



Building Acts, Regulations, and Standards





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Objective

This guidance note provides an overview of what building acts, regulations, codes, and standards are and how they interact. It also provides insights on how these legislative instruments contribute to climate change initiatives and infrastructure resilience.

Target audience

This guidance note is intended for government officials, policy makers, and building permitting and enforcement authorities and personnel.

Building codes and standards in the Pacific

Pacific building codes and standards have been developed through development cooperation initiatives between Pacific Island governments, foreign governments, and multilateral development banks. The trade flow of construction materials and education of technical specialists overseas has also influenced which codes and standards are implemented in Pacific Island countries.

Pacific Island countries can be partitioned into three zones of practice for building codes and standards (see Figure 1), noting that there can be exceptions to certain building projects where no building legislation or building code exists (but where there is a practice); where donor projects are permitted to use a different standard; or where the availability of construction materials may limit full compliance with the practiced codes and standards.

Figure 1: Geographical Distribution of the Practice US-Based and Australian/ New Zealand-Based, and French-Based Codes/Standards

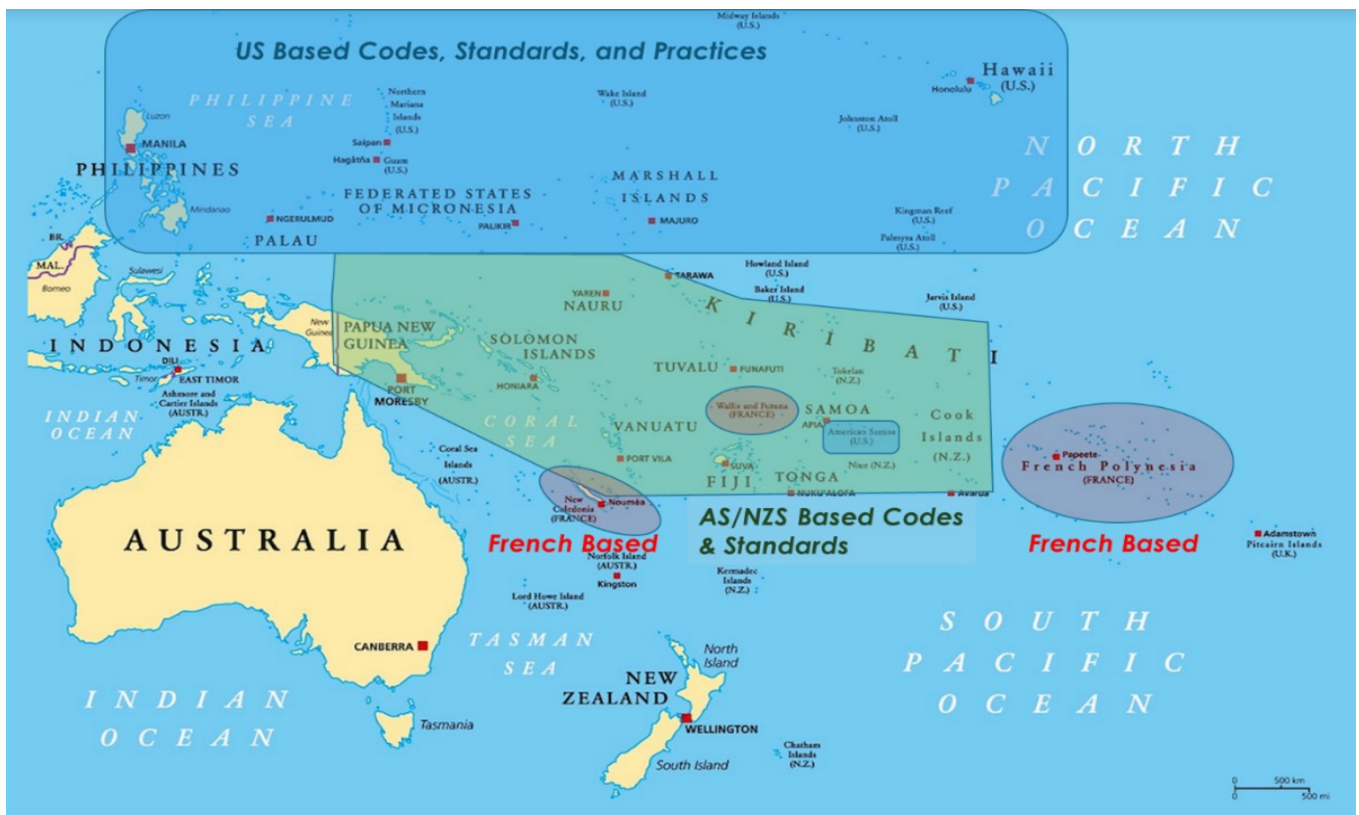


Table 1: Building codes and standards by country

Building Codes	Country
Australian and New Zealand-Based Codes and Standards	Cook Islands, Fiji, Kiribati, Nauru, Niue, Samoa, Solomon Islands, Tonga, Tokelau, Tuvalu, and Vanuatu
French-Based Regulations and Norms	French Polynesia, New Caledonia, Wallis and Futuna
US-Based Codes and Standards (North Pacific)	FSM, Palau, RMI; US Insular areas (Guam, Northern Mariana Islands, American Samoa); US States (Hawaii); Philippines

Not all Pacific Island countries have building acts, regulations, or codes. Design practitioners and government officials should verify with the ministry or department mandated to develop, administer, and/or enforce building construction standards (or planning and development) for the current legal context. In some countries, provinces and municipalities publish building construction by-laws which may be more stringent or complement the national legislation. In some cases, building construction standards may not apply to specific geographic areas of a country (see Table 1).

