different degrees of harm for one type of hazardous event."</p> <p>This is up to the participant to decide when undertaking their risk assessment. This is a fairly normal part of risk assessment.</p> <p>For example, 'derailment' has multiple degrees of harm - low speed derailment (harm / likelihood) is quite different from high-speed derailment, and so we separate them.</p> <p>The guidance just brings attention to this idea. Additional words have been included in the footnotes on page 5 and page 6 as examples.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p> <p><i>Closed</i></p>	
45.	Page 9 Degree of Harm	<p>This needs to be simplified to denote the requirement for consequence factors that are end state not otherwise contributory.</p> <p>This means denoting the human harm scale up to death. Concurrent or sequential Consequence analysis as part of the causal chain is only one part but the ultimate defined consequence (degree of harm) when ranking the safety risk is the human impact on a scale from no impact to death. Most participant safety consequence factors are structured this way</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p> <p>Response noted and agreed Darryn Robin 17.10.22</p>	Important	<p>Not sure what the commenter is getting at.</p> <p>This comment is in relation to the above comment and the example "<i>For example, a broken rail can result in different degrees of severity from nothing adverse, low speed derailment, to catastrophic derailment with many injuries. Outcomes will depend on the nature of the operations and the nature of the defect. Each of the potential severities may have different estimated likelihoods. It may be appropriate to document only the 'most-probable worst case'</i></p> <p>The UK risk model has a database of the different levels of harm from various types of incidents. These might be useable to inform the risk assessment.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p> <p><i>Closed</i></p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
46.	Page 9 What is Known	<p>To what extent ?</p> <p>KiwiRail (DR) 15/08/2022</p> <p>With respect to 'divergence in opinion', this could be an unmanageable level of information given the levels of experience or understanding of the rail environment within the KR workforce, for example a 17 year old working for KR for 6 months vs someone with 30+ years experience.</p> <p>KiwiRail (SM) 23/08/2022 Response noted and agreed Darryn Robin 17.10.22</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>This is in relation to the documentation of differing opinions in risk estimates, from the following statement <i>"The workers understanding and perceptions of the hazards and associated risks, noting any divergence in opinion with risk estimates and historical data"</i></p> <p>What are the implications of wildly irreconcilable differences in perceptions of risk between those involved in undertaking a risk assessment? How can they be resolved?</p> <p>Do we even suggest documenting it?</p> <p>Consider removing guidance suggesting documenting divergence of opinion between people and data. I note the agreement some have with the RMTU to be involved in assessment of risk and for their RMTU members voices / estimates to be captured.</p> <p>R. McMullan Jan 2023</p> <p><i>Closed</i></p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
47.	Page 9 What is Known	<p>This expectation on KiwiRail appears very onerous to me, if we are expected to review historical data from international sources, are we looking at all sources or those deemed credible or aligned to NZ?</p> <p>KiwiRail (SM) 23/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p> <p>Response noted and agreed Darryn Robin 17.10.22 user should decide.</p>	Important	<p>This statement is in relation to <i>'what is known about the hazard or risk'</i></p> <p>The guidance suggests places to look, and areas to enquire to understand risks.</p> <p>Rail tends to be relatively safe and then occasionally it will suffer catastrophe. Is it reasonable to learn from others in a small industry?</p> <p>How do we learn when things don't happen very often?</p> <p>Let's say you own a steam train. How might you understand steam train risks?</p> <p>Let's say you want to operate a new light rail, how might you understand the risks with running light rail?</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p> <p><i>Closed</i></p>	
