

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 article 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* recreational injuries



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INTERNATIONAL TOURISTS AND RECREATION IN AUSTRALIA

Each year Australia hosts over four million international visitors who on average stay 27 nights and spend \$2549. International visitors mostly come from 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, such as wildlife and beaches.

According to the Australian Tourist Commission, 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 increasingly 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'.

As well as our international visitors, there are large numbers of Australians moving around the country as inter- and intrastate tourists.

This article does not examine domestic tourism, but it is important to note that domestic travel within Australia constitutes 76% of national tourism revenue. However, injury profiles comparing the two groups show that international visitors are much more likely than Australians to be hurt while participating in unfamiliar activities and being in unfamiliar environments. This stands to reason, but it is often overlooked in the development of prevention initiatives.

ADVENTURE TRAVEL

Adventure travel is one of the fastest growing areas of tourism. 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 participation rates and popularity according to destination. They also vary in their injury potential. For example, researchers reported that about 19% of all overseas visitor injuries in New Zealand involve recreational/adventure activities. This corresponds to 8.4 injuries per 100,000 overseas visitor arrivals.³

The researchers concluded that activities with a lower 'perceived risk' but a relatively high 'actual risk', such as horse riding and cycle tours, should be the focus of industry attention to improve safety standards for participants. Interestingly, horse riding and biking are listed in Table 1 as 'soft' adventure.

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), Dr Jeff Wilks and his colleagues⁴ profiled fatal injuries for all overseas visitors to Australia between 1997 and 2000. In that time there were over 17 million visitor arrivals 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%) and accidental drowning/submersion (4%). Males were more frequently involved in all forms of accidental death.

TABLE 1: HARD AND SOFT ADVENTURE ACTIVITIES

Hard Adventure	Soft Adventure
Backpacking across rugged terrain	Camping
Whitewater rafting or kayaking	Biking
Hot air ballooning	Hiking on gradually changing terrain
Rock climbing or mountain climbing	Bird watching or animal watching
Off-road biking or mountain biking	Sailing
Hang gliding, parasailing or windsurfing	Horseback riding
Parachuting or skydiving	Snow skiing
Skateboarding or snowboarding	Canoeing
Roller hockey, bungee jumping or other extreme sports	Visit to a cattle or dude ranch
Spelunking or cave exploring	Wilderness tours in off-road vehicles.
Snorkelling or scuba diving	
Survival games like paint ball	

TABLE 2: NUMBER OF OVERSEAS VISITOR DEATHS BY TYPE OF ACCIDENT, AUSTRALIA 1997-2000

Accident Type	Males	Females	Persons
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
Total accidents	218	89	307

* In line with ABS policy, this table cannot show gender figures where indicated for reasons of confidentiality.

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

The largest number of accidental drownings involved swimming at surf beaches (18), or tidal rivers, harbours and bays (12). 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).

“Our laws should accommodate the fact that what is obvious to a local is not necessarily obvious or familiar to a visitor.”

In the accidental falls group, deaths were related to a wide range of falls from buildings, cliffs, stairs, trees, skis and roller blades.

Accidental poisoning usually involved psychodysleptics and narcotics. Figures are not provided because of the small number of deaths in specific categories and for reasons of confidentiality.

Water and air transport accidents most frequently involved carrier collisions.

In the ‘all other accidents’ category, the causes of death include fire, electrocution, choking, striking against another person (that is hitting someone else or someone else hitting them), being struck by an object, travel and motion, and air pressure injuries, such as barotrauma.

TABLE 3: TYPE OF INJURY-RELATED INCIDENTS FOR OVERSEAS VISITORS ADMITTED TO QUEENSLAND HOSPITALS, 1995/96 – 1999/2000

Type of injury-related incident	Number (%) of 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)

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

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

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 Queensland motor vehicle accidents involving overseas visitors.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.

Other injuries that appear to be related to adventure activities include near drowning (81 cases) and watercraft accidents (79 cases).

WATER SAFETY

Scuba Diving and Snorkelling

Reviews over the past 10 years have highlighted the prominence of scuba diving accidents compared to all other injuries involving overseas visitors in Queensland.⁸

The state government's Division of Workplace Health and Safety has been extremely active in this area, providing legislative frameworks, education, guid-

ance and training to marine tourism operators.

The report by the Diving Industry Taskforce⁹ provides a very good overview 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 detailed advice about ways to manage exposure to risks identified as typical when conducting diving and snorkelling activities. The advice includes:

- Ensuring no person is 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.
- 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 Great Barrier Reef off Port Douglas on 25 November 1998. The charter operator did not report their disappearance until two-and-a-half days later, a delay that proved fatal when the subsequent search found no trace of their bodies.

At the inquest into the Lonergan deaths 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.

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.¹¹

A state-wide audit and assessment of scuba diving and snorkelling injuries 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. Between 1992 and 1997, 88 tourists from 12 countries drowned in Australia.¹² Of these, 61% drowned at surfing beaches or elsewhere in the ocean. A further 24% drowned while scuba diving or snorkelling.

