

**BIS** | Department for Business  
Innovation & Skills

**THE GOVERNMENT RESPONSE TO  
THE RISK AND REGULATION  
ADVISORY COUNCIL (RRAC)  
REPORT “RESPONSE WITH  
RESPONSIBILITY: POLICY –  
MAKING FOR PUBLIC RISK IN THE  
21<sup>ST</sup> CENTURY”**

DECEMBER 2009

## **Foreword by Ian Lucas MP**

Public risk is challenging. Every area of society is affected by risk, whether to health, finances, the environment or to safety.

People feel strongly about public risk issues, and there is often pressure to react in haste when something goes wrong. The complexity of public risk and calls for urgent intervention can result in solutions leading to unintended consequences.

Early last year the Prime Minister asked the Risk and Regulation Advisory Council (RRAC) to look at the issue of public risk. He asked the Council to improve understanding of public risk and how best to respond to it.

Through their programme of work the Council have developed new approaches to the problems of public risk. They have led the way in bringing diverse groups together to form a common understanding of public risk issues. The Council have put together maps showing how different groups influence responses to public risk. They have given policy makers practical guides and tools to help policy makers make, and communicate, policy in a better and even more inclusive way.

The Council have used these tools to explore a number of issues in depth, with notable success. They have worked with police leaders and other stakeholders to give the police the freedom and space to increase the number of incidents that are dealt with in a way that is satisfactory to the public. They have shown Government the perspective of a small organisation in dealing with health and safety, and have demonstrated how to help empower those organisations. They have encouraged Government to think widely about the nature of community activism. The Council have even intervened into a public debate to reduce the unnecessary felling of trees.

I would like to thank all the members of the RRAC, who have worked hard to deliver tangible results, and have moved the debate on risk significantly forward. Their work will influence policy work across Government, leading to better outcomes for all.

A handwritten signature in black ink, appearing to read 'Ian Lucas', with a long horizontal flourish underneath.

**Ian Lucas**

**Minister for Business and Regulatory Reform at the Department for Business, Innovation and Skills**

## **Summary**

The Government welcomes the Risk and Regulation Advisory Council's (RRAC) report. The Council have delivered tangible results, and have moved the debate on public risk significantly forward. They have shown how policy makers can ensure that their policies benefit from a more rounded consideration of public risk. They have delivered practical and sensible tools and approaches.

The Council's approach and tools are being promoted in the civil service, to encourage their use in policy making processes across Government.

The Regulatory Policy Committee (RPC) will provide independent scrutiny of the policy development process. The RPC will consider public risk as part of their scrutiny process, and the Government will work with them to explore how their work can be informed by the Council's approach.

The Better Regulation Executive will encourage appropriate engagement by policy makers with groups that shape perceptions and responses to public risk.

The analytical professions in government will also play an important role in ensuring that considerations of public risk are embedded within the policy development process.

The Department for Business, Innovation and Skills will work with the Health and Safety Executive and others over the coming months to commission a research programme to develop the Risk and Regulation Advisory Council's ideas on public risk and responsibility, including appropriate responses to risk. This programme will build on the RRAC's comprehensive research seeking to develop practical guidance that will help Government consider the appropriate response and responsibility for public risks.

The Government believes that these measures form the best-value and most appropriate solution given existing initiatives and spending constraints. The Government, along with the bodies mentioned above, will build on the Council's excellent work, aiming to embed its approach within the culture of policy making across Government. This should lead to more effective policy making and better outcomes for all.

If a Council member revisits this work in a year's time, the Government would be happy to hear their views on the effectiveness of action in this area.

The Government would like to thank all of the Risk and Regulation Advisory Council members for their valuable contribution to risk and regulatory thinking.

## Introduction

The Risk and Regulation Advisory Council (RRAC) was set up by the Prime Minister in January 2008 to work with Government and stakeholders across society to improve understanding of public risk and how best to respond to it.

The Council published a report of its findings in May 2009: *Response with responsibility: policy-making for public risk in the 21st century*.<sup>1</sup> The report included:

- an analysis of the issues faced in responding to public risk;
- tools and approaches developed by the Council to tackle public risk;
- advice for Ministers in charge of responding to a risk;
- the Council's recommendations.