48.	Page 10 Ways to Manage Risk	<p>I still see no reason to have interchangeable language here, perhaps just use RISK and be done with it. Even ONRSR Mixes this term</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p> <p>Response noted and agreed Darryn Robin 17.10.22</p>	Grammar	<p>I note the language of reasonably practicable states:</p> <p>"the hazard or risk"</p> <p>Will re-examine the use of the terms hazard & risk.</p> <p>R. McMullan Jan 2023</p> <p><i>Closed</i></p>	
49.	Page 10 Ways to Manage Risk	<p>It is important to go back to the language of the Act and refer to that, so as to avoid inadvertently importing irrelevant concepts or applying the Australian tests, which may or may not be appropriate</p> <p>KiwiRail (SD) 13/09/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Grammar	<p>Updated Para 17-20 to address this and other comments raised. Also refer to the definitions section in Para 23.</p> <p>This language should now be consistent with NZ Railways Act.</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
50.	Page 10 Ways to Manage Risk	<p>Who hold are Technical Competent, Qualified and/or Certified in the discipline that they are providing advice and recommendations? AF</p> <p>KiwiRail (DR) 29/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p> <p>Response noted and agreed Darryn Robin 17.10.22</p>	Important	<p>This comment is in relation to the identification of possible ways to manage risk, “<i>Advice and recommendations from authorities such as interfacing Rail Participants, Waka Kotahi, WorkSafe, FENZ, etc.</i>”</p> <p>This is about broadening the horizon on ‘ways to manage risks’ that the organisation might not be aware of.</p> <p>The participant still needs to ‘own’ any decision to implement or not implement. Also, the ‘availability and suitability’ weeds out poor ideas.</p> <p>Should any person (from a regulator, FENZ, interfacing participant) suggest a control that is not suitable, the SFAIRP process allows for bad ideas to be discarded and that rationale to be documented.</p> <p>Suggest no change to the document arising from this comment.</p>	
51.	Page 10 Availability and Suitability	<p>Available on the open market, or if it is reasonably possible to design and/or manufacture it. AF</p> <p>KiwiRail (DR) 29/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p> <p>Response noted and agreed Darryn Robin 17.10.22</p>	Important	<p>This is in relation to the comment “<i>It is important to document the rationale where controls are considered ‘not-available’</i>”, and the footnote states “<i>Rationale for controls that are not available might include that they are not available on the market in New Zealand, or that the technology is unproven. For the most severe risks, it is reasonable to engage with strategic suppliers to see if they can supply certain controls as part of your collective long-term planning.</i>”</p> <p>This is up to the participant to decide availability. The guidance suggests this is documented.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p> <p><i>Closed</i></p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
52.	Page 10 Availability and Suitability	<p>Are the controls compatible with the existing systems or operating requirements or legislation? AF</p> <p>KiwiRail (DR) 29/08/2022 Response noted and agreed Darryn Robin 17.10.22</p> <p>Response noted and agreed Darryn Robin 17.10.22</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>This is in relation to the guidance "<i>It is important to document the rationale where controls are considered 'not-suitable'</i>".</p> <p>This is up to the participant to decide availability. The guidance suggests this is documented.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p> <p><i>Closed</i></p>	
53.	Page 10 Availability and Suitability	<p>Do they meet industry code, standard, good practice or legislation etc. Good practice and standards may in some cases be sufficient to ensure safety SFAIRP. AF</p> <p>KiwiRail (DR) 29/08/2022 Response noted and agreed Darryn Robin 17.10.22</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>The idea that standards meet SFAIRP is debated.</p> <p>Literature suggests standards are a minimum, and where standards are not applied, some documented argument is applied to say why.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p> <p><i>Closed</i></p>	
54.	Page 11 Value of Harm Reduction	<p>Where it is proposed to introduce concepts, or methods of analysis or evaluation which are not required by the Act or indicated by the Act (or indicated by case law), or reference guidelines agreed by other working groups, or, in the case of the ONRSR guideline which is an Australian regulatory approach, it is important to explain why Waka Kotahi considers them relevant, appropriate and useful in this regulatory context. They may be, but it should be explained.</p> <p>KiwiRail (SD) 13/09/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>This comment is in relation to assigning a value to harm to allows some estimate of disproportionality.</p> <p>Refer to Para 8 and updated Paras 17-20 to address this</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
