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# What an international best practice Building Act looks like – key learnings from 30 years-experience in law reform

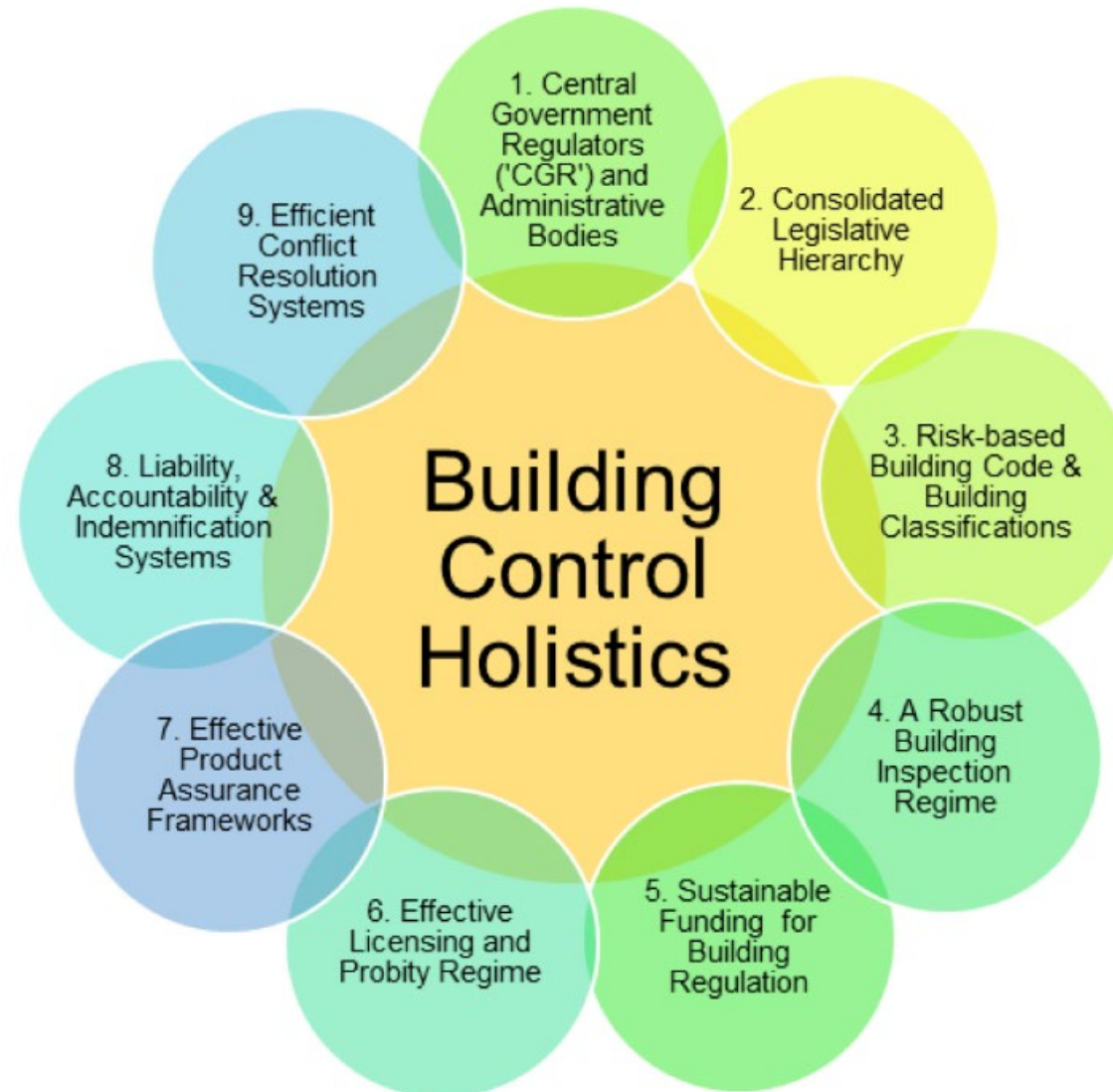
## Speakers law reform background

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.

# Essential Elements in a Building Regulatory Ecology



# Essential Elements in a Building Regulatory Ecology

- I developed this flow chart with a World Bank colleague, when retained as a senior law reform advisor on various law reform deployments in Asia and Africa.
- It encapsulates the key elements of an international best practice conceptual diagram.



