

Why Some Things are More Important than Rental Yield

There are upgrade bills ahead for blocks that lean on old standards for balcony safety.

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There used to be a general principle in strata that even if your balcony balustrades weren't up to standard, you didn't need to fix them unless there were other major works going on in the block that required local council approval.

The prevailing wisdom was that unless the council knew about it, there was nothing they could do.



Updated applications of strata law in NSW could affect apartment owners.

That all changed last September – in NSW at least, when in a case before the NSW Civil Administrative Tribunal (NCAT) Appeals Board, an owner successfully argued that the owners corporation had a duty to bring common property up to scratch with safety standards.

Previously, it was widely believed that common property only had to adhere to the standards that prevailed at the time the block was built. The standards set in the Building Code of Australia (BCA) were held to not be effective retrospectively by the original NCAT hearing into the case of Doherty versus SP36613.

The current standards have been in place since 1997 and require a balustrade to be at least 1 metre high, not have openings wider than 12.5 cm and not to be constructed in a way that makes them easy to climb.

According to Adrian Mueller, senior lawyer, JS Mueller & Co Lawyers who conducted the case for the successful lot owners, there were many balustrades constructed before the BCA took effect and which did not meet its safety requirements.

But what changed in this case about the balustrades around a top-floor terrace – in a block where other barriers were already the subject of orders – that compelled the owners' corporation to upgrade them?

Changing Situation

There were a few unusual elements: first, the owners corporation must have known the balustrades were unsafe.

There was also a history of maintenance neglect which, at one point, led to the compulsory appointment of a strata manager, who took over all the responsibilities of the owners corporation and its committee.

Second, the argument wasn't so much about whether the BCA applied to older buildings, but whether the balustrades were safe. However, since the BCA establishes the benchmark by which safety is judged, it was relevant in this case.

And then you have [the provisions of strata law](#), which in NSW says owners corporations for a strata scheme must properly maintain common property and keep it in "a state of good and serviceable repair".

And even though the owners corporation can decide via a special resolution not to maintain, renew, replace or repair the property, that's only if its decision will not affect the safety of the building or detract from its appearance.

Put all that together and give it a good stir, and you can see how the NCAT Appeals Board reached a decision that the owners corporation needed to make the balustrades compliant with an objectively established level of safety – the BCA standards.

So, what does this mean for other buildings in NSW and elsewhere? Although NCAT rulings don't create solid legal precedents, they can provide a point of reference for subsequent cases of similar ilk, even in other states.

As investors in [older properties](#), you really should think of this in terms of resident safety rather than potential costs. It may take only one disgruntled owner to force their owners corporation into spending thousands of dollars on an upgrade.

But it also takes just one clambering kid or careless party goer to fall to their death, or a serious injury to make you realise there are issues more important than rental yield.