55.	Page 11 Disproportionality	<p>I expect there is some case law to assist with understanding "grossly disproportionate"</p> <p>KiwiRail (SD) 13/09/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>The case law for the <i>introduction</i> of the term 'grossly disproportionate' is outline in King, 2016</p> <p>What is of interest, is where participants have applied some figure and the regulator has chosen NOT to prosecute.</p> <p>Suggest no change to the document arising from this comment. Refer to Para 8 and updated Paras 17-20 to address this</p> <p>R. McMullan Jan 2023</p>	
56.	Page 12 Disproportionality	<p>Why? Has NZ case law referenced the Australian guideline? What is that regulatory context? How is it equivalent, appropriate here?</p> <p>KiwiRail (SD) 13/09/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>Suggest no change to the document arising from this comment.</p> <p>Refer to Para 8 and updated Paras 17-20 to address this</p> <p>R. McMullan Jan 2023</p>	
57.	Page 12 SFAIRP Key Requirements	<p>Should we just use ONRSR example</p> <p>Response noted and agreed Darryn Robin 17.10.22</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>Over to each participant to decide? A participant might say 'instead of this NRIAF guidance we use the ONRSR guidance'. This document allows for that.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p> <p>Closed</p>	
58.	Page 12 SFAIRP Key Requirements	<p>How do we identify what is standard industry practice? And how does KiwiRail determine that those controls are suitable or unsuitable</p> <p>KiwiRail (SD) 13/09/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>Standard practice is difficult to identify in an industry like NZ rail, given there is no guidance / rules / or industry standards. Either way, if a widely known practice is evident then it is 'normal to apply' unless there is good reason not to - or so the literature suggests.</p> <p>It is up to each participant to assess the context of their operations and determine what is 'standard practice'. It will be different for each organisation.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
59.	Page 12 SFAIRP Key Requirements	<p>Agree but how do we fare with examples from work safe of dictating tunnel operational controls that are not industry practice, rejecting controls that are industry practice, and adding risk with non-proven prescriptive controls?</p> <p>KiwiRail (JH) 16/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>The participant still needs to 'own' any decision to implement or not implement. Also, the 'availability and suitability' assessment within a SFAIRP assessment weeds out poor ideas.</p> <p>Should any person (e.g. regulator) suggest a control that is not <i>suitable</i>, the SFAIRP process allows for that rationale to be documented.</p> <p>Regulators should not be suggesting controls to be implemented; However, they should be able to suggest controls to be considered as part of a SFAIRP assessment – as they may have visibility of other operators, or done particular research into how similar risks are controlled elsewhere. "Refer what you ought reasonably know"</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p>	
60.	Page 13 SFAIRP Key Requirements	<p>Can we chat about this one? What about other controls that are affordable and have the same risk reduction? Also how do we document and measure risk reduction?</p> <p>KiwiRail (JH) 16/08/2022</p> <p>Response noted and agreed Darryn Robin 17.10.22</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>This comment is in relation to "The capacity to pay"</p> <p>The text in the document is a logical interpretation of the requirements of reasonably practicable that appears across other guidance and is widely described in literature on the SFAIRP principle. This concept is reasonably well established across international guidance on SFAIRP.</p> <p>The way participants document and measuring risk reduction is up to them. The three options discuss multiple ways.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023 Closed</p>	
