

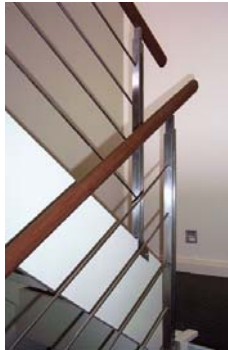
**INSIDE: Could Your Balcony Balustrades be Ladders to Litigation?  
& How To Stop Rising Injury Claims - Slips, Trips & Falls...**

## **Could Your Balcony Balustrades be Ladders to Litigation?**

Recent accidents involving people falling from balconies and stairway landings have highlighted the need to reassess the approach your Owners Corporations are taking to balustrades. The risk of an owner, tenant or visitor falling from certain types of balconies is outlined in the article below.

### **Recent court case**

Cameron Toomey, a former member of the Australian lacrosse team, was awarded \$2.248 million after an accident which left him an incomplete quadriplegic.



The incident occurred when Toomey tried to squeeze past two of his friends who were wrestling on the landing outside the apartment after a night of drinking. The plaintiff sued the Owners Corporation and six others. The rail over which Toomey fell was 66.5 mm below the Building Code of Australia requirements at the time the building was designed, leading to a payout of \$33,804.51 for every millimetre the railing was below the Building Code requirement.

While the balustrade had been compliant at the time of construction it wasn't until a tiler was contracted to lay some new, thicker tiles on the landing did the height of the balustrade become non-compliant.

***Continued on Page 2***

### **How To Stop Rising Injury Claims - Slips, Trips & Falls**

**New Statistics on Falls by Elderly Australians Creates Concern.**

**On average there are 3 slip, trip or fall fatalities by Australian's 65 years and over and over 1000 people are hospitalised daily as a result of slip or trip hazards.**

Currently thousands of elderly people are living with dangerous slip and trip hazards which could be fatal or result in serious injury. Falls are a serious public health problem amongst older Australian's, causing about 1,000 deaths each year and a further 55,000 admissions to hospitals.

And these figures cover only those Australians aged 65 and over. There are many other fall statistics that show that slips, trips and falls are the most common form of accident likely to happen anywhere, including on the common property of your building. It is not only the elderly residents and visitors that are increasingly having accidents, so are younger residents and workers coming to your common property to undertake Owners Corporation work.

***Continued on Page 3***

## Could Your Balcony Balustrades be Ladders to Litigation? Continued from Page 1

### Requirements of the Building Code for level balconies and/or landings;

- The top of the railing must be at least 1 metre (1000mm) from the ground
- Any opening must not permit a 125mm sphere to pass through it - this includes both horizontal and vertical railings
- For balcony floors more than 4 metres off the ground floor there must not be any horizontal or near horizontal elements that facilitate climbing between 150mm and 760mm above the floor

### When did the Legislation change?

An amendment to Clause D2.16 of the 1996 edition of the Building Code of Australia meant that no horizontal elements or toe-holds were to be designed for buildings after 1 July 1998. While this amendment was not retrospective some buildings have since changed their balustrades to comply with the most recent Building Code of Australia.

### What if rectification/maintenance work is completed on the balustrade?

If any maintenance or rectification work more involved than a paint job is completed on the balustrade it will need to comply with the current Building Code. This could potentially cause major conflict between owners as the aesthetics of the building would be changed with the addition of a dissimilar balustrade to only one apartment.

### How do I know if my building complies with the Building Code applicable at the time it was built?

Buildings need to be assessed on a case-by-case basis. Before the Building Code applied there were various State and Council codes that were applicable and each required different types of balustrade construction and geometry.

If one of our inspectors was to find a building with a balustrade that did not meet the current Building

Code, the code that was in force at the time of the buildings construction would be consulted.

### What if the balustrade met the code at the time of construction?

In a Solutions ie Safety Report a typical balustrade's geometry will be measured and analysed against the Building Code at time of design\*. In 99% of cases balustrades are found to be compliant with the Building Code and do not constitute a risk.

### Which balustrades are more likely to constitute a risk?

Your balustrades could be below the legal height, have openings that are too wide or have horizontal members that act as a ladder.



Balconies with stainless steel wire, thin metal or wooden slats running horizontally can be a cause for concern.

### Summary

Balconies are an integral part of the Australian culture, and effectively a unit owner's backyard. It is essential that if one of your buildings hasn't had its balustrades evaluated recently a risk assessment should be carried out as soon as possible.