What is a building act?

A building act is a law, generally passed by parliament, that is the primary legislation setting out the rules for building construction: objectives, processes, and measures that must be met. A building act is intended to protect consumers from risks associated with building construction.

A building act may cover several topics:

- Objectives and performance requirements for building construction;
- Roles, functions, and powers of ministries and their officers, supporting ministries, approval authorities / councils, authorized persons, and private sector;
- Building permit requirements;
- Demolition;
- Inspection;
- Notices;
- Appeals process;
- Registration of building professionals; and/or
- Issues to be dealt with in building regulations and building codes.

Building construction may be regulated by multiple acts. In some cases, regulation of building construction may mainly stem from an associated law, but could also be specified in a public health or physical planning law. See Table 2 below for some examples of laws.

Table 2: Building Construction act examples

Country	Examples of Acts covering building construction
Fiji	Public Health Act
Marshall Islands	National Building Act
Niue	Building Code Act
Tonga	Building Control and Standards Act
Vanuatu	Building Act No.36

What is a building regulation?

Regulations are secondary legislation (made by the executive government rather than by parliament) outlining administration, enforcement, and technical provisions and requirements to ensure application of and compliance with the building act. Building regulations specify:

- procedures for obtaining permits
- building types requiring permitting
- permit and inspection fees
- exemptions from permitting
- inspection regimes
- responsibilities
- inspection procedures and stages
- inspection and completion certificates
- appeals procedures
- enforcement regimes (such as enforcement penalties)
- qualifications of inspectors, and
- qualifications for building practitioners (registration of private practitioners).

Regulations may also adopt a building code as a schedule to the building regulations or as a separate ministerial order.

What is a building by-law?

By-laws are made by subnational governments, such as councils or provinces. They deal with local issues, procedures, and fees, supplementing (and in some cases) filling gaps left by national legislation. By-laws should be equal to or more stringent than national laws, regulations, and building codes.

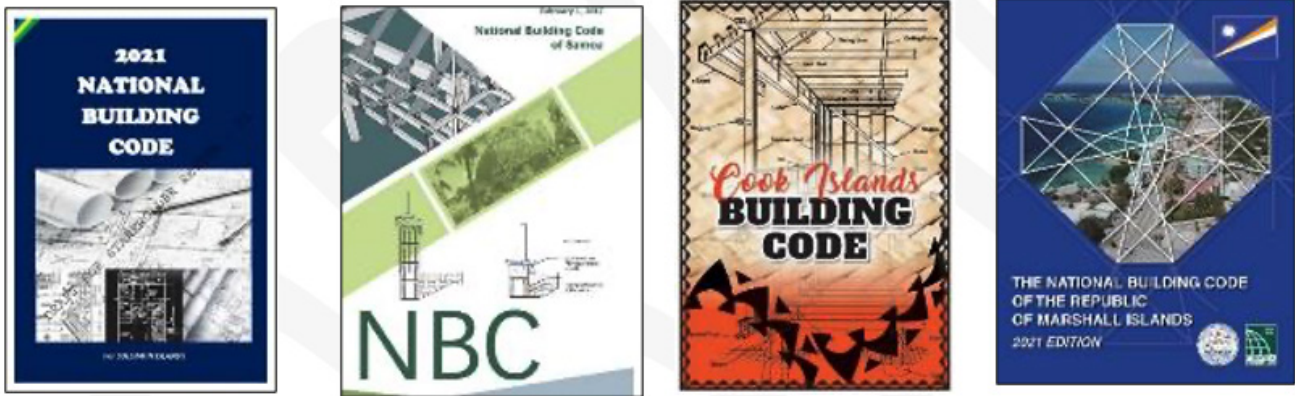
What is a building code?

