IBQC Good Practice Principles for Building Regulation

INTERNATIONAL
BUILDING
QUALITY CENTRE

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About the International Building Quality Centre

The IBQC is a collaboration of international public and private sector professionals with expertise relating to the regulation of the building and construction industry.

The IBQC intends to be a sounding board or point of reference for law reformers, policymakers and stakeholders intent on designing building regulation that provides the greatest opportunity for the realization of codes and laws that maximize:

- Public safety;
- Cost-effective and efficient construction systems; and
- Sustainability within the context of the built environment.

The IBQC provides a medium through which comparative analyses can be applied to reforming jurisdictions to enable the peer review of proposed concepts.

The paramount vision of the organization is that, through its research and its members, the IBQC will have a positive and material impact on building regulation and practices in jurisdictions across the world.

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PREFACE

To be effective, good practice building regulatory systems, as highlighted by the IBQC, must not only ensure public safety, but support two other goals: regulatory efficiency and industry innovation.

Regulatory regimes that are not efficient will encourage industry practitioners with limited budgets and timeframes, to circumvent these systems. New and innovative building technologies can sometimes provide better safety, improve performance, increase productivity and lower costs. Regulatory systems that do not accommodate legitimate building innovations risk becoming irrelevant.

Therefore, good practice regulatory systems must not only provide a very high level of public safety, but also be efficient and facilitate high quality design, construction and material/product innovations fully compliant with required safety standards. To be effective, good practice building regulatory regimes need to achieve a win-win-win proposition relative to safety, efficiency and innovation.

Those seeking to implement the IBQC Good Practice Principles for Building Regulation, as set out below, will need to have regard to their own circumstances, including the capability and capacity of their:

- Country or jurisdiction to enact the required legislation and establish the necessary institutional arrangements to properly support the implementation of all principles; and
- Building and construction industry participants to meet regulatory requirements and develop their professionalism.

In many cases a staged approach to implementation will be appropriate.

PRINCIPLE ONE– LEGISLATION

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.**

   Fragmentation and inconsistency (which should be avoided) is caused by having:

   1.1 Multiple applicable Acts and Regulations;

   1.2 Multiple government departments or entities responsible for administration and enforcement that operate under different policy settings and do not have clearly defined statutory roles and mechanisms to facilitate effective collaboration;

   1.3 Legislation that is not harmonized across jurisdictions operating within a single country resulting in participants having to understand and comply with different laws within one country; and

   1.4 Multiple Ministers responsible for features of building regulation.

   Many countries operate a federalized system of government which results in different regulatory frameworks operating in different states, territories, provinces or regions. Where this occurs the mechanisms for collaboration, mutual recognition and sharing of good practice should be established to minimize compliance costs for businesses operating across jurisdictions as well as ensuring consistent benchmarks and standards.

   NOTE: *The IBQC developed Model Building Act linked Here, can serve as a useful resource. Its purpose to provide a clear, adaptable structure that supports quality assurance, accountability and safety across the lifecycle of building work – from design and permitting to construction and compliance – within developed and emerging economies.*

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PRINCIPLE TWO – TECHNICAL CODE

2. Provision for a single technical code that clearly sets out technical requirements for compliant construction.

2.1 In countries that operate a federalized system of government, a model technical code can be developed for adoption at a national level through collaboration between relevant jurisdictions and industry;

2.2 The technical requirements of the code, which may include the referencing of reputable technical standards, should be cost effective, proportionate and the minimum considered necessary to achieve the necessary technical objective or policy goal;

2.3 The code should be risk-based, making provision for more onerous requirements to be placed on buildings that represent a higher risk to occupants and the general public. This should be accompanied by a inspection regime commensurate with the level of risk.

2.4 Authoritative rulings on the interpretation of technical matters arising in the application of the Code by a competent government appointed expert, or committee of experts, in the relevant discipline (which might be a specialist construction and technology court if available within the jurisdiction);

2.5 Ongoing development of technical standards based on advice from properly constituted technical committees represented by industry, experts, academics and government officials; and

2.6 An ongoing commitment to government funded research to support the development of the code and referenced technical standards.