61.	Page 13 SFAIRP Key Requirements	<p>That would depend on the modelling you use. E.g. the LX risk evaluation model measures time to failure etc.. no further comment at this time Darryn Robin 17.10.22</p> <p>KiwiRail (DR) 16/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>Not sure what this comment is about.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023 Closed</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
62.	Page 13 SFAIRP Key Requirements	<p>Would this require regulatory approval as to the acceptability of the SFAIRP position at that point in time when assessed. Given the safety assessment and system approach you have included above this could make sense. In fact we argue this now in essence across many of our risks at enterprise level.</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p> <p>Response noted and agreed Darryn Robin 17.10.22 SFAIRP statements or the like deemed not binding on regulators (e.g. they are not bound under law to accept them)</p>	Important	<p>The notion of an acceptable SFAIRP position is an interesting one. I'm not sure a regulator would ever 'positively agree' beforehand rather they might just not suggest any revisions.</p> <p>What a documented SFAIRP position does provide is 'the state of knowledge 'at the time' which is a central concept to reasonably practicable.</p> <p>There is an outstanding question which, as far as I can tell, remains untested: whether a suitably documented SFAIRP based risk assessment has deterred a regulator.</p> <p>What would be valuable (in the absence of precedent setting court cases) is understanding where a regulator has determined they do not have a case – because a participant has a suitably documented risk assessment (and that suitably documented risk assessment was good enough the prosecution felt they had a weak case.)</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023 Closed</p>	
63.	Page 13 SFAIRP Key Requirements	<p>This would be appropriate for Enterprise Critical Risks, but not for Projects, as the risk assessment and SFAIRP is applicable for that project at that time. Once the project as delivered the asset the project is closed. Need to be clear when we apply is across the organisation and at what level</p> <p>AF</p> <p>KiwiRail (DR) 29/08/2022 Response noted and agreed Darryn Robin 17.10.22 user to decide</p> <p>Reviewer response to Author [Review Name – Date]</p>	Important	<p>This comment is in relation to periodically updating SFAIRP assessments over time.</p> <p>Yes agree. Though don't see a need for change to the text (and no suggested revised wording is suggested by the reviewer).</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023 closed</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
64.	Page 13 SFAIRP Key Requirements	<p>It is not in itself a demonstration of SFAIRP but surely it has a relationship to the overall SFAIRP outcome?</p> <p>KiwiRail (JH) 16/08/2022</p> <p>Reviewer response to Author [Review Name – Date] Response noted and agreed Darryn Robin 17.10.22</p>	SFAIRP concept	<p>This comment is in relation to the notion that “risk scoring as ‘low’ on a risk matrix has no relationship to demonstration of SFAIRP”</p> <p>Risk scores and SFAIRP are two very different concepts.</p> <p>There are some very fundamental compatibility problems with risk matrices and SFAIRP – especially for catastrophic risks. A risk matrix allows you to make an estimate that the risk is low (and depending on how the organisation has structured the risk matrix, they might not have created any obligation to do anything about it).</p> <p>As for SFAIRP, it requires you assess the ‘availability and suitability’ of controls and apply all those that are ‘within the grossly disproportionate ratio’. This means that catastrophic risks will always have ‘available, suitable, and not-a-grossly-disproportionate-cost’ controls applied – irrespective of the organisation’s tolerance for risk.</p> <p>The notion of a ‘low’ risk not needing treatment works in standard project and finance risk where ups and downs eventually balance out, but this doesn’t work in safety because harm accumulates.</p> <p>Refer Robinson (2015)</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023 Closed</p>	
65.	Page 13 SFAIRP Key Requirements	<p>Use of the term probable infers some level of semi or full quantitative assessment? would this be required for (all) low consequence high frequency risk for example</p> <p>Response noted and agreed Darryn Robin 17.10.22</p> <p>KiwiRail (DR) 15/08/2022</p> <p>Reviewer response to Author [Review Name – Date]</p>	Qualitative vs quantitative	<p>The term ‘improbable’ used here is to highlight the point that controls need to be put in place to ensure risks ‘remain improbable’, in relation to how people think about risk and risk matrices – this has nothing to do with quantitative vs qualitative.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023 Closed</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