Building codes are developed by the government ministry or department mandated to control building construction. Once developed, building codes are typically adopted through a ministerial order. Building codes may also be an annex to a building regulation.

Many Pacific building codes set the minimum performance requirements (general statements) for the design and construction of buildings to meet the obligations of the building act. In alignment with the building act, most Pacific building codes provide concise performance requirements and provide specific conditions to protect public safety and ensure public health, and public welfare. Some Pacific building codes have also integrated climate change, sea-level rise, corrosion resistance, and minimum energy efficiency requirements.

Building codes will provide parameters and indicate standards that can be used.

Figure 2: The PRIF website hosts National Building Code pictorial tiles that link to the building code¹



What is a building standard?

Standards are published documents setting out specifications, procedures, and methods for materials, design, testing, and equipment. Standards are developed through balanced, expert committees and consensus-based processes, and thus represent industry best practices. Standards specify minimum requirements for safety, quality, or performance of a product or service. Standards are voluntary documents unless referenced by government in legislation. Standards can also serve as purchasing specifications or technical conditions of contract between two parties.

Building standards are referenced in building regulations and codes, providing a simple way for authorities to provide building solutions without encumbering the regulation or guidance with technical information.

The building standards referenced in the deemed-to-satisfy (DtS) provisions of building codes provide detailed technical guidelines, including:

- ensuring consistency, quality, and reliability of materials, products, and practices;
- creating a common language in the industry for a given process; and
- documenting the requirements for products, practices, methods, or operations.

Where can I find standards? Which building standards are voluntary or mandatory?

Building standards are available through various international organizations (ISO, Standards New Zealand, Standards Australia, ASTM, ICC, etc.).

Within the Pacific, there are three standards bureaus (Fiji, Samoa, and Vanuatu), which maintain catalogs of voluntary and mandatory standards. Updated standards catalogues ensure imported/exported construction materials support resilient National Building Codes and prevent low-quality and hazardous materials from entering or exiting the country and being incorporated into building construction.

Standards are voluntary documents unless decreed by legislation. National standards organizations will usually maintain a catalog indicating whether a standard is voluntary or mandatory.

Table 3 provides several cases where a building standard is voluntary or mandatory

¹ <https://www.theprif.org/online-repository-building-codes>

Table 3: Mandatory vs. Voluntary Standards

Status	Cases for Building Construction
Mandatory	<ul style="list-style-type: none"> An Act states a standard is mandatory (ex. Building Act, Public Health Act, Electrical Safety, Import Controls Acts, Labor and Working Conditions Act, Energy Efficiency Acts, Standards Act, etc.). The Minister issues an order, regulation, or other legislative instrument that explicitly states that a standard is mandatory. The National Building Code is a prescriptive code that requires the mandatory use of specific standards. A design services or construction contract requires the use of specific building design, construction, material/equipment standards. <p>Example:</p> <ul style="list-style-type: none"> <i>Electrical Safety Act specifies AS/NZS 3000 Australian/New Zealand Electrical Wiring Rules as mandatory, but National Building Code references AS/NZS 3000 as a voluntary deemed-to-satisfy solution. Because AS/NZS 3000 is mandatory per the Act, all building electrical wiring is required to comply with the AS/NZS 3000 standard. Thus, because of the Act, AS/NZS 3000 wiring rules become the mandatory standard to satisfy the building code performance requirements.</i>
Voluntary	<ul style="list-style-type: none"> The Minister issues an order, notice, or other legislative instrument that explicitly states a standard is voluntary to encourage its use and/or sets the expectation for imported materials. The National Building Code allows the use of any standards that meet the performance requirements of the code – through either a performance solution or a deemed-to-satisfy solution. A performance code will provide deemed-to-satisfy solutions that list building standards, which, if used, would satisfy its requirements (i.e., standards in a performance code are voluntary). A design services or construction contract provides a list of standards for the use of specific building design, construction, and material/equipment; but allows the contractor to propose alternatives that are equivalent or better. <p>Example:</p> <ul style="list-style-type: none"> <i>The Bureau of Standards issues a legislative instrument indicating that the standard AS 3972 is the voluntary standard for cement. AS 3972 is added to the Bureau of Standard's catalog as voluntary. Importers and buildings can use other types of cement provided that they comply with the building design drawings approved under a building permit.</i>