The single code can be designed for compliance to be achieved by performance-based or prescriptive means (or a combination of the two), noting that both prescriptive and performance-based requirements require a high level of skill in the designer and those that assess the design for permitting (typically referred to as authorities having jurisdiction). Where prescriptive codes are preferred, consideration should be given to a mechanism that allows for the approval of innovative design or more complex buildings that cannot meet prescriptive requirements.

The extent to which a country may have the capacity to develop technical standards will vary. An alternative approach may be to recognize adopt or adapt international codes and standards in so far as they meet the above principles.

NOTE: *The IBQC developed Risk-Based Classification and Inspection Guideline Here, can serve as a useful resource. Its purpose is to provide a likelihood and consequence methodology and commensurate inspection regime as the basis for classifying buildings, based on the risk posed by the intended occupation of the building, associated with a range of other criteria such as height, size and complexity, enables a proportionate inspection regime to apply in parallel, which promotes safety, efficiency and innovation.*

Most advanced and many emerging economies have developed technical codes for buildings. These are not typically designed for application in other countries, but nonetheless point to key subjects and provide a framework for the design and composition of a code. The model I-Codes linked Here, are designed for adaptation in other countries.

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PRINCIPLE THREE – AUDITING AND ENFORCEMENT

3. **A coherent framework of government departments or authorities with powers and functions to effectively administer and enforce the legislation**

This would include:

3.1 Broad powers to enable auditing, investigation and enforcement;

3.2 Adequate funding to support effective enforcement and compliance which may be best achieved via a self-funding model;

3.3 A system for determining non-compliance which is based on competent decision making and fair legal processes; and

3.4 Adequate penalties or other consequences for non-compliance including appropriately weighted civil or criminal sanctions which should apply to individuals, corporations and directors and executives of corporations.

NOTE: *The IBQC developed Model Building Act linked Here, can serve as a useful resource. Its purpose to provide a clear, adaptable structure that supports quality assurance, accountability and safety across the lifecycle of building work – from design and permitting to construction and compliance – within developed and emerging economies.*

PRINCIPLE FOUR – PRODUCT SAFETY

4. **Provisions for building products safety**

This would include:

4.1. A **government Agency or Authorities with legislated powers and functions to effectively administer:**

A. Oversight and enforcement of building product safety requirements;

B. oversight and enforcement of a compulsory product certification scheme(s) for defined building products or categories of such products under which scheme(s) **Accredited Conformity Assessment Bodies** issue certification;

C. A recognized and robust mechanism for the accreditation and oversight of **Accredited Testing, Inspection and Conformity Assessment Bodies** to ensure complete impartiality and accuracy of testing, inspection and certification; and

D. Ensuring publication of all certificates issued by **Accredited Conformity Assessment Bodies** and of all test results, including failed tests.

There should be appropriately weighted civil or criminal sanctions for any governance failures or negligence on the part of the **Accredited Testing, Inspection and Conformity Assessment Bodies.**

4.2. **Accredited Conformity Assessment Bodies** that:

A. Are accredited under internationally recognized competence, calibration and governance standards such as ISO/IEC 17065 (or national implementation of such standards);

B. issue certificates:

I. Based on product testing by laboratories accredited to testing and calibration standards such as ISO/IEC 17025 or national implementations of such standard;

II. That provide proof of compliance to approved standards or normative documents;

III. That contain prescribed product safety information; **and**

C. Undertake factory inspections under international accreditation to ISO/IEC 17020 for competence and impartiality for mandatory batch and type testing of certified products post certification to ensure on-going quality control and consistency with the certified product.

4.3. Establishment within the legislative scheme for manufacturers or suppliers of building materials, products and systems to demonstrate they satisfy requirements for minimum levels of performance and are fit to be used for their intended purpose, to **designers and authorities having jurisdiction.**

4.4. Product supply chain laws administered and enforced by the **appropriate government Agency or Authorities**, which place express obligations on those in the building product supply chain (including, but not limited to, the manufacturer/product supplier) to:

A. Supply safe and compliant building products;

B. Provide product safety information in the form of:

I. Statements/declarations of performance that are subject to independent scrutiny/peer review, not merely those stated by the manufacturer/product supplier; or

II. Where required under the compulsory product certification scheme, certificates issued by an **Accredited Conformity Assessment Body.**

There should be appropriately weighted civil or criminal sanctions for misstatements or misinformation by those in the building product supply chain, which should apply to individuals, corporations, and directors and executives of corporations.