66.	Page 13 Definitions	Where do these definitions come from? NZ case law? KiwiRail (SD) 13/09/2022 Response noted and agreed Darryn Robin 17.10.22 Reviewer response to Author [Review Name – Date]	Scope / legal	These were the definitions from the NZ industrial forum's SFAIRP guidance document, which is one of the referenced documents used to create this guidance. Definitions have been revised R. McMullan Jan 2023 Closed	
67.	Page 14 Definitions	What is optional here ?? risk controls or system elements etc ... ? who decides if we have included all the necessary system elements ?? KiwiRail (DR) 15/08/2022 Reviewer response to Author [Review Name – Date]	Grammar	Grammar error. It should say " <i>when considering Operations</i> " (not options) Definitions have been revised R. McMullan Jan 2023	
68.	Page 14 Definitions	Agree, the sentence appears out of context. You could assume that they are referring to the system under review, but greater clarity is required to ensure no misinterpretation of 'options' KiwiRail (SM) 23/08/2022 Reviewer response to Author [Review Name – Date]	Grammar	Grammar error. It should say " <i>when considering Operations</i> " (not options) Definitions have been revised R. McMullan Jan 2023	
69.	Industry Guidance - IG001 Demonstrating SFAIRP Page 6 Safety Assessment	Reviewer comment [Greg H – Consider adding change events / new process into the reason for a safety assessment 20/9/22] Reviewer response to Author [Review Name – Date]	Grammar	Para 10 now includes the following: <i>It is ultimately the railway participants responsibility to decide when and why a health and safety risk assessment is needed to assist them meeting their obligations under the Railways Act.</i> R. McMullan Jan 2023	
70.	Industry Guidance - IG001 Demonstrating SFAIRP Page 7 What is known	Reviewer comment [Bruce B - Consider adding asset condition / failure reports to list – 20/9/22] Reviewer response to Author [Review Name – Date]	Grammar	Included R. McMullan Jan 2023	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
71.	Industry Guidance - IG001 Demonstrating SFAIRP Page 7 What is known	<p>Reviewer comment <i>[Bruce B – Define what constitutes ‘consultation’ (best practice i.e. working group / committee / who should be involved etc) 20/9/22]</i></p> <p>Reviewer response to Author <i>[Review Name – Date]</i></p>	Definitions	<p>Paragraphs 10 through 20 have been rewritten and should now address this comment.</p> <p>R. McMullan Jan 2023</p>	
72.	Industry Guidance - IG001 Demonstrating SFAIRP Page 7 What is known	<p>Reviewer comment <i>[Greg H – General definition on what ‘ought to be reasonably known’ as this is referred to several times in the document 20/9/22]</i></p> <p>Reviewer response to Author <i>[Review Name – Date]</i></p>	For discussion	<p>The sections on ‘what is known’ and ‘ways to manage risk’ aim to guide participants toward ‘what out to be reasonably known’.</p> <p><i>what ‘ought to be reasonably known’</i> is used in the Act, so the same meaning applies.</p> <p>However, one of the conceptual problems that is raised with SFAIRP is that after an accident new information emerges, and the cause(s) of this accident then becomes the centre of ‘what ought to have been known’ – refer Proctor and Henderson. 2016, p.5.</p> <p>Suggest no change to the document arising from this comment.</p> <p>Author response to comment <i>[Author Name – Date]</i></p> <p>Author response to reviewer response <i>[Author Name – Date]</i></p>	
73.	Page 5 - definitions	<p>Reviewer comment: The definition of hazard confuses hazard and risk. I don't think we need to go full ISO 31000 with the definition of risk, but something along the lines of a hazard is something with the potential to cause harm, the risk is the likelihood of the harm being realised or similar? Definition of hazard mentions ‘chemicals’; I think this should be hazardous substances. Definition of hazard mentions chronic illness; I think this should be illness as acute health effects may also result from exposure. <i>[Ivor Smith – 6 Sep 22]</i> Reviewer response to Author <i>[Happy with that– 22/9/22]</i></p>	Definitions / grammar	<p>Updated to ISO 31000 definitions.</p> <p>Updated definitions section.</p> <p>Also see para 21.o. which states:</p> <p>“o. The rail participant might choose to also consider including all harm, such as health effects, including minor harm and chronic and acute illness, when evaluating risks to support obligations under the Health and Safety At Work Act.</p> <p>R. McMullan Jan 2023 Closed</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