# Funding

- Building control is a **vital organ** of the State.
- If governments are committed to a robust building control system, they must provide **adequate funding** and resourcing.



# Funding

- Adequate funding and resourcing is axiomatic; axiomatic in plain English means self-evident.



# Funding

- The 2013 Latvian supermarket collapse occurred against a backdrop of government cutbacks on the funding of the inspectorate.
- Experts cited the dismantling of the Latvian “State Building Inspection” institution in 2009 as a reason why building control processes had been loosened up during the time of the construction of the supermarket. This was done as a result of budget cuts during the global economic crisis. [1]

# Funding

- The collapse caused the deaths of 54 people with another 40 injured. [2]



# The Noble Experiment Example

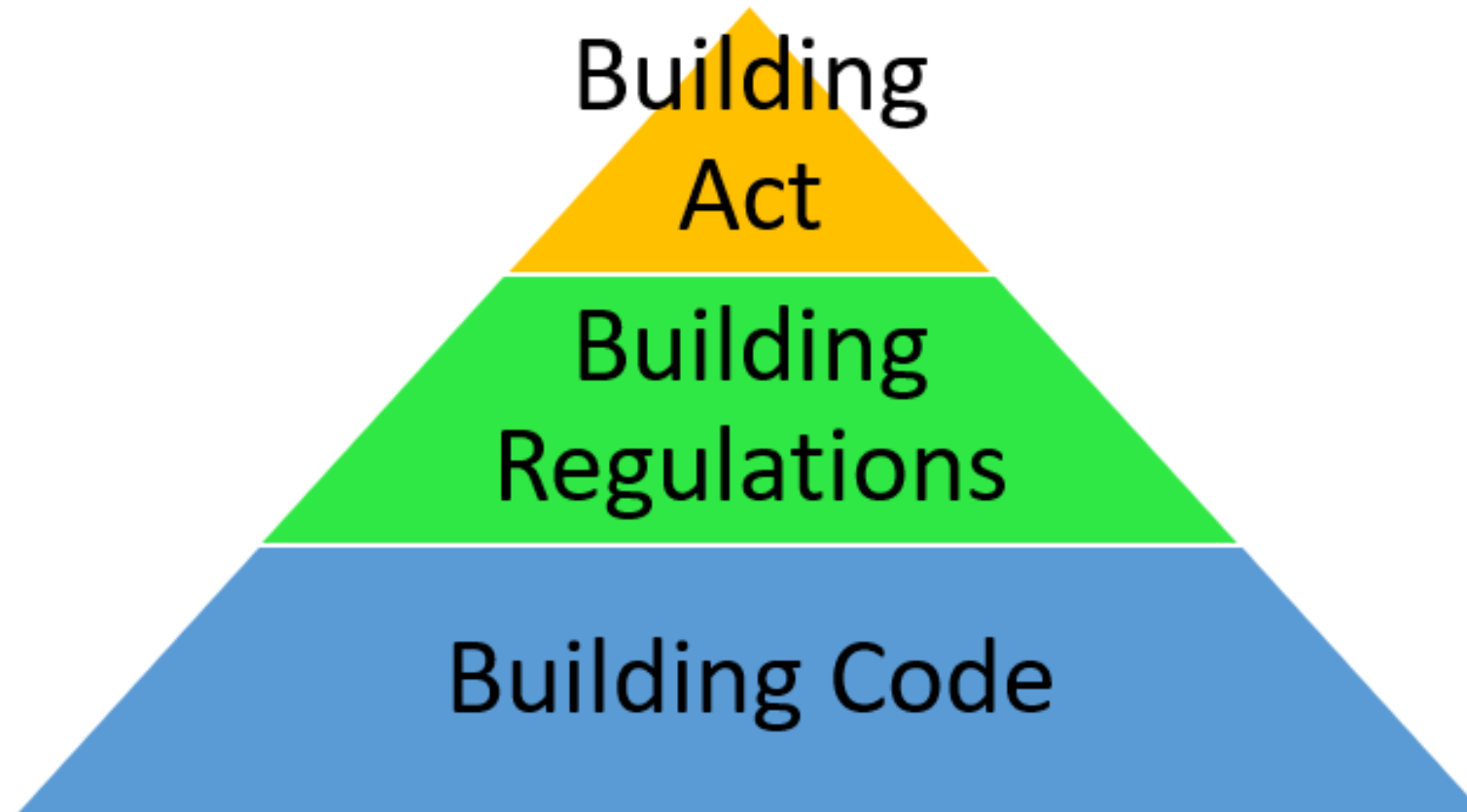
- When prohibition was introduced in the 1920's, it was an abject failure.
- This is because legislation was promulgated without sound law enforcement funding
- Rendering the illegality of alcohol culminated in an explosion of vice.



