

International Tourists and Recreational Injuries^A

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Abstract

By world standards, Australia is a safe destination for international visitors. However, tourists still get injured through participation in unfamiliar recreational activities and being in unfamiliar environments. This paper describes those areas where tourists are most likely to experience difficulties (on the roads and in the water) and the actions needed to prevent tourist injuries. Current trends in public liability insurance and the focus on operators' duty of care responsibilities are also examined within a risk management framework.

International Tourists and Recreation in Australia

Each year Australia hosts in excess of four million international visitors who, on average, stay 27 nights and spend \$2,549.00. The main source markets for international visitors to the country are New Zealand, the United Kingdom, Japan, the United States, Singapore, Korea, China, Hong Kong and Germany. These visitors say they are particularly looking for nature-based experiences, wildlife and beaches. According to the Australian Tourist Commission <http://atc.australia.com> the most frequent types of recreation for international tourists are shopping for pleasure, going to the beach (including swimming, surfing and diving), and visiting friends and relatives. Drive tourism is an increasing important component of the market, which means international tourists are highly mobile and can independently visit a variety of destinations.

The World Tourism Organization¹ defines a tourist as "a person travelling to and staying in places outside their usual environment for not more than one consecutive year, for leisure and other purposes." So, as well as our international visitors, there are large numbers of Australians moving around the country as inter- and intrastate tourists at any one time. This paper does not examine domestic tourism, but it is important to note in passing that domestic travel within Australia constitutes 76% of national tourism revenue. Injury profiles that compare the two groups, however, show that international visitors are much more likely than Australians to be hurt while participating in unfamiliar activities and through being in unfamiliar environments. This stands to reason, but it is often overlooked in the development of prevention initiatives.

Adventure Travel

One of the fastest growing areas of tourism is adventure travel. As there is no definitive industry list of adventure activities, the Travel Industry Association of America² divides adventure recreation into two basic categories: Hard and Soft Adventure (see Table 1). These recreational activities vary considerably in their participation rates and popularity, according to destination. They also vary in their injury potential. For example, Bentley and his colleagues³ report that approximately 19% of all overseas visitor injuries in New Zealand involve recreational/adventure activities, corresponding to 8.4 injuries per 100,000 overseas visitor arrivals. These researchers conclude that activities for which there is a lower 'perceived risk' but a relatively high 'actual risk' (e.g., horse riding and cycle tours) should be the focus of industry attention to improve the standards of safety for participants. Interestingly, horse riding and biking are listed in Table 1 as 'soft' adventure.

Table 1. Hard and Soft Adventure Activities

Hard Adventure	Soft Adventure
<ul style="list-style-type: none">• Backpacking across rugged terrain• Whitewater rafting or kayaking• Hot air ballooning• Rock climbing or mountain climbing• Off-road biking or mountain biking• Hang gliding, parasailing or windsurfing• Parachuting or sky diving• Skateboarding or snowboarding• Roller hockey, bungee jumping or other extreme sport• Spelunking or cave exploring• Snorkelling or scuba diving• Survival games like paint ball	<ul style="list-style-type: none">• Camping• Biking• Hiking on gradually changing terrain• Bird watching or animal watching• Sailing• Horseback riding• Snow skiing• Canoeing• Visit a cattle or a dude ranch• Wilderness tours in off-road vehicles.

While no national study of tourist morbidity has yet been undertaken in Australia, a series of available snapshots confirms the importance of unfamiliar activities and environments for tourist injuries.

Profile of Fatal Injuries

In a recent project with the Australian Bureau of Statistics (ABS), Wilks and his colleagues⁴ profiled fatal injuries for all overseas visitors to Australia during the four-year period 1997-2000. In that time there were more than 17 million visitor arrivals in the country, and 1513 visitor deaths (20% of which were deemed accidental). Table 2 shows that the main causes of fatal injuries were land transport accidents (10% of all deaths) and accidental drowning/submersion (4%

of all deaths). Following ABS policy, small cell sizes in the table have not been reported by gender for reasons of confidentiality. What can be reported is that males were more frequently involved in all forms of accidental death.