Its findings are based on a year of research, exploring how best to understand and approach public risk. The research looked at the:

- demand for public enquiries and their role in driving responses to risk;
- role of standard setters, the legal system, insurers and experts and the drift towards risk minimisation;
- pressures on politicians and civil servants for immediate action and to take control of public risks;
- role of risk communication and lessons learnt from attempts to educate the public in the risks they face;
- changing nature of regulation in Europe and North America and how the speed of change has led to 'regulatory storms'.

As a part of this research the Council held a number of workshops, including major forums to investigate particular risk topics:

- starting a national debate to tackle risk aversion and embed culture change in the police service;
- understanding the drivers of small organisations lack of confidence to decide what health and safety measures should be implemented;
- exploring how more resilient communities could be built.

It also highlighted proposals for tree safety management that would place considerable burdens on landowners and advised the Pitt Review on improving the public's understanding of flooding and other community risks.

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<sup>1</sup> <http://www.berr.gov.uk/files/file51459.pdf>

The issue of public risk is one of the most challenging areas for policy making for any Government. That is why the Prime Minister asked that the Risk and Regulation Advisory Council be the catalyst for the change in the way policy is developed across all Government Departments.

The Government believe that Council has met this challenge. The Council's campaign on the mishandling of risk has delivered tangible results. Its work has helped to build Government's understanding to ensure that policy-making benefits from a more rounded consideration of public risk.

This is the Government's response to the recommendations the Council made in its report.

## **The Government's aim – balancing benefits and costs of regulation**

Laws and regulations play an essential role in making Britain a prosperous, fair and safe society by both supporting economic development and providing essential rights and protections for citizens, consumers, workers and businesses.

Regulation carries costs as well as bringing benefits. Managing the balance between these costs and benefits is key to delivering the joint goals of economic prosperity and fairness and safety.

To be effective, regulations need to be well designed, communicated and enforced; striking the right balance between benefits and costs is an essential part of designing good regulations.

The existing framework of Impact Assessments ensures that benefits of regulations justify their costs even if at times the benefits can not be fully quantified.

The Better Regulation Executive in the Department for Business, Innovation and Skills has the lead on the better regulation agenda within Government. Working with and through others, it aims to work with departments to improve the design of new regulations and how they are communicated; to work with departments and regulators to simplify and modernise existing regulations; and to work with regulators (including local authorities) and departments to change attitudes and approaches to regulation to become more risk-based.

### Strengthening Regulatory Management

On 2 April 2009, the Government announced a programme of measures to further strengthen its management of regulation, tailored to the present economic environment – these measures included the establishment of the new Regulatory Policy Committee.<sup>2</sup>

The establishment of the Regulatory Policy Committee was in order to provide independent external scrutiny of the policy development process. The Committee will be able to comment publicly on whether the Government has been effective in minimising the costs of measures and maximising the benefits, and on whether the benefits justify the costs. In this way the Regulatory Policy Committee will bring greater transparency to regulatory decision making across Government and promote further improvement in the underlying analysis of expected policy outcomes.

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<sup>2</sup> The ministerial statement can be found at <http://services.parliament.uk/hansard/Lords/ByDate/20090402/writtenministerialstatements/part002.html>

The Government has invited the Regulatory Policy Committee:

- a) to comment on the quality of analysis supporting policy decisions on new regulations, and on whether the policy design will ensure the benefits justify the costs, including:
  - the accuracy and robustness of the costs and benefits;
  - whether the range of policy options assessed support minimising costs and maximising benefits; and
  - the degree to which issues of public risk and the practicalities of ensuring compliance are taken into account.
  
- b) to review, advise and comment on the performance of regulators against the Hampton principles.<sup>3</sup>

The Committee will not comment on the Government's policy objectives, which are a matter for Ministers, but will focus on the cost-effectiveness of the instruments to deliver them.

In addition, the Regulatory Policy Committee can advise government in areas that it is invited to do so, or areas related to its terms of reference.