## The Noble Experiment Example

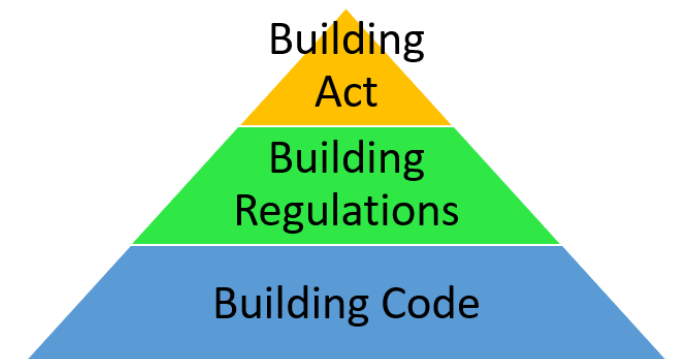
- *“Even honest officials who did their best to enforce law were hampered at the outset by insufficient funding resources” [3]*
- *“Inadequate resources at the federal level were matched by a lack of commitment to the law at the State and local levels” [3]*

# Dedicated Building Act and Code



## A top-down civil service hierarchy

- Just like Attorney Generals should be qualified in law, it is submitted that heads of building departments should have bespoke quals that are fit for task.



## Yes To

Those with the likes of:

- Building degrees
- Engineering degrees
- Architectural or building official qualifications
- Construction law experience

## Probably not so much the likes of:

- Arts
- Sociology
- Accounting
- Agriculture
- Or career civil servants lacking bespoke qualifications.

Because these qualifications are not really on task, they are qualifications for other domains.



# Essential Elements in a Building Regulatory Ecology

## A robust Building Permit delivery system

- Sound funding will ensure that the vital functions of the department can be resourced.

- Front and center is building permit delivery.
- No building work will be able to commence without a building permit.
- There will be mandatory inspections carried out by qualified and independent building officials.

# The IBQC **Draft** Risk Correlated Mandatory Inspection and Regime [4]

Medium Potential  
Consequence

1. Building official reviews plans issued by competent persons and issues building permit

2. Building official inspects footings  
Structural engineer inspects and certifies footings and foundations prior to building official approval

3. Building official inspects frame upon completion

Structural engineer inspects and certifies frame prior to building official approval

4. At key commissioning stages competent persons will inspect and certify compliance with all the relevant provisions of the jurisdictions' codes and standards. This includes:

- fire safety
- mechanical and air conditioning
- electrical
- plumbing and drainage

5. Upon notification of completion by the client, the building official will organise joint inspection(s), including for mandatory waterproofing, with the principal contractor, the principal, the project designer and all other competent persons. The building official will, after having regard to the above inspections, not issue an occupancy permit until satisfied that the work is compliant with the jurisdictions' codes and standards.

- Once the project is completed, there will be a final joint inspection involving owner, builder, architect (if applicable), engineers, building official.
- Once the building official is satisfied that the work is fit for occupation then an occupancy permit can be issued.

# The front and center role of the building official

- The building official will be a local government building surveyor/inspector.
- S/he will have a degree in building surveying and 3 years training to the satisfaction of a government registration body.
- Upon admission the said will swear an oath of integrity, akin to the Hippocratic oath.

# Mandatory inspections

- The International Building Quality Centre (IBQC) is developing a proposal for inspection junctures determined by the risk a failure of the building would pose.

# The proposal categorises buildings into:

- Low potential consequences
- Medium potential consequence
- High potential consequence

Each level of risk/consequence carries its own inspection and approval regime.

For instance, this draft IBQC chart demonstrates the Inspection junctures in low potential consequence building:





- For medium and high potential consequence buildings, further attention will be required concerning the building's:
  - Fire safety
  - Electrical
  - Mechanical and air conditioning
  - Plumbing and drainage

Once the building official is satisfied that the work is fit for occupation, an occupancy permit will be issued.

