



ESTABLISHED 1869

Law

Training for Life



# INCORPORATING VALUES WITHIN ENVIRONMENTAL RISK ASSESSMENT

**Ceri Warnock**

Faculty of Law

University of Otago

Dunedin, New Zealand

[www.otago.ac.nz/law](http://www.otago.ac.nz/law)

# Offshore O+G exploration in NZ?



# Risk

- Risk = not turning out how we wanted it to
- Risk = we can calculate a probability (cf complete uncertainty)
- Risk = connotes a process not a result

“The acceptability of risk cannot be isolated from values. We take incalculable risks to save the life of a child. To cross the road, presumably even Lord Rothschild seeks zero risk. Where he and the environmentalists differ so passionately is for what goals, and to promote what kind of society, it is worth taking particular risks”

Professor Stephen Cotgrove, letter to ‘The Times’, 1978.

How do we ascertain a legitimate  
and valid values framework?

# Legitimacy

- Ulrich Beck – in this world of complexity and “organised irresponsibility” often no one is held to account.
- Jenny Steel argues we should be trying to build responsibility and one way to achieve this is through the decision making process.
- Need to consider who assumes the risk or who will suffer the adverse consequences if it goes wrong.

# Legitimacy

- Absent preventing an activity all together, we can't guarantee to remove the risk, but there are ways to validate the decision making – **ensure that those who will bear the consequences make the decision to accept the risk.**

# Validity

- **And ensure that those who will suffer, provide or have meaningful input into the values framework.**



“ people are problem solvers”

*David Krantz*

- Societal, cultural, environmental, economic values and priorities?
- Benefits?
- Control?
- Voluntariness?
- Remedial?

Risk should be  
analysed as a technique of  
governance

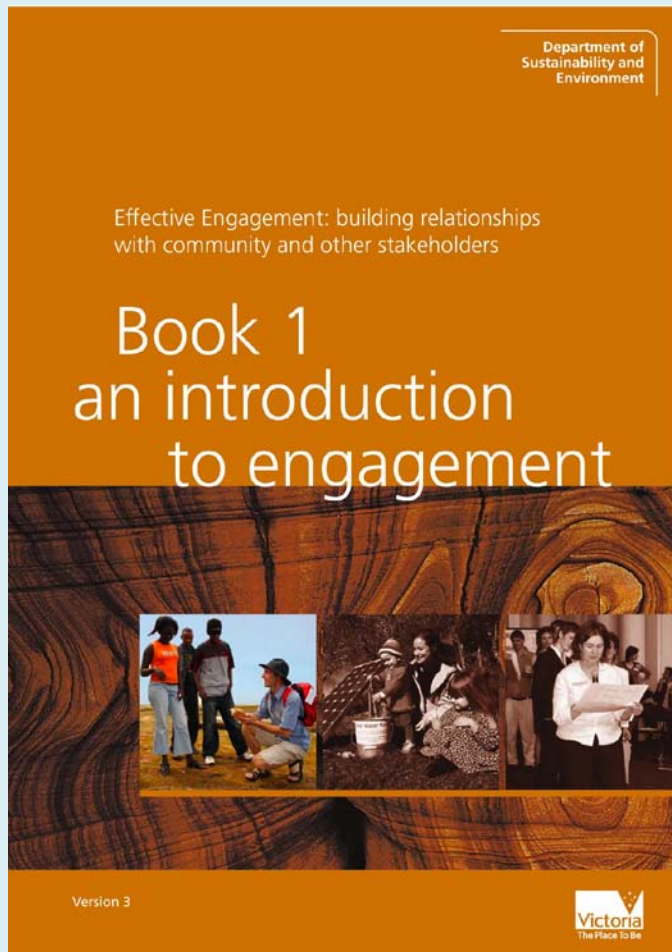
In the context of risk, meaningful  
participation equates to active  
participation in decision making

“acceptability is not merely a matter of probability combined with preference but rather of **reasoned debate** aimed at designing the best strategies” *Jenny Steel*

“process of decision making can be designed in order to help value construction be performed rationally”  
*Paul Slovic*

“**deliberative** constitutive paradigm”  
*Elizabeth Fisher*

# Meaningful participatory processes



## International Association for Public Participation ([www.iap2.org](http://www.iap2.org))

Democratic deliberative  
processes:

- Citizens' juries
- Consensus conferences
- Deliberative forums
  - Charettes ...

# **RIO+20 - NEW ZEALAND**

Are we moving farther away from  
the desired objective of  
meaningful public participation in  
environmental risk decision  
making?

# Two decades of environmental law statutes

- Resource Management Act 1991
- Hazardous Substances and New Organisms Act 1996
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill 2011

# **Ex-ante, incommensurate values...**

EEZCS(EE)Bill – cl 59: (d) the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and (f) the economic benefit to New Zealand of allowing the application;

General frameworks	RMA	HSNO	EEZ
Full information	✓	~	~
Planning frameworks: public input into classifying permitted activities and the ability to change the classification	✓		
Planning frameworks: mandatory consultation (with Maori and other specified groups)	✓		



<b>If permit required for specific activity:</b>	<b>RMA</b>	<b>HSNO</b>	<b>EEZ</b>
Mandatory consultation (with Maori and other specified or especially affected groups)			
If notified, anyone can make submissions	✓	✓	✓
Right for submitters to be heard	✓	✓	

<b>Decision making</b>	<b>RMA</b>	<b>HSNO</b>	<b>EEZ</b>
1 <sup>st</sup> instance: democratically elected decision makers	✓		
Appeal on the merits to specialist Environmental Court	✓		
Prospects of mediated result	✓		

# BUT ... the embryonic beginnings of meaningful “collaborative governance”?



## Second Report of the Land and Water Forum

Setting Limits for Water Quality and Quantity  
Freshwater Policy- and Plan-Making Through  
Collaboration

April 2012

[www.landandwater.org.nz](http://www.landandwater.org.nz)