74.	Page 6 – Safety Assessment	<p>Reviewer comment: Second and third paragraphs note that assessment should include hazards; should be hazards and risks for consistency? <i>[Ivor Smith – 6 Sep 22]</i></p> <p>Reviewer response to Author <i>[Happy with that– 22/9/22]</i></p>	Grammar	<p>The terms are defined and aligned to the Act in their usage and context.</p> <p>R. McMullan Jan 2023</p> <p><i>Closed</i></p>	
75.	Page 7 - likelihood	<p>Reviewer comment: Footnote 1 mentions chronic health risks; should cover chronic and acute. <i>[Ivor Smith – 6 Sep 22]</i></p> <p>Reviewer response to Author <i>[Happy with that– 22/9/22]</i></p>	Grammar	<p>see para 21.o. which states:</p> <p>“o. The rail participant might choose to also consider including all harm, such as health effects, including minor harm and chronic and acute illness, when evaluating risks to support obligations under the Health and Safety At Work Act.</p> <p><i>Closed</i></p>	
76.	Page 8 – Ways to Manage Risk	<p>Reviewer comment: Bullet point mentions higher order controls but the hierarchy of control is not mentioned or referred to in this document. Do we need it explained or a link to the WorkSafe hierarchy? <i>[Ivor Smith – 6 Sep 22]</i></p> <p>Reviewer response to Author <i>[Happy with that– 22/9/22]</i></p>	Scope	<p>Refer 21h.</p> <p>h. The rail participant might choose to follow the hierarchy of controls, starting with the most effective controls that eliminate the hazard and working down through the hierarchy to the least effective controls that only control the hazard. The health and safety assessment should consider the use of administrative controls and PPE as a last resort, after all other controls have been exhausted or deemed not feasible. This approach ensures that the most effective controls are implemented first and that resources are not wasted on less effective controls.</p> <p>R. McMullan Jan 2023</p> <p><i>Closed</i></p>	
77.	Page 8 – Availability and Suitability	<p>Reviewer comment: Footnote 6 has a typo – visa should be vice. <i>[Ivor Smith – 6 Sep 22]</i></p> <p>Reviewer response to Author <i>[Cheers– 22/9/22]</i></p>	Grammar	<p>Corrected</p> <p>R. McMullan Jan 2023</p> <p><i>Closed</i></p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
78.	Page 10 – Additional advice	Reviewer comment: Final bullet point states “including minor harm and chronic illness”. Suggest rewording to “covering all harm including health effects” or similar. <i>[Ivor Smith – 6 Sep 22]</i> Reviewer response to Author <i>[Happy with that– 22/9/22]</i>	Scope	see para 21.o. which states: “o. The rail participant might choose to also consider including all harm, such as health effects, including minor harm and chronic and acute illness, when evaluating risks to support obligations under the Health and Safety At Work Act. R. McMullan Jan 2023 <i>Closed</i>	
79.	Page1	There are a lot of references to the ONRSR in this document. I think the NZ rail industry needs to stand on its own in this respect. This is an NZTA heavily referencing the ONRSR. CB 20/09/2022	References	Updated. ONRSR only mentioned in refences and bibliography R. McMullan Jan 2023	
80.	15. ObjectivePage2	All good stuff. However there are financial constraints for smaller operators, also there may be risk of change of law if enforced resulting in variations from existing operators. CB 20/09/2022	Information	The imposition on smaller operators was considered as part of the law change. Refer the HSWA Hansard database which acknowledges that the legal requirements introduced are burdensome – specially discussed on the impact on small business (link) Smaller operators also tend to have less complex operations and grouping may be appropriate. This is up to them. Suggest no change to the document arising from this comment. R. McMullan Jan 2023	
81.	41. Definitions Page5	Consider including competent and experienced, disproportionality and proportionality CB 20/09/2022	Scope	Will revise definitions, though it is up to the organisation to define competency. The concepts of disproportional and proportionality and complex,... The document gives some guidance, and the references provide more explanation. Suggest no change to the document arising from this comment. R. McMullan Jan 2023	
82.	50. Notes Page6	Consider defining competent (eg certification) and experienced (min years in field of expertise) CB 20/09/2022	Scope	This is up to the participant to define. Suggest no change to the document arising from this comment. R. McMullan Jan 2023	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