Michael Gibbons has been appointed the first Chair of the Regulatory Policy Committee with effect from October 2009. Michael has a strong interest and background in better regulation both at domestic and EU level, including as a member of the Better Regulation Commission.

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<sup>3</sup> The Hampton Principles are that

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most.
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.
- No inspection should take place without a reason.
- Businesses should not have to give unnecessary information, nor give the same piece of information twice.
- The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
- Regulators should provide authoritative, accessible advice easily and cheaply.
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work.
- Regulators should recognize that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

## The Risk and Regulation Advisory Council

The Government set up the Risk and Regulation Advisory Council in January 2008 to complement the Better Regulation Executive's work. The Council's year-long programme of work looked at how policy making in the area of public risk could be improved – exploring how regulations and other interventions can be best understood and developed in a way that effectively balances costs and benefits.

### Tackling the causes of poor regulation

In October 2006 the Better Regulation Commission (BRC), explored the link between risk and regulation in their report *Risk, Responsibility and Regulation – Whose risk is it anyway?*<sup>4</sup> The BRC argued that there was considerable pressure for government to act disproportionately in response to certain risks, and that this encourages inappropriate regulation aimed at tackling those risks. The BRC made proposals for an approach to address these issues in *Public Risk – the Next Frontier for Better Regulation*.<sup>5</sup> The Prime Minister accepted the key elements of this report, establishing the Risk and Regulation Advisory Council in January 2008.

Public risk: Public risks are risks that may affect any part of society and to which government is expected to respond.

The Risk and Regulation Advisory Council was given the remit of:

- working with Ministers and senior civil servants to develop a better understanding of public risk, and how best to respond to it, through a series of workshops which consider both good and poor practice;
- working with external stakeholders to help foster a more considered approach to public risk and policy making.

The Council also served as a source of advice for Ministers on particular issues when appropriate.

The Council's work on the development of policy was intended to complement the Better Regulation Executive's focus on the resulting regulations.

The Risk and Regulation Advisory Council was chaired by Rick Haythornthwaite. Its members were Sarah Veale, Lord Jamie Lindsay, Lynne Berry, Donald Macrae, Philip Cullum and Tim Heymann. Each brought expertise from their own field – from business, the trade unions, Parliament, the third sector, government, consumer affairs and medicine.

<sup>4</sup> [http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/risk\\_res\\_reg.pdf](http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/risk_res_reg.pdf)

<sup>5</sup> [http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/public\\_risk\\_report\\_070108.pdf](http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/public_risk_report_070108.pdf)

Membership was voluntary and unpaid. The Council was supported by a team reporting to Vicky Pryce, Director General of Economics at the Department for Business, Innovation and Skills and Joint Head of the Government Economic Service.

The Council's work culminated in the publication of its May 2009 report *Response with responsibility: policy-making for public risk in the 21st century*, which made a number of recommendations for Government.<sup>6</sup>

### **The House of Commons Regulatory Reform Committee**

The Regulatory Reform Committee is the main Parliamentary Committee to scrutinise the better regulation agenda and regularly carry out Inquiries to examine matters relating to regulatory reform.

In the 2008-2009 parliamentary session the Regulatory Reform Committee carried out an inquiry into *Themes and Trends in Regulatory Reform*. The Committee published a report summarising their findings on the 14<sup>th</sup> July 2009.<sup>7</sup> The report made 12 recommendations on the better regulation agenda, one of which was in regard to the Risk and Regulation Advisory Council. The Government responded to these recommendations on the 6<sup>th</sup> November 2009.<sup>8</sup>

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<sup>6</sup> <http://www.berr.gov.uk/files/file51459.pdf>

<sup>7</sup> <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmdereg/329/329i.pdf>

<sup>8</sup> <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmdereg/597/597.pdf>

## Response to the Risk and Regulation Advisory Council recommendations

### Recommendation 1 – tools and approach

*The Government take on the Risk and Regulation Advisory Council's analyses, thinking, approach and tools to improve its policy making.*<sup>9</sup>

The Government welcomes the Council's findings, approach and tools. The Council has made a valuable contribution to thinking around the issue of public risk and policy making and has provided useful tools, case studies and research.<sup>10</sup> The Government expects these to be used by policy makers across a wide range of departments and other bodies.