Table 2. Number of Overseas Visitor Deaths by Type of Accident, Australia 1997-2000

	Males	Females	Persons
Total accidents	218	89	307
Land transport accidents	100	57	157
Accidental drowning and submersion	48	14	62
Accidental falls	19	6	25
Accidental poisoning	*	*	18
Water transport accidents	*	*	11
Air and space transport accidents	*	*	10
All other accidents	17	7	24

Car crashes, where an occupant was killed (97 deaths), were the leading cause of land transport accidents for all overseas visitors. Other land transport accidents included 19 pedestrian deaths, nine (9) pedal cyclists, six (6) motorcycle riders, six (6) occupants of vans or pick-up trucks, and four (4) bus occupants.

The largest number of accidental drownings included swimming at surf beaches (18 deaths) or tidal rivers, harbours and bays (12 deaths). Other accidental drownings involved swimming pools (6), lakes and dams (5), being swept off rocks or breakwaters (3), skin diving using underwater breathing equipment (4) and other types of skin diving/spear fishing (4).

In the accidental falls group, deaths were related to a wide range of falls from buildings, cliffs, stairs, trees, and skis or roller blades, while accidental poisoning most frequently involved psychodysleptics and narcotics. Due to the small number of deaths in specific categories, and for reasons of confidentiality, figures are not provided. Water and air transport accidents most frequently involved collisions of the carriers. In the 'all other accidents' category, the causes of death included fire, electrocution, ingestion of food causing obstruction (choking), striking against another person (i.e. they hit someone else or someone else hit them), struck by another object, travel and motion, and air pressure injuries (e.g. barotrauma).

Serious Injuries Requiring Hospitalisation

A similar profile highlighting road and water accidents emerges when serious injuries requiring hospitalisation are considered. To date, Queensland is the only State to examine international visitor health and safety issues in detail. Table 3 shows the results of visitors admitted to Queensland hospitals over a five-year period.⁵

Table 3. Type of Injury-Related Incident for Overseas Visitors Admitted to Queensland Hospitals, 1995/96 to 1999/2000*

Type of injury-related incident	No. (%) overseas visitors
Motor vehicle traffic accident	567 (21.8)
Fall on level ground, slip or stumble	408 (15.7)
Diving accidents	302 (11.6)
Fall from height, fall from one level to another	250 (9.6)
Struck accidentally by object or person	121 (4.7)
Bite from venomous spider, snake, marine animal	99 (3.8)
Fight, rape, assault	94 (3.6)
Accidental laceration	92 (3.5)
Drowning, near drowning	81 (3.1)
Water transport accident	79 (3.0)
Horse riding accident	77 (3.0)
Dog bite and other non-venomous animal bites	65 (2.5)
Other transport accident	44 (1.7)
Overexertion	43 (1.7)
Fire, smoke or heat	37 (1.4)
Suicide and intentional self harm	30 (1.2)
Suffocation, inhalation of food or foreign body	28 (1.1)
Accidental poisoning	28 (1.1)
Other	153 (5.9)
Total	2598 (100.0)

Motor vehicle crashes were the most frequent cause of injury, followed by falls and scuba diving accidents. Important, but less common were venomous bites, horse riding accidents and overexertion. The 'other' category mostly included injuries where the cause was not stated.

In relation to motor vehicle crashes, driving on the opposite side of the road to that which is familiar, fatigue and not wearing seatbelts have all been identified as key factors in overseas visitor crashes in Queensland.⁶ Decompression illness associated with scuba diving is consistently identified as a major area for tourist hospital injury admissions. While scuba diving is the most obvious adventure tourism activity identified among hospital injury admissions, horse riding also emerged as a substantial source of injury in Queensland, just as it has in Victoria⁷ and New Zealand.³ Other injuries that appear to be related to adventure activities include near drowning (81 cases) and accidents associated with watercraft (79 cases).

Water Safety

Scuba Diving and Snorkelling

Reviews over the past 10 years have highlighted the prominence of scuba diving accidents in comparison to all other injuries involving overseas visitors in Queensland.⁸ The Queensland Government's Division of Workplace Health and Safety has been extremely active in this area, providing legislative frameworks, education, guidance and training to marine tourism operators. The report by the Diving Industry Taskforce⁹ provides a very good overview of the various pieces of legislation, regulations and codes of practice that have been in force since 1989.

The current Industry Code of Practice for Compressed Air Recreational Diving and Recreational Snorkelling¹⁰ sets out very detailed advice about ways to manage exposure to risks identified as typical when conducting diving and snorkelling activities, namely:

- Ensuring no persons are left behind;
- Medical fitness to dive or snorkel;
- Supervision of divers and snorkellers in open water;
- Appropriate skills and knowledge of workers, divers and snorkellers;
- Instruction and advice to non-English speaking divers and snorkellers;
- Equipment for diving and snorkelling; and
- Emergency plans.