Modern architecture has allowed for many innovative and cost-effective ways to eliminate risks on non-compliant balustrades. To ensure your common property complies with all relevant Building Codes and Safety Legislation an annual safety inspection is highly recommended.

For an obligation free quote or to place an order please contact Solutions ie on the details below.

\* For an accurate analysis access to a typical balustrade is needed at the time of inspection.



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## How to Stop Rising Injury Claims – Slips, Trips & Falls

Continued from Page 1

**Recent accidents reported by our clients include:-**

- Broken arms, hips and collar bones from tripping on uneven pathways and paving.
- Gashed eye and loss of sight from the corner of an air conditioning unit hanging in a common area walkway.
- Three slips and falls on wet stairs.
- Twisted ankles from changes in ground level off side of pathways.
- Damaged back from moving an industrial bin left in the driveway.
- On site managers suing the Owners Corporation for fall off 1.2 m retaining wall adjacent to pathway. (No railing in place.)
- Tenant electrocuted when using common property power. (No RCD.)
- Volunteer worker hospitalised after being cut by mower blades.

Not only are people hurting themselves but they are seeking compensation for the costs associated with their medical treatment, loss of income and emotional damage. In a recent case, the injured party claimed that a back strain for a fall created an irreparable rift in their relationship with their young child due to not being able to pick them up. The compensation claim for this was astronomical.

**Recent payouts relating to slips, trips and falls include:-**

- \$160,000 to an elderly tenant who tripped on a low gutter between a driveway and an entry porch to a unit building. She broke her hip and spent considerable time in hospital. Despite her having stepped over the gutter many times she was awarded the payout.
- \$32,000 to a lady who slipped and fell on common property. Her original claim was for ten times this amount but was reduced when it was discovered she was drunk at the time, the injury was an existing one that she then claimed was flared up by the accident. This was one of five claims she held against Owners Corporations.
- An undisclosed payout to a man who fell when exiting a car. The accident was caused by uneven ground adjacent to where he aligned the car which caused his foot to twist and give way. His injuries included a broken foot and broken collar bone. He claimed he could no longer work in his trade due to a minor but permanent disability sustained in the fall.

## So what can you do to prevent these accidents?

The Occupational Health and Safety Inspectors at Solutions ie put together a list of things to look for which typically cause slips, trips and falls. We trust you will find it useful and that it will prevent you being sued.

### Concrete Paths

- Grind down any change in ground level over 10mm on concrete paths to eliminate potential tripping hazards.
- Fill in garden beds or ground adjacent to paths to eliminate change in ground level.

### Paving

- Rip up and re-lay pavers that sink or stick up so that any tripping hazard is removed.
- Put in root barriers in between trees with roots systems that typically lift pavers.

### Retaining walls

- Install railings where the height of a drop adjacent to access ways, pathways or high use areas is more than one metre.

### Carpet

- Immediately replace carpet that has been ripped, worn or torn so that any tripping hazard is removed.
- They can also be taped down with industrial tape, however this is unsightly and should only be temporary. If it fails and causes an accident it further demonstrates a lack of action to permanently remove the hazard.

### Lighting

- Install movement sensitive lights to access way areas, and change light bulbs as soon as they blow.

### Steps and stairs

There are too many technical requirements to give an exhaustive list here but here are some basic ones to look out for.

- All stairs must have a hand rail.
- If a stair is more than 2000mm wide then a hand rail is required on both sides.
- Highlight the front edge of a step or steps if it is hard to see, in an unexpected place or one or two on their own.
- Ensure there is enough lighting at night to safely navigate the area (sensor lights are great as they save power and react to movement. Good for safety too).

All buildings' common property areas are workplaces as defined in the Occupational Health and Safety Act and are required to be checked regularly for all aspects of risk of injury. The Risk Management Standard dictates that OH&S inspections should be completed at least every 12 months.

# INTEREST

**OH&S has come a long way!**

Imagine the implications if you were caught doing some of these things today!

The photographs below are images from the 1930's in New York, by various artists including Charles Ebbets and images from the Bettman file. Enjoy!



For more of these amazing photos email;  
[enquiry@solutionsie.com.au](mailto:enquiry@solutionsie.com.au)

**WE TRUST YOU ENJOYED YOUR  
NEWSLETTER, HAVE A NICE DAY!!**

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