



**Adjunct Professor
Kim Lovegrove MSE, RML**

*Lovegrove & Cotton construction and planning lawyers,
Chairman of the International Building Quality Centre,
former senior law reform consultant to the World Bank*



How to inoculate the design of building regulation from failure

Speakers law reform background

This speaker has had more than 30 years' experience in the design of best practice building regulation, more specifically:

- Headed up the team which developed the Australian National Model Building Act.
- On two occasions advised the Japanese government on the design of best practice building regulation by way of participation in international law reform think tanks.

- Was engaged by the World Bank in law reform deployments in Beijing, Guangzhou, Shanghai and Chongqing on international best practice building regulation.
- Was deployed by the World Bank to advise on the first ever Malawian building act.
- Mention is made of the experience above as the speaker is able to bring to bear a cross jurisdictional comparative analysis of ingredients required to generate international best practice.

1. You need a crack team of law reformers

- Law reform is a matter of the State, for the State as it has both macro and micro impacts upon the State and the citizen.
- Good building regulation improves the lot of the citizen, bad regulation has a deleterious impact on the lot of the citizen.
- So, it behoves the legislature to get the best law reform 'on ballers' available.

- Some jurisdictions look outside the State to access law reformers that have a track record in generating best practice law reform.
- This may even mean that one has to access them from abroad as they are a rare breed.

A best practice team will comprise at the very least:

- A couple of highly regarded technically qualified experts.
- A building industry economist.
- A construction lawyer well versed in the application of legislation.

And the team will be headed up by a law reformer that has introduced successful and resilient law reforms.

Resilient can be an overused term, but within this context it means legislation that is designed to last, that is immunized against failure. Be that failure macro, systemic, economic or prejudice to life and limb.

Best practice approach to law reform - Japan

- By way of example, this speaker was retained on two occasions by the Japanese government to participate in a think tank comprising offshore experts known to be experienced in the provision of best practice law reform advice.
- One from America, one from the UK, and myself.

- We were asked, if not interrogated about, that which worked and that which had failed.
- The Japanese officials utilized the advice provided by the coalition of international experts to assist with the inoculation of their reforms against the elements that had culminated in failure in offshore jurisdictions.
- Some key take-outs were adopted in the reform of the Japanese standard law.

2. Engage in international best practice comparative analyses

When this speaker had carriage of the development of the National Model Building Act in the early nineties, that became the reform blueprint for modern day law reform to building regulation in a number of Australian jurisdictions-

- The team that I headed up engaged in extensive international comparative analyses of the best building regulatory regimes on the planet.
- 27,000 books were circulated nationally comprising:
 - ‘Dispute Resolutions Systems and Options’ (co-authored)
 - ‘Model Building Act: Legislative Aims and Options’ (co-authored)
 - ‘Constitutional Options For Uniform Legislation’, authored by the Centre of Comparative Constitutional Studies at Melbourne University and Professor Cheryl Saunders and Deborah Cass, Melbourne University.
 - ‘The Model Building Act’ drafted by parliamentary Councils offices NSW.

You can see by the headings the rigor and the lengths by which we went to engineer a best practice building regulatory ecology.

There was a cherry picking of the best of the best ideas from around the planet.

Out of this came:

- 10-year liability capping
- Proportionate liability
- Compulsory insurance for key actors
- Mandatory registration of key actors
- A privatized alternative to building permit delivery that has been in existence for 3 decades. Note that in NZ, this was annulled in 2008, but thirty years later private certification still remains intact in Australia as it does in Japan.



- The key elements of the National Model Building Act template were enacted in the Victorian Building Act 1993 and the Northern Territory Building Act 1993.
- Other jurisdictions also ran with some of the key reforms, such as proportionate liability and 10-year liability capping.

3. Treasury should commit significant funds to the establishment of an effective administrative and enforcement apparatus



- The NSW government has just announced that it will commit \$24 million to the establishment of a building commission that will house 400 staff.
- It is clear that they are taking the task very seriously.

- Some of you will recall the long defunct NZ BIA. It was established with ambitious and well-intentioned ideals and a big wingspan but would have benefited from significantly greater funding.
- This impacted upon the BIA's ability to fulfil certain ambitions.
- It also coincided with the development of building regulations that culminated in the notorious “leaky building” disaster which left many New Zealanders terribly prejudiced when they had to contend with the trauma of leaky buildings.