Many of these injury prevention initiatives can be directly linked to the case of American scuba divers Thomas and Eileen Lonergan. The Lonergans were abandoned at sea at the end of a charter diving trip to the outer edge of the Barrier Reef off Port Douglas on the 25 November 1998. The charter operator did not report their disappearance until two and a half days later, a delay that was to prove fatal for the subsequent search that found no trace of their bodies. At the inquest into the Lonergan's death the coroner committed the master of the charter vessel to stand trial for manslaughter and made a number of recommendations intended to prevent this sort of accident in the future.¹¹

The fact that overseas visitors continue to appear in Queensland hospitals for treatment of scuba diving and snorkelling related injuries means that industry and government advice is not translating into prevention.¹² A state-wide audit and assessment of scuba diving and snorkelling injuries by tourists is required if we are to fully understand the ongoing problems in this area of recreation.

Surfing

International tourists continue to be a group who experience difficulties in the surf. In his national review, Mackie¹³ reports that 88 tourists from 12 countries drowned in Australia during 1992-1997. Mackie's analysis shows that 61% of these tourists drowned at surfing beaches or elsewhere in the "ocean", while a further 24% drowned while scuba diving or snorkelling.

An excellent review by Brett Charrington¹⁴ has already appeared in Plaintiff dealing with the common law in relation to surf and beach litigation. More recently Fitzgerald and Harrison¹⁵ have also reviewed the law of the surf. They note that in the case of *Prast v Cottlesloe* (2000) 22 WAR 474 the court found that “The risk of so being dumped is inherent in body surfing itself, cannot be avoided as is well known” [at 32, per Ipp J]. While this familiarity with the surf can be assumed for Australians, the question arises as to whether international tourists can also be expected to understand and respond appropriately to what for many is clearly an unfamiliar recreational activity.

In *Enright v Coolum Resort Pty Ltd & Anors* [2002] QSC 394 the court dismissed a AUS\$120 million civil action for compensation claimed by the widow of a United States tourist who drowned on an Australian beach during 1993. Maureen Enright, of Connecticut, sued the Hyatt Coolum Resort where her husband Robert was staying, and the Maroochy Shire Council, which controlled the beach where he drowned. As noted by Justice Moynihan, the defendants were under an obligation to exercise a reasonable care to protect the deceased from the reasonably foreseeable consequences of the risks of water-based recreational activities in general, and of surfing at Yaroomba Beach in particular.

However, His Honour noted that on the question of imposing a duty of care and in determining whether the duty had been breached the common law recognises the importance of autonomy and responsibility. In this case the deceased had a background of participation in water sports. The Hyatt Coolum had also developed a range of risk management initiatives to guide and assist their customers in relation to swimming and surfing (brochure information, facilities at a private beach resort that was patrolled by a lifeguard, a shuttle service to the private beach) though the deceased had not accessed any of the available services or information.¹⁶

The decision in the Enright case is very important to the Australian tourism industry and for local councils at a time when research shows that drowning remains a leading cause of accidental death among international visitors to Australia (Table 1). American and English tourists are the visitors most frequently involved in drowning fatalities, despite the efforts of government and surf lifesavers to encourage visitors to swim between flags in patrolled areas of the beach.

Road Safety

Having raised the point about American and English tourists being most frequently involved in drownings, it is worth noting that as visitor groups they also feature prominently in road crashes. Table 4 shows that German and New Zealand tourists lead in road crash involvement, followed by English and American visitors.¹⁷ The table also shows that a focus only on deaths can be misleading, since many accidents result in other outcomes, such as inpatient

admission to hospital, medical treatment as an outpatient, first aid for minor injuries at the site of the crash, or no injuries but at least some property damage to the vehicle.

Table 4. Queensland road crashes involving international drivers by severity of crash: 1993-1998

International Group	Fatal	Hospitalisation	Medical Treatment	Minor Injury	Property Damage	Total
German	3	20	24	15	75	137
New Zealand	1	12	23	14	59	109
English	3	24	19	13	42	101
American	2	17	26	9	45	99
Japanese	3	18	13	6	33	73
Swiss	1	7	10	5	48	71
French	0	5	2	1	12	20
Italian	1	2	1	0	8	12

A number of studies are now available to show that road crashes involving international drivers are less likely to be a product of risk-taking *per se*, but rather a lack of familiarity with Australian driving conditions. For example, alcohol and speed are less likely to be factors in the serious casualty crashes involving international drivers, compared with those involving Australian drivers.⁶ In contrast, international drivers are often over-represented in serious crashes involving driver fatigue, 'failure to keep left', 'head-on' collisions and 'overturning'. Indeed, drivers from right-side of the road driving countries are significantly more likely than those from left-side of the road driving jurisdictions to be involved in head-on crashes. It appears that the automatic reaction to return to the 'familiar' side of the road in a panic situation may explain this finding.