Table 4 provides insights on three standards bureaus in the Pacific which have been established to promote and ensure consumer protection and alignment with international trade agreements.

Box 1: Regional Initiative

Free Access to New Zealand Standards, A Benefit for Pacific Island Building Construction & Building Code Compliance

MFAT Pacific Partnership Program

Numerous New Zealand standards are referenced as deemed-to-satisfy solutions in Pacific building codes. Through the New Zealand Ministry of Foreign Affairs and Trade’s (MFAT) Pacific Partnership Program, Pacific Island governments can obtain free access to New Zealand Standards, which should increase the ability of Pacific Island building authorities to administer and enforce their building codes using the most current standards.

MBIE and Standards New Zealand

In addition, the Ministry of Business, Innovation and Employment (MBIE) has funded free access to numerous building standards that are used for New Zealand Building Code compliance. Such free access, by proxy, provides a clear benefit to Pacific Island design practitioners and governments when the Pacific building codes reference New Zealand Standards.

<https://www.standards.govt.nz/get-standards/sponsored-standards/building-related-standards>

Table 4: Pacific Standards Bureaus

Standards Bureau	Description
Fiji The Fiji Department of National Trade Measurement and Standards (DNTMS), Ministry of Commerce, Trade, Tourism and Transport	<p>Established under the Trade Standards and Quality Control Act 1992, the DNTMS prepares and promotes standards in relation to goods, services, processes, and practices used and produced locally, for the protection of the health and safety of consumers and the environment, as well as for industrial development, in order to enhance the economy of Fiji.</p> <p>The DNTMS is a full member of the International Organization for Standardization, an affiliate of the International Electrotechnical Commission and a full member of the Pacific Area Standards Congress.</p> <p>The DNTMS signed a Memorandum of Understanding with Standards Australia International in 1998, which gave Fiji a platform from which it approached standardization issues. The Memorandum of Understanding gave the DNTMS the opportunity to adopt and modify Australian Standards as Fiji Standards.</p> <p>https://www.mcttt.gov.fj/division/national-trade-measurement-and-standards/standards/</p>
Samoa National Standards Samoa (NSS), Ministry of Commerce, Industry and Labor	<p>Established in 2018, the NSS is entrusted to facilitate the development of national standards based on the needs of industry, community and government. NSS develops national standards, but is not responsible for enforcing, regulating or certifying compliance.</p> <p>https://www.mcil.gov.ws/services/consumer-protection/national-standards/</p>
Vanuatu Vanuatu Bureau of Standards, Ministry of Trade (VBS)	<p>The VBS was established under the Bureau of Standards Act No. 14 of 2016 as a statutory body under the Ministry of Tourism, Trade, Industry, Commerce and Ni-Vanuatu Business. VBS was formally launched in August 2017 to develop, increase, and verify the quality of goods traded in an efficient and fair manner so as to reduce trade barriers and improve consumer welfare.</p> <p>VBS promotes standardization in industry and commerce; acts as a depository for all standards; prepares draft standards and to declare them as Vanuatu Standards; makes arrangements or provides facilities for the examination and testing of commodities and any material or substance from which or with which they may be manufactured, produced, processed, or treated and the manner of such manufacture, production, processing or treatment; provides for the assessment of manufacturing, process or management systems and their certification; and provides for the examination, testing and calibration of instruments, appliances, apparatus and weights and measures, weighing and measuring instruments in relation to their accuracy.</p> <p>The VBS is a Correspondent member of the International Organization for Standardization.</p> <p>http://www.vbs.gov.vu/, https://vbs.gov.vu/national-standards/</p>

Source: Mapping of Pacific Island country building standards by the authors.