83.	59. Safety AssessmentPage6	<p>Consider providing a template for SFAIRP Assessment for guidance and standardisation.</p> <p>Consider including new hazard identified after incident investigation.</p> <p>Any requirement for periodic review? To consider frequency of review for SFAIRP (eg. annually, 3 years, etc).</p> <p>CB 20/09/2022</p>	Scope	<p>Each participant will have their own context and should use their own template.</p> <p>These are for the participant to define, based on the nature of their operation, and the context of their risks as they determine them.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p>	
84.	59. Safety AssessmentPage6	<p>Suggest defining these modes.</p> <p>CB 20/09/2022</p>	Definitions	<p>This comment is in relation to "normal, degraded, and emergency modes"</p> <p>Definition section updated to include them.</p> <p>R. McMullan Jan 2023</p>	
85.	64. LikelihoodPage7	<p>What if I don't know. What if it is a new network.</p> <p>Suggest a clarification if this means similar reference systems and a global statistic source.</p> <p>CB 20/09/2022</p>		<p>This is in relation to " Estimation of a likelihood should include known history of the hazard and hazardous events,"</p> <p>How does one take on operations if they don't understand the risks? How does such an operator get insurance if they cannot demonstrate they understand the risks? How does a new organisation persuade their board that risks are going to be managed if they cannot make an assessment? The need to understand risks is a core part of business, and if an organisation cannot make a reasoned assessment then perhaps they need to rethink things.....</p> <p>As for the second sentence, this is covered by the phrase "rates of hazardous events in similar contexts within the organisation and other similar organisations"</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p>	
86.	68. What is KnownPage7	<p>Consider providing a template for SFAIRP Assessment for guidance and standardisation.</p> <p>CB 20/09/2022</p>	Scope	<p>Each organisation may need to develop their own template to suit their context.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
87.	68. What is KnownPage7	<p>Similar Reference Systems?</p> <p>CB 20/09/2022</p>	Grammar	<p>This comment is in relation to the sentence. <i>“The workers understanding and perceptions of the hazards and risks, noting any divergence in opinion with risk estimates and historical data”</i></p> <p>The person conducting the risk assessment should document those things they feel relevant.</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p>	
88.	68. What is KnownPage7	<p>Should this be shorted to worker consultation. Perceptions can be wildly varying.</p> <p>CB 20/09/2022</p>	Grammar	<p>Worker consultation reflected throughout document.</p> <p>R. McMullan Jan 2023</p>	
89.	88. Value of Harm Reduction Page9	<p>Consider including CBA checklist in appendices as guidance and checklist.</p> <p>CB 20/09/2022</p>	Scope	<p>This is in relation to the explanatory statement in the document <i>“A ratio of cost and benefit needs to be established to determine disproportionality. This generally requires comparing two numerical values – the value of the estimated harm reduction against the cost of the associated control.”</i></p> <p>Para 16 provides advice that should assist.</p> <p>It is up to a participant to define their own checklist</p> <p>Suggest no change to the document arising from this comment.</p> <p>R. McMullan Jan 2023</p>	
90.	96. DisproportionalityPage10	<p>I would question whether is wise to put this in here, as Australia has different legislation. If you were going to put this in here, I would have this as a mandate from the NZTA - not referenced to Aus.</p> <p>Also should note that this could bed tested by a court of law and found not to be adequate.</p> <p>CB 20/09/2022</p>	Improvement	<p>This is in relation to the factors around gross disproportionality multiplier</p> <p>Refer Para 19. it is important to read in context of the whole paragraph.</p> <p>R. McMullan Jan 2023</p>	

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
91.	101. SFAIRP Key Requirements Page10	This can be a never ending spiral. ONRSR in Australia did this, and it made life miserable for all of the operators. CB 20/09/2022	N/A	Yes SFAIRP is knowingly onerous. This document cannot change the law. Suggest no change to the document arising from this comment. R. McMullan Jan 2023	