In summary then, international visitor injuries appear to be largely linked to their participation in unfamiliar activities. In terms of recreation, this may involve driving long distances in unfamiliar vehicles and under very unfamiliar road and weather conditions. Some adventure tourism activities can also be identified in injury profiles, especially recreation associated with water sports.

Dangerous Recreational Activities

Government reactions to the recent insurance crisis have resulted in several states either announcing or introducing laws that designed to limit liability for one or more of obvious risks, inherent risks, dangerous recreational activities and permit liability waivers.¹⁸ The Commonwealth has, for similar reasons, recently amended the Trade Practices Act 1974 to enable providers of recreational services to contract out of the implied warranties of suitability for purpose under the Act.

Queensland, New South Wales, Western Australia and Tasmania have each specifically legislated to limit liability for materialisation of 'obvious risks' in 'dangerous recreational activities'. For example, s. 19(1) of the new Queensland Civil Liability Act 2003 provides that:

A person (defendant) is not liable in negligence for personal injury suffered by another person (plaintiff) as a result of the materialisation of an obvious risk of a dangerous recreational activity engaged in by the plaintiff.

The definition of 'dangerous recreational activity' is very broad, but it is the definition of 'obvious risk' that raises questions in the case of international tourists. An obvious risk is one that would have been obvious to a reasonable person; it includes risks that are a matter of common knowledge; a risk can be obvious even though it has a low probability of occurring; and finally, a risk can be obvious even if it is not prominent, conspicuous or physically observable. Moreover, an injured person is presumed to be aware of obvious risks.

Given the empirical evidence that most international tourists are injured while participating in what are, to them, unfamiliar activities then this provision appears excessively onerous. For example, few hire car companies take the time to familiarise tourists with a vehicle or their route at the time of hiring. Yet motor vehicle crashes are the leading cause of injury death for tourists worldwide. Perhaps this issue has not been highlighted in the past because most injured tourists don't sue. Hurt, upset and perhaps believing that they were at least partly to blame because of language barriers or not understanding instructions many tourists go home without seeking compensation for the negligent acts of others. Once they are home issues of cost, jurisdiction, language, lack of adequate legal advice on Australian law and inconvenience all prevent or preclude them from seeking redress.

Since the recent wave of legislative reform in this area the law itself will now provide an additional impediment to injured tourists seeking compensation for injuries. The change in the liability landscape, coupled with the increasing cost of liability insurance, will each effect changes to the way many tourism operators perceive and react to risk.

Risk Management

Until recently the tourism industry relied heavily on insurance as their main protection against risk. Insurance was used to Transfer risk (see Figure 1) in circumstances where risk occurred infrequently, but the consequences were severe (for example, the serious injury or death of a customer).¹⁹ Where risk was infrequent and not severe, operators generally Retained risk (self insured); and

when risk was frequent and severe the most practical option was to Avoid it (for example, cancel an activity). Since the terrorist attacks in the United States on 11 September 2001, and the global insurance crisis, there has been a strong move toward the Reduction of risk through 'best practice' initiatives such as written policies and procedures, staff training, signage, visitor and customer briefings, and monitoring of industry standards.²⁰

To a large extent this beneficial outcome has been the result of increased premiums and a tighter insurance market, both of which have increased the concern that operators have about their exposure to liability risks. It will be interesting to see whether this trend continues now that the liability regime has been watered down. Paradoxically, recent reforms designed to increase the availability of insurance (by making liability insurance more attractive to insurers) may encourage some operators to now eschew insurance entirely.