DNTMS = The Fiji Department of National Trade Measurement and Standards; NSS = National Standards Samoa;

VBS = Vanuatu Bureau of Standards

How do the building act, regulation, code and standards interact?

How the building act, regulations, codes, and standards interact depends on the legislative and regulatory framework (see Figure 3).

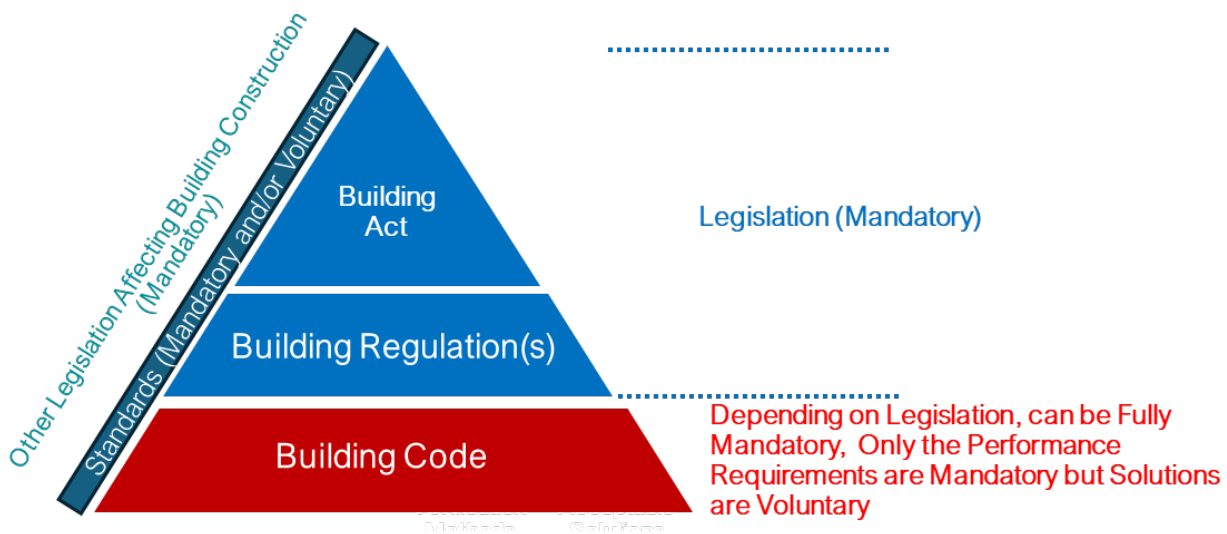
The following are general terms:

- The Building Act, being primary legislation, is the law for building construction. The Act is law and thus mandatory.
- The regulations provide the operational and administrative matters to implement the requirements of the Act. In some cases, the building regulations adopt the building code and attach it as an annex or schedule. Multiple building regulations can be written under the main building act covering a variety of topics.

Most Pacific Island countries do not have building regulations and thus do not have the necessary rules in place to administer and operationalize compliance with the Building Act. Building regulations are considered necessary in practice. Without regulations, there are no clear pathways or procedures for authorities and the public to follow;

- The building code, or sections thereof, can be considered mandatory or voluntary depending on how the building regulations and building code are written;
- Standards can be voluntary or mandatory depending on other legislation and/or how the building act, building regulations, and building code are written. Standards may also become mandatory if other legislation makes them mandatory.
- Other acts and regulations can also have an impact on aspects of building design and construction. Examples of this could include public health or environmental health acts and regulations that may prescribe requirements for sanitation facilities.

Figure 3: Inter-relationships of building acts, regulations, codes, and standards



Do the building act, regulation, and code apply everywhere?

Building acts and building regulations may exempt or exclude certain geographic areas from complying with the building code; and/or focus building requirements on municipal, designated, or declared areas. In some cases, the acts and regulations may even waive the requirements for building permitting and/or certification of designs by registered professionals.

In some countries, buildings on customary land are not subject to the legal requirements of the building act, regulations, or code. In this case, some government agencies will try to ensure compliance of government-owned buildings with the building act, regulations, and code, regardless of where the building is located.

Thus, although a country may have a building act and a building code, there may be large geographical areas of the country that may not be subject to building construction requirements. Building authorities should be consulted to understand the context.

Do the building act, regulation, and code apply to every building type?

