



**BALUSTRADE** – Answers to all your questions  
**LUCKY ESCAPES** – They Fell and Survived  
**HUMOUR** – Dear Becky.....

## Does your balcony balustrade meet the current Building Codes?

**If not, what do you do? Upgrade to the current Building Code or do you leave them, and what is in the current Code anyway?**

The answers to all your questions are here. Recent accidents involving people falling from balconies and stairway landings have highlighted the need to assure yourself that the approach you are taking to balustrade and the risks of falling from them is appropriate especially in a constantly changing legislative and legal environment.

**Do I need to ensure the balustrade in the buildings I manage meet the current Building Code of Australia requirements?**

You need to ensure that the balustrade on the buildings you manage met the relevant building codes at the time of their design and construction. That could be the current or previous codes depending on when the building was designed and built.

There are other circumstances that may trigger the need to upgrade to the current Code, which are covered later in this article.

**The research behind this advice**

We have spoken to the Australian Building Codes Board about whether a change to the Building Code of Australia, which is updated with changes every six months, is retrospective. (Meaning any changes would apply to all existing structures.) They described the idea as laughable and said that changes apply to the design of future buildings. An example given was that if they increased the requirement for the concrete coverage over reinforcing steel (which is the...

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### **SOME LUCKY ESCAPES**

#### **Man Falls 12 Floors and Lives**

A Taiwanese man who fell from the balcony of his 12th floor flat while changing a light bulb, has escaped serious injuries.

Chang Shih-chi, 68, said he lost his balance after suffering an electric shock. His fall was broken as he bounced off a canvas awning, electric wiring and a parked car.

A doctor who treated the man said: "The patient fell from the 12th floor to the ground without suffering major injuries. This is a miracle."

#### **Teenage Girl Falls from Top Floor**

Cuyahoga Falls police received a call about a wild party on the top floor of a complex.

Police arrived, knocked on the apartment door and heard somebody inside trying to get away. The girl tried to climb between balconies but fell in her attempt.

The girl fell 5 stories and landed on another resident's barbecue grill. The impact was so great, it broke the grill and several wooden boards stacked along side. She escaped unharmed. #



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.... distance between a concrete slab surface and the reinforcing steel) then most existing buildings would need to be pulled down and rebuilt.

From a legal perspective there is no recorded case in which a person has successfully sued when the balustrade in question met the code at the time it was constructed. All the known cases relate to balustrade that did not meet the current building code at the time it was constructed.

The advice in this article is backed up by legal opinion sought by leading lawyers who are experts in litigation. We specifically sought legal advice on these matters and their report forms the basis of this article.

We also asked specifically about some cases relating to accidents involving glass panels that did not meet current glass codes. Refer to the answer to the question - 'What are the court cases that are relevant to balustrade?' later in this article.

**What are the current BCA requirements for balustrade?**

The current BCA requirements are that a balcony balustrade have the following attributes: -

- ✓ The top of the railing must at least 1 metre (1000mm) from the ground.
- ✓ Any opening must not permit a 125mm sphere to pass through it. So the vertical balusters must not be more than 125mm apart.
- ✓ The gap from the balcony surface to the bottom rail must be no more than 100mm.
- ✓ For balcony floors more than 4 metres off the surface beneath

(and higher than the 1<sup>st</sup> floor), there must not be any horizontal or near horizontal elements between 150mm and 760mm above the floor that facilitate climbing.

These requirements are for all buildings designed since 1 July 1998\*.

\*The requirement for no horizontal elements or toe-holds became law on 1 July 1998 with Amendment 3 to Clause D2.16 of the 1996 edition of the BCA.

Please Note: The above attributes apply to level balconies and/or landings. Level is defined as a surface having a gradient of less than 1:20 (in other words a fall/slope of less than 50mm in every metre). A gradient of more than 1:20 is considered a ramp and has different requirements.)

**How do I know if my building complies with the Code applicable at the date it was built?**

This needs to be done on a case-by-case basis. The codes relating to the many aspects of balustrade construction and geometry have changed many times especially in the last 20 years, before which various State and Council codes applied.

When our inspectors find a building with a balustrade that in some way does not meet the current code we go back and look at the requirements of the relevant code at the time of construction

**What if we do rectification/maintenance work to the balustrade?**

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When a balustrade has rectification or renovation work done to it, it triggers the need to comply with the current Building Code. I would suggest any work done to a balustrade that is more than a paint job would trigger this requirement.