The Council's work complements the Government's efforts to improve policy-making through Strengthening Regulatory Management, by reducing the chance that policy will lead to poor regulation.<sup>11</sup> It reinforces the importance of considering both the need for intervention and whether it is appropriate for the Government to take responsibility for managing certain public risks.

The Risk and Regulation Advisory Council's approach offers policy makers the opportunity to help their stakeholders develop a shared understanding of a risk issue, leading to policy that is both more effective and less contentious.

Over the summer and autumn of 2009, the Government provided funding to allow the Risk and Regulation Advisory Council's support team raise awareness of the Council's work and encourage the use of its tools across Government. The team was funded and supported by the Department for Business, Innovation and Skills, reporting to Vicky Pryce, the joint-head of the Government Economic Service and Director General for Economics.

The support team have worked with the residual Council members to embed the Council's tools and approach into the culture, process and institutions through which the Government makes policy. They have worked to ensure that the Council's recommendations from its work on Health and Safety are fully considered and embedded within the Health and Safety Executive, Department for Work and Pensions, and Ministry of Justice and to ensure its findings from its work on Community Resilience are fully considered by Communities and Local Government, Department for Children, Schools and Families, Department for

<sup>9</sup> The full text of the recommendations can be found in the annex and in the Risk and Regulation Advisory Council's report *Response with responsibility: Policy-making for public risk in the 21st century*.

<sup>10</sup> The research covers the following areas: an introduction to public risk; the role of public inquiries in the management of public risk; various groups and their interactions with public risk - including insurers, standard setters, experts, civil servants, politicians, the public, and the media and the National Audit Office; examples of risk communication examples; and discussions and examples of 'regulatory storms'.

<sup>11</sup> The ministerial statement can be found at <http://services.parliament.uk/hansard/Lords/ByDate/20090402/writtenministerialstatements/part002.html>

Environment, Food and Rural Affairs and Department for Business, Innovation and Skills. As requested by the 2008 Pitt Review the team have provided a tailored response for the Flooding Management Team in DEFRA to help the Government improve the public's understanding of flooding and other community risks.

The team have publicised the Risk and Regulation Advisory Council philosophy and approach and promoted its tools across Government through its involvement in the major government-wide Civil Service Live event in July and joint sponsorship of the Regulatory Reform Conference in October. The team have promoted the Council's tools to policy makers, regulators, analysts and risk professionals across government in targeted seminars and opportunistic use of other events, groups and networks such as the Government Heads of Internal Audit conference, the cross-government Risk Improvement Group and launch of the Council's public risk research.

The team have successfully worked with training providers that provide policy and/or risk training or guidance to Government to encourage them to include the Council's approach and tools in their policy-making training programmes and support material. Westminster Explained and PTSC are using the Council's materials within their training programmes for policy makers and are considering whether to incorporate this material further. Discussions continue with the National School for Government to get the materials and tools included in its Policy Hub and to work with them to explore how the approach and tools may be embedded within their policy making training programmes.

## **Recommendation 2 – Regulatory Policy Committee**

*The Regulatory Policy Committee should embrace issues across society, not simply in the narrow realm of business. It should hold Ministers to account on whether or not actual rather than perceived risk is being considered in cost/benefit analyses; evidence-based consideration is given to understanding the system of forces playing on the risk in question; all voices are heard during the process of consultation, not just the loudest and most familiar; and the implementation process tackles any remaining gaps between perceived and actual risk.*

**The new Regulatory Policy Committee (RPC) will advise on whether the Government is doing all it can to accurately assess the costs and benefits of regulation and on whether regulators are appropriately risk-based in their work. The creation of the Committee is an important innovation in regulatory management that will improve the way regulation is made and implemented.**

The Committee will provide transparent external scrutiny of the policy making process, including on the degree to which issues of public risk and the practicalities of ensuring compliance are taken into account.