In general,

- The building act applies to all building types based on the provided definition (either nationally or to specific geographic areas);
- The building regulation may provide building classifications and may specify which of these and what situations require building permitting and/or certification by a registered professional. The regulations may also have a list of building classes that are exempt from permitting (usually low-risk structures). In some cases, the regulations may also specify which sections of the building code a specific class or size of building needs to satisfy (ex. small owner-driven construction using light timber and steel sheet materials may only require compliance with gravity and wind loads and basic sanitation requirements).
- The building code provides requirements for all classes and types of buildings. When a specific type of building is not addressed in the building code using the deemed-to-satisfy solution, a performance solution that satisfies the performance requirements may be proposed.

What is the difference between a performance code and a prescriptive code?

A prescriptive building code provides all the requirements and standards that are mandatory and must be followed. It says exactly what to do: what materials to use, how to design, what construction techniques are allowed, etc.

A performance-based code provides multiple pathways of compliance. It has mandatory performance statements that identify what the building must achieve (building performance level) but does not provide the detail how to achieve this.

Modern building codes tend to be hybrids, mixing prescriptive and performance-based requirements. The difference can be how legislation and the building code defines which aspects of the building code are voluntary or mandatory. Examples include:

- Several South Pacific building codes, such as Tonga, Vanuatu, Australia, and New Zealand, are performance-based at their core; in which performance requirements are mandatory. They are also considered hybrid as they provide prescriptive deemed-to-satisfy solutions.
- The International Building Code used in the North Pacific (Republic of Marshall Islands) is a prescriptive building code at its core, but provides clauses for alternative solutions and methods to be submitted to the authority having jurisdiction.

Do I have to use the standards in the building code? What is a performance requirement? What is the difference between a deemed-to-satisfy solution or performance solution?

If the building code is prescriptive, then the standards are mandatory and the solution is fixed. If the building code is performance-based (as with all of the South Pacific building codes), there are several solutions and the standards are considered voluntary.

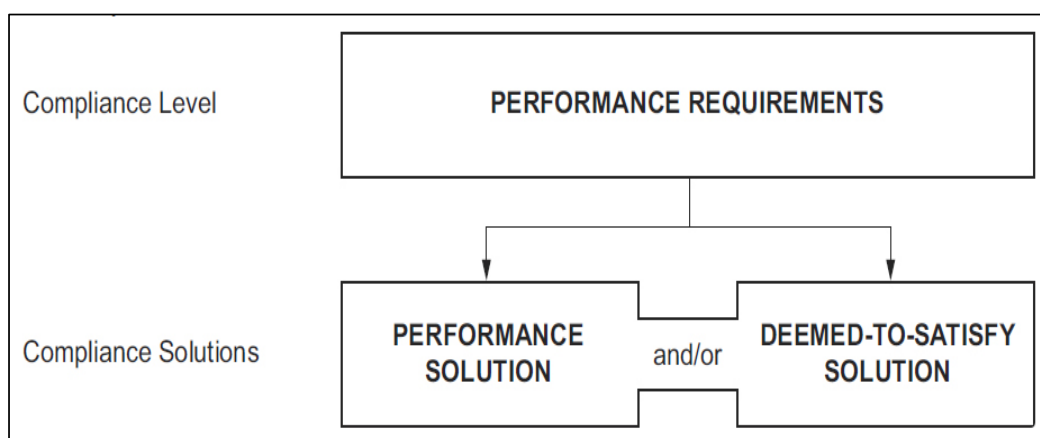
The standards listed in a performance-based building code are voluntary and are generally found in the deemed-to-satisfy sections of the code. Performance-based codes provide a voluntary pathway for a designer or builder to satisfy the performance requirements.

Performance-based building codes will have listed mandatory performance requirements. A performance requirement is a general statement as to how the building or building component shall perform for its intended use in a particular situation (level of performance, or compliance level). The building authority will use its regulatory powers to verify that designs satisfy these requirements.

There are three pathways to comply with building code performance requirements: a performance solution, a deemed-to-satisfy solution, or a combination of both (Figure 4).