- The author of the book Rottenomics, Peter Dyer, stated that the estimated cost of the NZ leaky building crisis was \$47 billion according to his research. [1]



4. Ban the old and tired not so true mantras

Cut the red tape

And

Let's loosen things up and deregulate

I have been around long enough to see how these mantras play out.

Cutting the red tape is often code for let's take away some of the key controls. Controls that are designed to protect the citizen.

Leaky building syndrome was a result of the combination of:

- Freeing things up
- Deregulation
- Cutting the cost to industry
- An elevated prioritization of freeing up the market
- Less red tape

Grenfell too occurred in a backdrop of lighter touch regulation and deregulation.

The 2013 Latvian supermarket collapse which killed 54 people was a result of post GFC austerity measures that led to a disbanding of key inspectorate controls. [2]



In this speaker's submission: *“let's deregulate, free things up, ease the market entry points, cut red tape”* – are some of the most frightening fad mantras around.



History has revealed that light touch regulation “red tape slashing” although of benefit to some, when things ultimately play out, can often generate very prejudicial impacts upon the citizen.

A best practice law reform mantra will be:

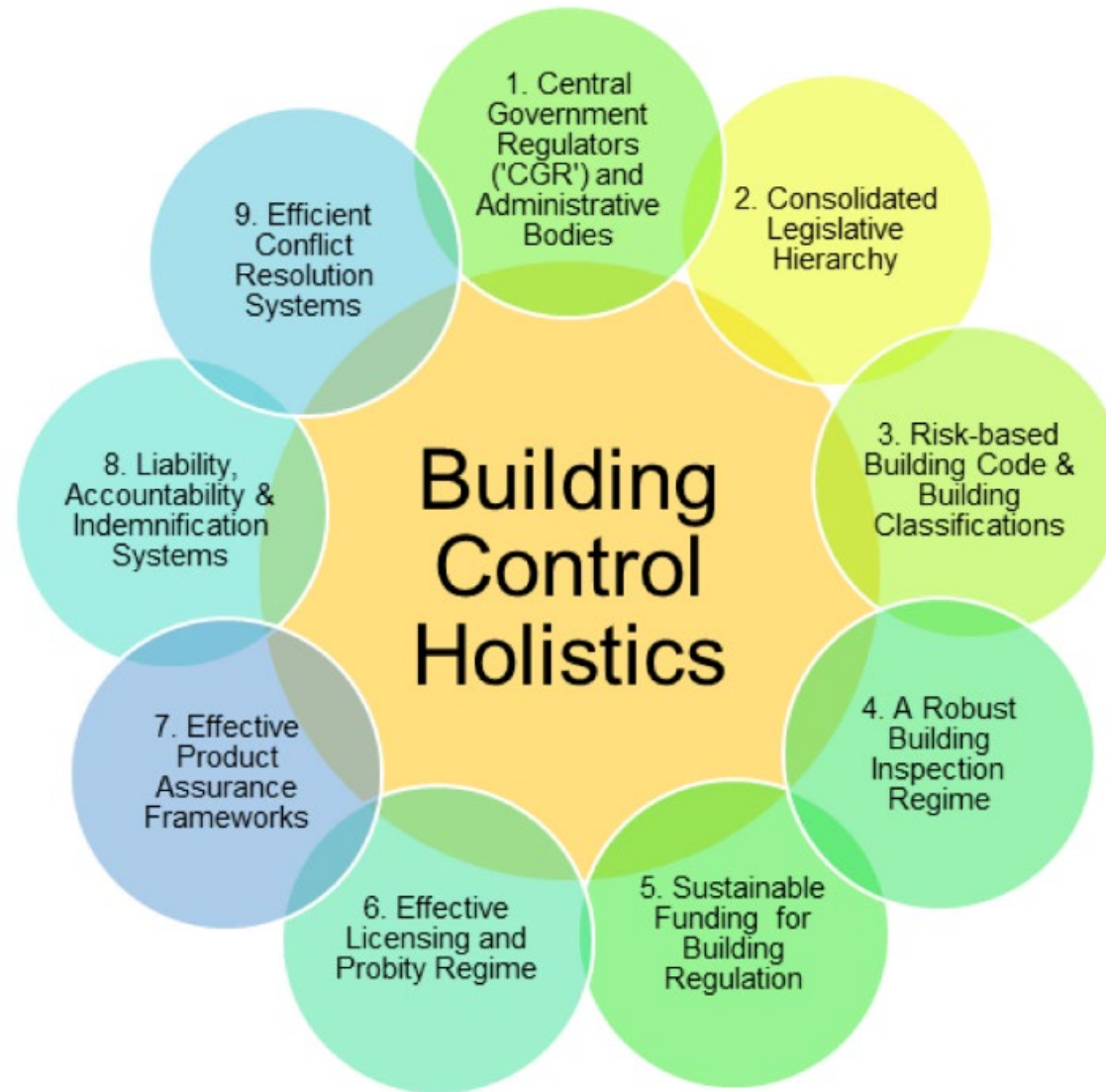
- “Right regulate” and
- “Regulate right”