The Committee's initial focus will be the scrutiny of the Government's cost-benefit analysis. During the set-up and initial phase of operation, officials from BIS's Economic and Policy Analysis (EPA) team and the Better Regulation Executive will work with the Chair of the Regulatory Policy Committee, to examine how best to embed the Risk and Regulation Advisory Council's findings in the Committee's approach. They will explore how the Committee can best include considerations of public risk as part of their scrutiny process, including in relation to the issues of perceived risk in cost/benefit analyses; the system of forces playing on the risk; appropriateness of consultation; and the implementation process.

Policy makers are required to complete Impact Assessments for interventions that could create a significant cost to business or the third sector. The Government is currently revising the Impact Assessment template and guidance for policy makers to further improve information and reporting requirements as the Government continues to improve the Impact Assessment process across all areas of policy development, including: consultation, policy design and post-implementation review.

As part of this process, the Government is exploring how the rationale for intervention included in Impact Assessments could incorporate an explicit analysis of public risk. The publication of an explicit analysis of public risk in Impact Assessments would mean that policy-makers were required to consider risk as part of their analysis of whether there is sufficient evidence to support government intervention. It would also make it easier for the Regulatory Policy Committee to consider public risk issues when assessing the Government's interventions.

### **Recommendation 3 – Establishing a Public Risk Commission**

*The Government, as part of its current commitment to create the optimal risk and regulatory governance framework, should without delay establish an independent Public Risk Commission.*

At this point, Government does not feel it is necessary to set up a further body dedicated to public risk. Functions that the Council recommended the Public Risk Commission perform will instead be carried out by existing institutions, including the Better Regulation Executive and the Regulatory Policy Committee.<sup>12</sup>

The RRAC's work underlines the importance of policy makers across Government engaging with risk actors – those groups that shape perceptions and responses to public risk. Building on their existing work, the Better Regulation Executive, will encourage appropriate engagement with risk actors by policy makers. This is likely to include:

- communicating with and challenging risk actors when there is evidence of unhelpful behaviour;
- considering the role of all risk actors and not just those within the direct control of the Government;
- recommending to the Government specific opportunities to stem or reverse regulatory creep, acting as a neutral agent when required in the recommendation and implementation processes.

The analytical professions in government will also play an important role to ensure that considerations of public risk are included in the rationale for intervention and in the analysis of the different policy intervention options.<sup>13</sup>

The Regulatory Policy Committee will provide an independent challenge to the Government on its policy-making approach, including on issues of public risk. As described above, officials from the Council's support team and the Better Regulation Executive will work with the Chair of the Regulatory Policy Committee, to establish how best to embed the Risk and Regulation Advisory Council's findings in the Committee's approach.

The Risk and Regulation Advisory Council suggested that an independent voice was needed to champion the need for individuals, communities, businesses and organisations to take back responsibility for the management of risks that they can understand and control – and,

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<sup>12</sup> The complete list of functions that the Risk and Regulation Advisory Council recommended the Public Risk Commission carry out is given in the full recommendation in the annex.

<sup>13</sup> The Government Economics Service (GES), Government Statistical Service (GSS), Government Operational Research Service (GORS), Government Social Researchers (GSR) and Government Scientists/Engineers.

by so doing, provide a foundation for different policy solutions and the resurgence of resilient communities and a more resilient society. The Department for Business, Innovation and Skills will work with the Health and Safety Executive and others over the coming months to commission a research programme to develop the Risk and Regulation Advisory Council's ideas on public risk and responsibility, including appropriate responses to risk. This programme will build on the RRAC's comprehensive research seeking to develop practical guidance that will help Government consider the appropriate response and responsibility for public risks.

## References

### Risk and Regulation Advisory Council reports

The Risk and Regulation Advisory Council's main reports are:

- *Response with responsibility: policy-making for public risk in the 21st century*
- *Tackling public risk: a practical guide for policy makers*
- *The risk landscape: interactions that shape responses to public risk*
- *A practical guide to public risk communication: the five essentials of good practice*

These can be found, along with the Council's research and other publications, at [www.bis.gov.uk/rrac](http://www.bis.gov.uk/rrac).