# A government-controlled building practitioners' registration system

Key actors will be registered:

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>• Builders</li><li>• Engineers</li><li>• Designers</li><li>• Building officials</li></ul> | <ul style="list-style-type: none"><li>• Building envelope specialists</li><li>• Plumbers</li><li>• Electricians</li></ul> |
|---|---|

- The Board will control entry into and expulsion from the profession.
- The Board will have and use potent disciplinary powers when actors fall short of the standards required of good practitioners of good repute.
- The Board will determine registration criteria.

- The qualifications will be robust, not watered down rather they fit for purpose.
- There will be a competency-based experience criterion spelt out by the board.

# Compulsory insurance

- Key actors will be required to carry mandatory professional indemnity insurance cover.

## Clear Liability Laws

- 10-year limitation period.
- A 10-year liability cap that is triggered by the issue of an occupancy permit.

## S134 *Building Act 1993* (Victoria) –

(1) Despite any thing to the contrary in the Limitation of Actions Act 1958 or in any other Act or law, a building action cannot be **brought more than 10 years after the date of issue of the occupancy permit** in respect of the building work (whether or not the occupancy permit is subsequently cancelled or varied) or, if an occupancy permit is not issued, the date of issue under Part 4 of the certificate of final inspection of the building work.



- Note the certainty in the wording in the red bold font in section 134

- The NZ limitation period is at ‘sixes and sevens’ compared with the tight wording of the 10-year liability cap wording in Victoria.
- Good for lawyers, bad for litigants
- See below wording for comparison.

S393 *Building Act 2004* (NZ) –

### 393 Limitation defences

(1) The [Limitation Act 2010](#) applies to civil proceedings against any person if those proceedings arise from—

(a) building work associated with the design, construction, alteration, demolition, or removal of any building or the manufacture of a modular component manufactured by a registered MCM who is certified to manufacture it; or

(b) the performance of a function under this Act or a previous enactment relating to the construction, alteration, demolition, or removal of the building or the modular component.

(2) However, no relief may be granted in respect of civil proceedings relating to building work if those proceedings are brought against a **person after 10 years or more from the date of the act or omission on which the proceedings are based.**

# The NZ 10-year cap trigger date ambiguity

- In Victoria, the trigger date is simply the date of issuance of the Occupancy Permit.
- A major problem with the NZ provision relates to the trigger date starting *“from the date of the act or omission on which the proceedings are based.”*
- It follows that this ambiguity can impose an additional and unnecessary task of time-bar validity determination by the bench. Often, this must be made according to conflicting expert opinion and evidence.

# Out with the old, in with the new

## Proportionate liability replaces joint and several liability

- No defendant will be liable for any more than their adjudicated liability.
- But proportionate liability will only be introduced if compulsory insurance is introduced.

# Appeal Mechanisms

There will be an appeals board to preside over:

- Refusals to issue building permits
- Severity of enforcement notices
- Registration 'knock backs'
- It will be comprised of part time Ministerial appointees with expertise in building surveying, construction law, engineering, and design.

- Appeals will be heard by three decision makers with skills bespoke to task.
- Applicants will place monies on account with relevant governmental agency to remunerate the decision makers.

There will be an interaction with the Ministry of Justice, the judicial system and the building control department

Mediation of building disputes will be mandatory shortly after the initiation of legal proceedings

- Expert witnesses will be accredited as a category of building practitioners



# Court appointed expert witnesses will be nominated to:

- Inspect defective building works
- Diagnose
- Cost
- Allocate responsibility

The report will be available to the mediators and the judges.

The disputants will place monies on account with an agency to remunerate said expert witnesses.

In conclusion, also have regard to the ten key law reform tenets in the International Building Quality Centre – [Ten Principles for Good Practice Building Regulation.](#)



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

## References

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

[2] <https://www.dw.com/en/latvias-prime-minister-resigns-over-supermarket-collapse/a-17257473>

[3] <https://sourceable.net/without-well-resourced-compliance-and-enforcement-regimes-building-regulation-will-not-deliver/>

[4] Draft IBQC Building Inspection and Building Classification Guidelines. This publication is currently still in the drafting stage and has not yet attained Board approval.

**fire**  **NZ**  
**2023**