- 1. Deemed-to-satisfy solution:** A deemed-to-satisfy solution is a predefined pathway, or default procedure, for complying with building code performance requirements. The building code deemed-to-satisfy provisions will provide these default statements, parameters, and standards. It is a “recipe book” approach: if you follow the specified ingredients and steps, your building is considered compliant. The deemed-to-satisfy solutions are generally prescriptive and building authorities must accept them as compliant if they are followed correctly.
- 2. Performance solution:** A performance solution is an alternative path to comply with the building performance code requirements through the use of other standards, materials, techniques, and procedures.
- 3. Combination of both:** The building code also allows a combination of performance and deemed-to-satisfy solutions. For example, the structure of a building can be designed using the AS/NZS standards listed in the deemed-to-satisfy section of the building code, but the fire requirements can use a performance solution whereby test results and calculations based on American standards are submitted.

Figure 4: Pathways to compliance



Do Acts, Regulations, and Codes contribute to climate change adaptation, climate mitigation and resilience?

Acts, regulations, and codes can contribute to climate change adaptation, disaster mitigation, and resilience if they are written with clear requirements, provide designers/builders with the necessary data, are enforced, and the public is made aware of quality building construction that meets the climate and disaster resilience performance objectives. The key challenge for governments is to ensure that, as scientific research and knowledge evolves and improves, climate and disaster resilience are reassessed and incorporated into the building code and development planning; further, that the public, designers, and builders are aware and empowered to make the right choices.

Will the building code guarantee climate and disaster resilience?

Building code compliance does not guarantee climate and disaster resilience, but codes can support climate change adaptation, climate mitigation, and disaster resilience if they include clauses that address these topics. Ensuring climate and building resilience also requires quality materials, builders, specifications, inspection (owner and government), testing, and continuous operations and maintenance. Building owners should also upgrade or retrofit buildings to adapt to the changing climate, any new hazard studies, insurance requirements, or to reduce their own risk.

Building codes also must balance climate and disaster resilience, with construction cost, and government policy regarding acceptable damage, fatality rates, and loss (Table 5).

For climate mitigation and energy efficiency measures, building codes can set minimum requirements; further, owners and governments can go above the minimum requirements to achieve improved building performance. In some cases, “stretch codes” and building energy and water efficiency regulations or policies can be developed that go above the minimum requirements to address certain building types and sizes. Sometimes these are combined with rating systems and/or tax incentives.

Table 5: Examples of Climate Change in Building Codes

Country	Examples of Climate Change in Building Codes
Kiribati	<ul style="list-style-type: none">• Requires the use of a climate change scenario of SSP3-7.0 for sea-level rise and rainfall for building in flood hazard areas.• Specifies the use of the AS/NZS 1170.2 wind standard with the Climate Change Multiplier on wind speed of 1.10.
Tuvalu	<ul style="list-style-type: none">• Building code sets the minimum finished floor levels based on coastal hazard mapping that integrates climate change.• Considering Tuvalu’s climate vulnerability, its building code requires that a site-specific analysis be performed for a) all buildings located within 25 m of the coastline (as measured from the mean high-water mark); b) all buildings of importance level 3, 4, and 5 (in any location); or c) any building that the Building Controller deems to be of special or high risk.• The use of SSP2-4.5 climate change scenario at a 1 in 100-year recurrence interval sea flood event.
Vanuatu	<ul style="list-style-type: none">• Requires the use of a climate change scenario of SSP3-7.0 for sea level rise and rainfall for building in flood hazard areas, which applies to riverine, coastal flooding, and tsunamis.• Specifies the use of the AS/NZS 1170.2 wind standard with the Climate Change Multiplier on wind speed of 1.05.

As noted, building acts and building regulations may exempt certain geographic areas from complying with the building code, e.g., where certain building types built on customary land are not subject to the legal requirements of the building act nor do they contribute to international agreements on disaster risk reduction or climate change. Thus, although a country may have a building act and a building code, there may be large geographical areas that may not be subject to climate- and disaster-resilient building construction requirements.

References and Sources

Australian Building Codes Board <https://www.abcb.gov.au>

MBIE Building Code website <https://www.building.govt.nz>

MCTTT Fiji <https://www.mcttt.gov.fj/division/national-trade-measurement-and-standards/standards>

Pacific Islands Legal Information Institute <https://www.paclii.org>

Pacific Quality Infrastructure <https://forumsec.org/pacific-quality-infrastructure>

PRIF Building Codes Repository <https://www.theprif.org/online-repository-building-codes>

Standards Australia <https://www.standards.org.au>

Standards New Zealand <https://www.standards.govt.nz>

Vanuatu Bureau of Standards <http://vila.volutions.vu/about>



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