The extent to which a country may have the capacity to regulate building product safety will vary. An alternative approach may be to recognize building products that have been the subject of building product safety controls in other countries in so far as they meet the above principles.

NOTE: *The IBQC developed Good Practice Regulatory Framework for Building Products Performance linked Here, covers the end-to-end processes of legislative settings; system administration; establishing evidence that products are suitable for use; accountability and traceability along the supply chain; through to product information, education, installation and maintenance. The framework for building products sets out to enable confidence in product performance by regulators, practitioners, industry and consumers.*

PRINCIPLE FIVE – COMPETENCY AND ACCOUNTABILITY

5. **A competency and accountability framework for defined duty holders that extends to all relevant roles and disciplines, including:**

- Property developers;
- Design practitioners of all disciplines (including Architect, Building Designer, Structural, Mechanical and Hydraulic engineer,);
- Fire safety practitioners;
- Building approval authorities (authorities having jurisdiction);
- Builders;
- Project managers;

- Specialist trades (including plumbing, electrical, gas); and
- Building or facility managers (post construction).

To enable this principle to be implemented there must be a system capable of delivering education that meets quality standards and is accessible to those wishing to gain the required competencies through qualifications and training.

The accountability framework may include:

5.1 A government department or statutory body responsible for the licensing of duty holders and ensuring competency standards and assessment of competencies are properly executed, using the advice of **Industry Competent Bodies** (see below).

5.2 Government requirements against which a series of **Industry Competent Bodies** for each relevant discipline would prepare competency frameworks that they would apply to accredit and discipline specified practitioners/duty holders; and/or

5.3 Clear definition of each discipline including statements of duties imposed on each duty holder and consequences for failure to meet specified duties.

5.4 Competency frameworks prepared by the relevant **Industry Competent Bodies** should include:

A. Provision for auditing practitioners;

B. Complaints and disciplinary functions;

C. Clearly defined certificated qualifications which reflect agreed competencies required for each type of duty holder;

D. A process for accreditation of courses that ensures adequate levels of quality and scope in delivery of certificated qualifications;

E. Clearly defined experience requirements for each type of duty holder;

F. A requirement for duty holders to comply with a specified framework for continuing professional development (defined in each case by the relevant **Industry Competent Body**, but subject to Government definition and scrutiny as per 5.2 above); and

G. Specified minimum standards for ethics, fitness and propriety.

A duty holder who is licensed through this process is also referred to as a **Competent Practitioner** within the scope of their accreditation.

The extent to which a country may have the capacity to support education and training vary. An alternative approach may be to recognize qualifications and training in other countries in so far as they meet the above principles.

NOTE: *An Industry Competent Body may be a professional membership association of a duty holder discipline, through which a Competent Practitioner can be registered with the Association, a prerequisite of which will be to have been licensed and maintain a minimum level of continuing professional development.*

NOTE: *The IBQC is currently developing a Good Practice Guideline to provide further particulars in regard to a competency and accountability framework.*

PRINCIPLE SIX – BUILDING PERMITS

6. A mandatory statutory process for building permits that requires the approval of designs and documentation that adequately demonstrate compliance with any relevant regulatory and technical code requirements for proposed building works.

6.1 A **Building Permit Body**, often referred to as an authority having jurisdiction, the powers for which can also be vested in duly appointed building officials, will be required to exercise powers and functions to administer and oversee the building permit process.

6.2 The **Building Permit Body**, which may be the government body or authority established under Principle 3, another public entity such as local government with powers delegated by legislation or a hybrid of the two but for any model regulatory controls should ensure:

A. System design and strict controls to mitigate conflicts of interest;

B. High levels of competency;

C. Ethical conduct; and

D. Oversight of conduct and performance including, but not limited to, peer review (mandatory in the case of high-risk or complex buildings).

6.3 Building permit processes should ensure that within a recognized building classification system, buildings designated through a regulated risk-based mechanism by the appropriate government authority, have a **Holistic Safety Strategy**[1] that reflects building complexity, use and occupancy. The approach, which may be achieved by adopting different approval requirements for different types of building work, services (utilities) or buildings, would enable a more efficient process with a proportionate regulatory burden for lower risk and less complex buildings.