If there is a determination to deregulate then

- “Deregulate with safeguards”

5. Best practice law reform will ensure that the reform package is holistic and resilient

When the speaker was engaged as a senior law reform advisor by the World Bank to advise Chinese jurisdictions on international best practice building regulation, we devised the following holistic flow chart that comprises 9 key elements.



The 9 key elements are the foundation touchstones for a building regulatory law reformer who is intent on developing best practice building regulation.

6. Have regard to the IBQC guidelines that articulate the core principles for good practice building regulation



INTERNATIONAL
BUILDING
QUALITY CENTRE

Why use the IBQC guidelines?

Because they have been designed in an **apolitical** altruistic setting.

They have focused on the **purity of the idea, best practice building regulation maxims for the global citizen.**

The IBQC guidelines provide 10 principles [3].

Headings of each:

1. In the creation and development of a legislative scheme for the regulation of building and construction governments should seek to avoid fragmentation and inconsistency.
2. Provision for a single technical code or standard which clearly sets out technical requirements.

3. A coherent framework of government departments or authorities with powers and functions to effectively administer and enforce the legislation.
4. Provisions for building product safety.
5. A competency and accountability framework for defined duty holders which extends to all relevant disciplines.
6. A mandatory statutory process for building approvals which requires the approval of adequate designs and documentation for proposed building work.

7. A mandatory statutory process which provides for rigorous inspections of work by appropriately skilled practitioners.

8. Mandatory processes for final approval of completed works.

9. Powers and functions which enable actions to be taken or orders to be made by competent government officials where existing buildings or building works are a danger to life safety or health; or non-compliant with relevant laws.

10. Provision for the efficient and swift resolution of disputes and an adequate insurance provision by the Competent Practitioner and all members of the design/construction team.

Have regard to the credentials of the IBQC board members that collaborated on the development of the guidelines, to appreciate the diversity of skill, expertise and location:

- Dame Judith Hackitt, who presided over the Grenfell Tower Enquiry.
- Adjunct Professor Neil Savery, previous head of the Australian Building Codes Board.
- Dominic Sims, CEO International Codes Council.

- Michael De Lint, who like the writer was a consultant to the World Bank advising on best practice approaches to design of building regulation and permit delivery systems.
- Professor Jose Torero, preeminent fire engineer.
- Adjunct Professor Bronwyn Weir, leading Australian law reformer.
- Alejandro Espinosa Wang, senior private sector specialist World Bank.

- Professor Alfred Omenya, prominent East African academic and technical law reformer.
- Zama Ngcobo, senior construction lawyer South Africa.
- Stephanie Barwise KC, who represented 300 families impacted by Grenfell in the government enquiry.
- Professor Robert Whittaker AM, past president of the Australian Institute of Building.
- Professor Charles Lemckert, water engineer.
- And this speaker

Mention is made of the individuals that developed the set guidelines to highlight the calibre and breadth of expertise that culminated in these best practice guidelines.

So, there you have it.

You don't need to look much further than the IBQC guidelines as an aide memoir for the development of best practice building regulation ecology.

These are the views of the writer's - not any organization that he represents

References

[1] <https://www.stuff.co.nz/business/116236850/the-rottenomics-of-the-47-billion-leaky-homes-market-failure>

[2] <https://newrepublic.com/article/115736/latvia-supermarket-collapse-riga-mourns-country-acc>

[3] [IBQC, Principles for Good Practice Building Regulation](#)

Principles for Good Practice Building Regulation



September 2020

fire  **NZ**
2023