### Other documents

Better Regulation Commission. *Risk, Responsibility and Regulation – Whose risk is it anyway?* October 2006.

<http://archive.cabinetoffice.gov.uk/brc/>

Better Regulation Commission. *Public Risk – the Next Frontier for Better Regulation*. January 2008. <http://archive.cabinetoffice.gov.uk/brc/>

House of Commons Regulatory Reform Committee. *Themes and Trends in Regulatory Reform* July 2009.

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmdereg/329/329i.pdf>

Better Regulation Executive. Impact assessment guidance.

<http://www.berr.gov.uk/files/file44544.pdf>

Better Regulation Executive. *Regulatory Policy Committee Terms of Reference*. October 2009.

<http://www.berr.gov.uk/whatwedo/bre/policy/committee/index.html>

Ministerial Statement by Lord Mandelson, Secretary of State for Business, Enterprise and Regulatory Reform. Economy: Regulation. 2 April 2009.

<http://services.parliament.uk/hansard/Lords/ByDate/20090402/writtenministerialstatements/part002.html>

## **Annex: The Risk and Regulation Advisory Council's recommendations – extracts from the *Response with responsibility* report**

### Recommendation 1 - Embedding the approach in government

“We believe that government can take a range of lessons from the work of the Risk and Regulation Advisory Council.... The Risk and Regulation Advisory Council has shown that this is both possible and practical.

Government ... can use:

- Our approach and philosophy;
- Our map of the risk landscape;
- Our guide to risk communication;
- Our guide to understanding risk; and
- Our suggestions for Ministers

It can learn from the findings from our individual case studies.

A number of departments in Government, such as DEFRA, are already alive to many of these approaches and are demonstrating good practice every day. However there are still parts of government that can do better, and we urge them to do so.

We recommend that government take on our analyses, our thinking, our approach and our tools, to improve its policy making.”

### Recommendation 2 - The Regulatory Policy Committee

“The current Government intends to introduce an inward-facing independent body, the Regulatory Policy Committee (RPC), to provide oversight on government's cost-benefit analysis of primary and secondary legislation.

We support this move, provided that the Committee embraces issues across society, not simply in the narrow realm of business, and will hold Ministers to account on whether or not:

- Actual rather than perceived risk is being considered in the cost/benefit analysis.
- Evidence-based consideration is given to understanding the system of forces playing on the risk in question (the 'risk landscape'), thus providing a more confident view of the best point of intervention in the system, the range of

- All voices are heard during the process of consultation, not just the loudest and most familiar voices.
- The implementation process tackles any remaining gaps between perceived and actual risk.”

### Recommendation 3 - A Public Risk Commission

“The Risk and Regulation Advisory Council recommends that the Government, as a part of its current commitment to create the optimal risk and regulatory governance framework, should without delay establish an independent Public Risk Commission (PRC):

- To identify and understand instances where business, civic society, the third sector and the public are feeling the weight of ineffective policy, disproportionate responses to risk, unwelcome curtailment of civil liberties, weakened community resilience or simply over-managed lives. ...
- To recommend to Government specific opportunities to stem or reverse regulatory creep, acting as a neutral independent agent when required in the recommendation and implementation processes.
- To communicate with and challenge risk actors and risk-mongers – in liaison with business, civic society, the third sector and the public – when there is evidence of unhelpful risk actor behaviour, when their voices are in danger of inadvertently leading to poor regulatory outcomes, or when breakdowns in trust are acting as barriers to effective communication.
- To provide an independent and supportive voice where the Government and independent regulators are following good practice but failing to be heard through the distorting or emotional noise from risk actors.
- To provide an independent resource to Government in helping to understand and manage the risk landscape, even when under severe time pressure.

- To challenge Government to display the leadership required to set the right tone amongst the risk actor community.
- To champion, as an independent voice, the need for individuals, communities, businesses and organisations to take back responsibility for the management of risks that they can understand and control – and, by so doing, provide a foundation for different policy solutions and the resurgence of resilient communities and a more resilient society.”