6.4 The complexity and use of the building and the nature and number of occupants may increase/ reduce the nature and number of controls required, thereby enabling a more efficient process with a proportionate regulatory burden for lower risk and less complex buildings.

This requires:

A. A **Building Permit Body** that is able to access specialist advice on each relevant discipline involved in the construction of the building so as to be in a position to approve plans;

B. Any proposal to carry to out building work must meet a specified threshold of complexity and risk classification, and must be subject to the preparation of adequate design documentation, including detailed design drawings and calculations, clear resolution and justification for the use of any performance based measures, the phasing/stages of the work to be carried out and the specification of materials and products to be used in a buildings' construction;

C. The precise nature of the documentation to be clearly defined according to building type;

D. Such information to be lodged in its entirety at least one month before the commencement of any work;

E. Such documentation to be held on an electronic database ("**Building Specific Database**") to in- form oversight and enforcement by government and accessible to emergency services and residents 24/7 including:

1 Holistic safety strategies encompass a range of approaches that aim to create a comprehensive and proactive safety framework. They focus on the interdependence of various factors, which in the case of buildings and having regard to the complexity of the building and the nature of its occupancy, includes active and passive fire safety systems, structural durability, HVAC, evacuation planning, security systems, on-going maintenance regimes, etc.

I. **Competent Practitioners** involved in projects;

II. Lodgement of design documentation;

III. Lodgment of permits;

IV. Lodgment of inspection records;

V. Lodgment of enforcement actions and outcomes;

VI. Notification of variations; and

VII. Lodgment of final permit documentation including clearly defined safety information relating to:

i. Fire and location of hydrants close to the building;

ii. Gas including location of shut-off valves both internal and external;

iii. Electricity supplies;

iv. Water, boiler(s) and shut-off valves; and

v. identification of any hazards within/posed by the building.

F. All such design documentation should be:

I. Prepared by or under the supervision of an appropriately licensed **Competent Practitioner** who is the lead designer or person ultimately responsible for the construction or refurbishment; and

II. Declared by an appropriately licensed **Competent Practitioner** to meet legislation (including applicable codes and standards);

G. Adequate provision for a holistic assessment of the design documentation by the **Building Permit Body**;

H. Specific (safety critical) aspects of design to be the subject of mandatory independent peer review;

I. Any variation to approved design to be subject to redesign and approval following the above process; and

J. Ideally where funds permit, video/photographic record of work completed as at the relevant inspections and of any varied work.

PRINCIPLE SEVEN – INSPECTIONS

7. Mandatory statutory process that provides for rigorous inspections of work by appropriately skilled practitioners

This would include:

7.1 Inspections of work under construction at hold points defined prior to commencement of works by reference to either:

A. Prescribed inspections;

B. A framework for the assessment of appropriate hold points based on risk; and/or

C. Inspections required by specialist and appropriately licensed **Competent Practitioners**, including as part of mandatory peer review required as part of Principle 6 (such as structural or fire safety engineers);

7.2 An authorized process for determining the type and frequency of inspections based on risk classification, as stipulated by the **Building Permit Body** (in the event of high risk or complex work/stages and/or delay);

7.3 Mandatory documentation of the outcomes of each inspection to be held on the **Building Specific Database**;

7.4 Enforcement powers and processes mandated for use where works are identified as non-compliant; and

7.5 Adequate provision for a holistic assessment of the outcomes of inspections and compliance.

NOTE: *The IBQC developed Risk-Based Classification and Inspection Guideline Here, can serve as a useful resource. Its purpose is to provide a likelihood and consequence methodology as the basis for classifying buildings and commensurate inspection regime, based on the risk posed by the intended occupation of the building, associated with a range of other criteria such as height, size and complexity, enables a proportionate inspection regime to apply in parallel, which promotes safety, efficiency and innovation.*

NOTE: *The IBQC developed Good Practice Building Inspector Guidelines for Emerging Economies Here, may provide a useful resource for some jurisdictions. It is designed as a tool to help policymakers establish fit-for-purpose inspection regimes as well as for setting out the core competencies and associated training needed for building inspectors.*