Figure 1. The Risk Evaluation Matrix

FREQUENCY	HIGH	REDUCE RISK	AVOID RISK	HIGH
	LOW	RETAIN RISK	TRANSFER RISK	
		SEVERITY		

A good risk management program should:

- Identify areas of risk;
- Understand the causes and consequences;
- Take steps to prevent risks;
- Deal with incidents when they actually occur;
- Work with the media and government agencies.⁴

Most businesses in tourism do not consciously adopt risk management strategies, at least not in a systematic way.²¹ They are concerned about the welfare of their customers, and in the success of their businesses. But their risk management is a rather haphazard undertaking. It is not hard to identify areas of risk for tourists, as Tables 2-4 show. However, the second step in understanding the causes and consequences must acknowledge that international tourists get

into trouble through participating in unfamiliar recreational activities. Our laws should accommodate the fact that what is obvious to a local, is not necessarily obvious or familiar to a visitor.

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References

1. World Tourism Organization. Travellers' health abroad. Madrid: World Tourism Organization, 1991.
2. Travel Industry Association of America. The adventure travel report, 1997. Washington, D.C.: Travel Industry Association of America, 1998.
3. Bentley, T., Meyer, D., Page, S. & Chalmers, D. Recreational tourism injuries among visitors to New Zealand: an exploratory analysis using hospital discharge data. *Tourism Management*, 2001, Vol 22, pp. 373-81.
4. Wilks, J., Pendergast, D. & Wood M. Accidental deaths of overseas visitors in Australia: 1997-2000. *Journal of Hospitality and Tourism Management*, 2003, Vol 10, pp. 79-89.
5. Wilks, J. & Coory, M. Overseas visitor injuries in Queensland hospitals: 1996-2000. *Journal of Tourism Studies*, 2002, Vol 13, pp. 2-8.
6. Wilks, J., Watson, B. & Hansen, J. International drivers and road safety in Queensland, Australia. *Journal of Tourism Studies*, 2000, vol. 11, pp. 36-43.
7. Victorian Tourism Operators Association. Insurance costs - why are they escalating? *Tourism News*, 2001, Vol. 15(6), p. 2.
8. Wilks J. Scuba diving and snorkelling safety on Australia's Great Barrier Reef'. *Journal of Travel Medicine*, 2000, Vol. 7, pp. 283-9.
9. Diving Industry Taskforce. Review of Workplace Health and Safety Arrangements for Recreational Diving and Snorkelling. Final Report to the Minister for Employment, Training and Industrial Relations. Brisbane: Queensland Workplace Health and Safety Board, 1999.
10. Queensland Government Workplace Health and Safety. Industry Code of Practice for Compressed Air Recreational Diving and Recreational Snorkelling. Brisbane: Division of Workplace Health and Safety, 2000.

11. Nunan SM, Coroner, Findings of Inquest into the Cause and Circumstances of Disappearance of Thomas and Eileen Lonergan, Cairns, 9 October 1998.
12. Wilks, J., Coory, M. & Pendergast, D. Tourists still getting the Bends. *Tourism in Marine Environments*, 2003, Vol 1, in press.
13. Mackie, I.J. Patterns of Drowning in Australia, 1992-1997. *Medical Journal of Australia*, 1999, Vol. 171, pp. 587-590.
14. Charrington, B. Surf related litigation: keeping your case between the flags. *Plaintiff*, 2002, Vol. 53, pp. 6-14.
15. Fitzgerald, B. & Harrison, J. Law of the surf. *Australian Law Journal*, 2003, Vol. 77, pp. 109-116.
16. Wilks, J. & Davis, R. Duty of care to resort guest who drowned. ***International Travel Law Journal*, 2003, 4**, in press.
17. Wilks, J. & Watson, B. Assisting 'at risk' tourist road users in Australia. *Travel Medicine International*, 2000, Vol. 18, pp. 88-93.
18. See for example: Civil Liability Act 2002 NSW; Civil Liability Act 2003 Qld; s.27 Law Reform Bill SA and Recreational Services (Limitation of Liability) Act 2002 SA; Civil Liability Act 2002 WA and Civil Liability Amendment Bill; Civil Liability Act 2002 Tas; Civil Law (Wrongs) Act 2002 ACT and Civil Law (Wrongs) Amendment Bill 2003 ACT; Consumer Affairs and Fair Trading Amendment Act 2003 NT.
19. Wilks, J. & Davis, R.J. Risk Management for scuba diving operators on Australia's Great Barrier Reef. *Tourism Management*, 2000, Vol. 21, pp. 591-9.
20. Department of Industry Tourism and Resources. The 10 year plan for tourism. A discussion paper, Canberra: Department of Industry Tourism and Resources, 2002
21. Victorian Tourism Operators Association. Risk management guidance material. Melbourne, VTOA, 2002.

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