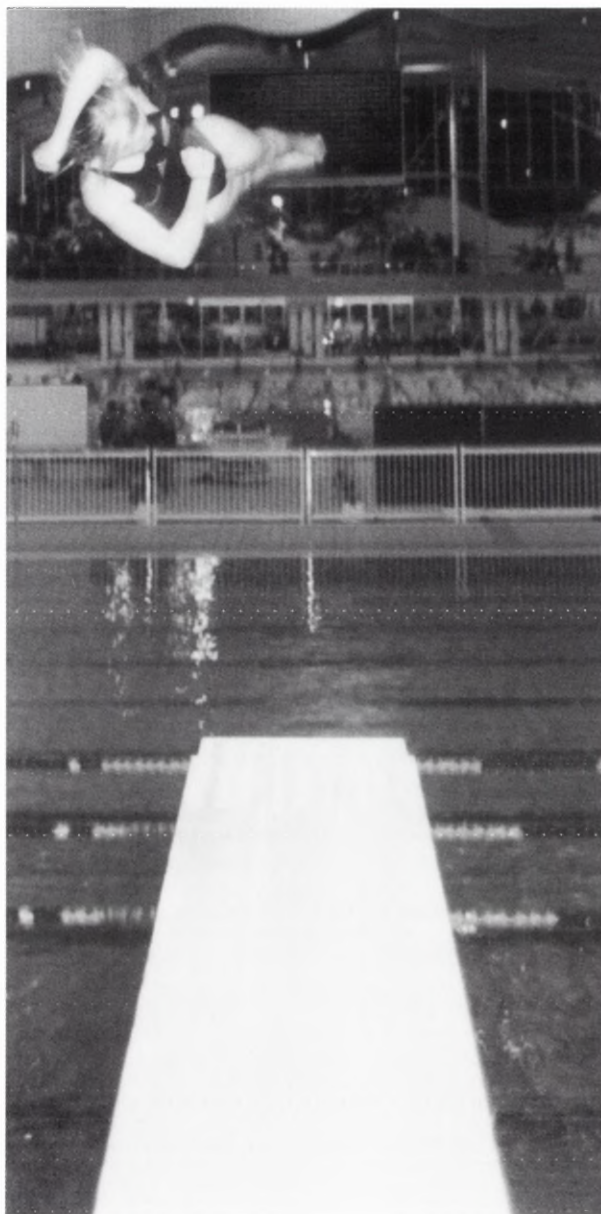
In *Prast v Cottesloe*¹³, the court found that 'the risk of so being dumped is inherent in body surfing itself, cannot be avoided and is well known'.¹⁴ While this familiarity with the surf can be assumed for Australians, the question arises as to whether international tourists can also be expected to understand and respond appropriately to what for many is clearly an unfamiliar recreational activity.

In *Enright v Coolum Resort Pty Ltd & Anors*¹⁵, the court dismissed a \$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 Moynihan J, the defendants were under an obligation to exercise 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



"Issues of cost, jurisdiction, language, lack of adequate legal advice on Australian law and inconvenience all prevent or preclude injured tourists from seeking redress."

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. These included brochure information, a private beach that was patrolled by a lifeguard, and a shuttle service to the private beach. The deceased had not accessed any of the available services or information.¹⁶

The decision in *Enright* 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.

American and English tourists are the visitors most frequently involved in drowning fatalities, despite the efforts of government and surf life-savers to encourage visitors to swim between flags in patrolled areas of the beach.

ROAD SAFETY

German and New Zealand tourists are most frequently involved in road crashes, followed by English and American visitors.¹⁷ Table 4 shows that a focus only on deaths can be misleading, since many accidents result in other outcomes.

A number of studies 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 factors in serious casualty crashes involving international drivers than those involving Australian drivers.¹⁸

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

In contrast, international drivers are often over-represented in serious crashes involving driver fatigue, failure to 'keep left', head-on collisions and over-turning. Indeed, drivers from right-side road driving countries are much more likely than those from left-side road driving jurisdictions to be involved in head-on crashes. The automatic reaction to return to the familiar side of the road in a panic situation may explain this finding.

In summary, international visitor injuries appear to be linked to their participation in unfamiliar activities. In terms of recreation, this may involve driving long distances in unfamiliar vehicles and under unfamiliar road and weather conditions.

DANGEROUS RECREATIONAL ACTIVITIES

Government reactions to the recent insurance 'crisis' have resulted in several states either announcing or introducing laws that are designed to limit liability for one or more of obvious risks, inherent risks, dangerous recreational activities and permit liability waivers.¹⁹

For similar reasons, the Commonwealth 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, section 19(1) of the new Queensland Civil Liability Act 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 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, 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.

"Many diving injury prevention initiatives can be directly linked to the case of American scuba divers, Thomas and Eileen Lonergan."

Due to 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 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 in circumstances where risk occurred infrequently, but the consequences were severe, such as the serious injury or death of a customer.²⁰

Where risk was infrequent and not severe, operators generally retained the risk (that is they self-insured against it). When risk was frequent and severe the most practical option was to avoid it.

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.²¹

To a large extent, this beneficial outcome has been the result of increased premiums and a tighter insurance market, both of which have increased operators' concerns 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 eschew insurance altogether.


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.²²

Most tourism businesses do not consciously adopt risk management strategies – at least not in any systematic way. While they are concerned about the welfare of their customers and the success of their businesses, 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.

Acknowledgment

The authors would like to thank Carmen Smith from Tourism Queensland for assistance with tourism industry information. 

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