PRINCIPLE EIGHT – FINAL APPROVAL

8. Mandatory processes for final approval of completed works.

This would include:

8.1 Final (possibly joint) inspections by the **Competent Practitioner**, the relevant disciplines of the **Building Permit Body**, which for high risk and complex buildings, should include a structural and fire engineer, as well as fire authorities and utility providers (e.g., water, gas and electricity); and

8.2 Lodgement of a final approval document together with documentation required for the ongoing operation and maintenance of the building on the **Building Specific Database.**

PRINCIPLE NINE – NON-COMPLIANT OR UNSAFE WORKS

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

This would include:

9.1 The power to enter a site and make orders for public safety;

9.3 The ability to step in and carry out work (and recover costs) in an emergency;

9.3 Adequate penalties for non-compliance; and

9.4 Appeal rights from decisions.

PRINCIPLE TEN – DISPUTE RESOLUTION

10. Provision should be made for the efficient, accessible and swift resolution of disputes.

The following principles should be applied:

10.1 Construction dispute-resolution systems should be founded on principles of speed, accessibility, technical competence and procedural clarity, ensuring that disputes are resolved by decision-makers with appropriate construction-sector experience and an understanding of the practical realities of design, certification and construction;

10.2 Regardless of whether the venue is a court, tribunal or statutory dispute-resolution body, the appointment of specialist construction and technology decision-makers is recommended, and decision-makers should be appointed based on demonstrated skill and experience in the resolution of construction disputes;

10.3 Decision-making institutions should be adequately resourced to ensure timeliness, reduce case backlog, and improve system efficiency through appropriate staffing, sector-specific training and modern digital case-management systems;

10.4 Low-value or straightforward disputes should be channeled into simplified and expedited processes to avoid unnecessary cost and delay;

10.5 Neutral evaluation at an early stage should be mandatory. Mandatory mediation should also occur before any escalation to a formal hearing or determination; and

10.6 There should be an accreditation process for expert witnesses overseen by the dispute-resolution authority, having regard to high levels of skill and experience.

NOTE: *The IBQC developed Good Practice Guidelines for the Development of Construction Dispute Resolution Tribunals and Decision-Making Institutions and Guidelines for Developing Construction Dispute Resolution Systems in Emerging Economies in Africa Here, may provide a useful resource for some jurisdictions. Whilst tailored for countries with different building control maturity, both documents provide useful insights and principles for the establishment and resourcing of dispute resolution infrastructure.*

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PRINCIPLE ELEVEN – LIABILITY AND INSURANCE

11. Mandatory Insurance should be required for key building practitioners.

The following principles should be applied:

11.1 Comprehensive professional indemnity insurance and residential warranty cover where available;

11.2 Each designing professional / contractor should be required to take out professional indemnity insurance and maintain insurance for a period equating to the period in which claims for breach of contract or negligence / breach of statutory duty can be brought;

11.3 A time limit on claims should be defined;

11.4 A policy decision has to be taken as to whether the liability of each member of the design and construction team should be joint, several or proportionate, but where a policy decision is made to introduce proportionate liability it should be complemented by the introduction of mandatory insurance for the key actors;

11.5 The accountability and liability of corporate entities and their officers will be determined by the relevant laws of each jurisdiction, but from a consumer perspective the limited liability of corporations should not enable decision makers to avoid accountability, and consideration should be given to express director liability provisions; and

11.6 A clear period of limitation for the initiation of legal proceedings should be stipulated. There should be a clearly defined trigger date for the commencement of the limitation period and the legislation should state what that is, be it an occupancy permit or other equivalent statutory instrument. The legislation should also specify the number of years that apply to the limitation period, and regard should be had to legislative precedent such as the French model or the Australian State of Victoria's ten-year limitation period, or such equivalent, where there is clarity on both the legislative start date and the number of years.

MEMBERS OF DRAFTING SUB-COMMITTEE COALITION

Professor (Adj) Bronwyn Weir – Former IBQC board member and Principal Author

Professor (Adj) Neil Savery IBQC board member

Professor (Adj) Kim Lovegrove MSE, RML. Chair IBQC

Michael de Lint – Former IBQC board member

Stephanie Barwise KC – IBQC Board member

Dame Judith Hackitt – IBQC Board member