92.	101. SFAIRP Key Requirements Page11	Define CB 20/09/2022	Suggested improvement	This is in relation to the word 'competent' which is up to each participant to define. Suggest no change to the document arising from this comment. R. McMullan Jan 2023	
93.	101. SFAIRP Key Requirements Page11	This in itself is onerous for an operator with 3 hundred risks. CB 20/09/2022	Information	Yes, suggest grouping for practicality. And target risks that need specific assessment. This is up to the participant. SFAIRP is knowingly onerous. Refer reference literature. Suggest no change to the document arising from this comment. R. McMullan Jan 2023	
94.	118. More InformationPage12	Suggest not adding you tube links that can be changed/revised. CB 20/09/2022	Format	References follow the IEEE format. Youtube links cannot be changed. While the videos can disappear, new content does not replace it. The undersigned controls that particular link. R. McMullan Jan 2023	
95.	Throughout document	Some places say 'safety assessment' some places say 'health and safety assessment' R. McMullan 19 Jan 2023		Resolved to say 'health and safety assessment' R. McMullan 19 Jan 2023	Closed
96.	Para 8	sentence structure is repetitive R. McMullan 19 Jan 2023		Resolved. Repetitive sentence moved to the end of the paragraph to improve readability. R. McMullan 19 Jan 2023	Closed

Item	Title / doc ref / rev / page no. / section	Reviewers' comments	Comment Category	Author response	Open / Closed (date)
97.	Worker engagement throughout.	<p>I have proposed a couple of additions in track changes that are aimed at highlighting the requirement for worker (and their representative) engagement throughout the risk management process.</p> <p>Section 60 of HSWA says that engagement with workers is required when identifying and assessing risks to H&S as well as making decisions about how to eliminate or minimise risk.</p> <p>And, where there are H&S Reps, engagement must specifically include them - section 59 (2) of HSWA</p> <p>The RMTU and KRG have a contractual agreement for Health and Safety Representatives to participate in risk assessments (attached). In addition both Transdev and Auckland One Rail have similar agreements with RMTU regarding H&S Rep participation in risk assessments.</p> <p>We would like the practical SFAIRP guidance to reinforce the legal requirement (and current industry practice) for health and safety rep engagement in the risk assessment process.</p> <p>Thank you for considering our track changes, please give me a call if you'd like to discuss.</p> <p>RMTU 31 Jan 23.</p>	Improvements	<p>Para 13 added “. If workers are represented by a health and safety rep, engagement to assess the risk must involve that representative.”</p> <p>Para 15 added: . When making decisions about how to eliminate or minimise risk, workers and their and their Health and Safety Representatives need to be given a genuine opportunity to participate and engage in the process</p> <p>Para 20, 6) Risk appetite should be determined in consultation with workers and their representatives</p> <p>Para 22 f) with workers and their representatives</p> <p>R. McMullan Jan 2023</p>	
98.	Additional guidance	<p>Consider adding “don't make the mistake of limiting thinking on the extent of controls because you think the hazard or risk is unlikely” into the additional guidance.</p> <p>R. McMullan Feb 2023</p>	Improvement	<p>Added</p> <p>R. McMullan Feb 2023</p>	
99.	Gross Disproportionality	<p>Consider discussing the choice of multiplier a little more, based on the KiwiRail discussion.</p> <p>R. McMullan Feb 2023</p>	Improvement	<p>Added</p> <p>R. McMullan Feb 2023</p>	
100.	Throughout	<p>Grammatical corrections as suggested by KiwiRail Discussed in the workshop.</p> <p>R. McMullan Feb 2023</p>	Improvement	<p>Added</p> <p>R. McMullan Feb 2023</p>	

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101.	Overall	<p>This revision (1C) has lost its way as a guidance document, and it reads more of a legal document full of legal disclaimers and has become almost useless as a guidance document for safety assessments.</p> <p>Suggest putting all the legal stuff in one section and adding more practical guidance to the process.</p> <p>Also, the current flow requires you to read two parts of the document at the same time, where it could be more linear.</p> <p>Rail Participant – Feb 2023</p>		<p>Moved all the legal stuff to one section.</p> <p>Revised the flow.</p> <p>Added more material to make it more practical.</p> <p>R. McMullan Feb 2023</p>	

Document amendments sent via tracked changes were closed due to large amendments of the guidance document.

END