**What if the balustrade met the code at the time of construction but constitutes a risk?**

It makes sense that if a balustrade complied at the time of construction but is clearly a risk it is advisable to upgrade to current codes. A risk analysis needs to be done of the balustrade geometry and recommendations made. This is part of a Solutions ie OH&S audit.

An example of a situation where a balustrade may constitute a risk is where a balustrade is made up of horizontal members 100mm apart much like a ladder that a child could easily climb.

**What are the court cases that are relevant to balustrade?**

The Cameron Toomey Case

Cameron Toomey, a member of the Australian Lacrosse team was awarded \$2.248 million after an accident at a buck's party where he fell over a balustrade outside a unit in Melbourne, which left him a paraplegic.

The incident happened when Mr Toomey tried to squeeze past two of his mates who were wrestling on the landing outside the apartment.

Mr. Toomey in the Victorian Supreme Court sued the two men as well as six others, including the apartments body corporate.

Judge Geoffrey Eames assessed the damages at \$3.211 million for injuries,

loss and damage. Because the 30 year old was drunk at the time of the accident, the judge reduced the damages by 30% to \$2.248 million.

The rail over which Mr. Toomey fell was 66.5 mm below the Building Code requirements at the time the building was built. That is \$33,804.51 for every Millimetre the railing was below the Building Code.

The School Glass Cases

There are 2 much quoted court cases that are used to imply there is a retrospective requirement for all aspects of buildings to comply with all current Building Codes.

They are the Irvine case in Perth and the Cordonne case in Canberra both happened at schools and involved accidents with glass which did not comply with the current Australian Standard which was first introduced in 1972.

The leading litigators we sought advice from on this issue informed us that the success of these cases were underpinned by a special part of law that confers a higher than normal responsibility on institutions which care for children.

This higher responsibility and special part of law does not apply to Bodies Corporate, as they are not institutions whose business is to care for children.

Therefore it is inappropriate to use these cases as an argument for existing residential apartment buildings (that complied with the codes when constructed) to comply with all aspects of the current Building Code.

**Do the insurance companies require us to upgrade our balustrade to current BCA requirements?**

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Solutions ie has spoken to the head office of CHU Insurance the largest insurer in the strata market and they have stated that “if a balustrade complied at the time of construction there is no requirement to upgrade the balustrade to the current Building Code.”

**When is it necessary to get balustrades tested for structural adequacy?**

There have been many accidents involving balustrade failing, recently a Gold Coast man fell to his death from a balcony. In the aftermath of these accidents local Councils have insisted that there should be an ongoing testing and maintenance program to ensure the structural integrity of the balustrade.

Up until recently it was difficult to ascertain whether a balcony balustrade was structurally sound. You could shake it and inspect its fixings but it was a visual inspection only.

Solutions ie has invented a machine that tests the integrity of a balustrade.

This revolutionary service includes a proper structural performance test using the patented machine. It tests the structural performance of the posts and rails in accordance with the procedures set out in AS1657 and the testing requirements set out in AS 1170.1 (the SAA Loading Code).

Prescribed pressures are applied in an outward and downward direction.

**Does a Solutions ie WH&S Safety Audit check the balustrade?**

Yes, the geometry of the balustrade is checked against the applicable Building Codes at the time the building was constructed.

**Summary**

If a balustrade is in good condition, has not been significantly renovated or rectified and complied with the applicable Building Codes at the time of construction then it doesn't need to be upgraded to the current Building Code.

Until there is a court case that creates a precedent to change this situation a Strata/Body Corporate Manager can move forward confidently with this knowledge. #

**HUMOUR – Dear Becky....**

A Marine stationed in Afghanistan recently received a letter from his girlfriend back home. It read as follows:

Dear Ricky,

I can no longer continue our relationship. The distance between us is just too great.

I must admit that I have cheated on you twice, since you've been gone, and it's not fair to either of us. I'm sorry.

Please return the picture of me that I sent to you.

Love, Becky

The Marine with hurt feelings, asked his fellow Marines for any snapshots they could spare of their girlfriends, sisters, ex-girlfriends, aunts, cousins etc. In addition to the picture of Becky, Ricky included all the other pictures of the pretty gals he had collected from his buddies. There were 57 photos in that envelope along with this note:

Dear Becky,

I'm so sorry, but I can't quite remember who you are. Please take your picture from the pile, and send the rest back to me.

Take Care, Ricky

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**In case we don't see you before Christmas – MERRY CHRISTMAS**