TOURISM AND AQUATIC SAFETY: NO LIFEGUARD ON DUTY—SWIM AT YOUR OWN RISK

JEFF WILKS

Griffith Health Institute for the Development of Education and Scholarship,
Griffith University, Logan Campus, QLD, Australia

The law requires a tourism operator to undertake due diligence in relation to reasonably foreseeable risks. In the marine environment it is now well established that international tourists are a particular “at risk” group for drowning and near drowning events due to factors such as poor swimming ability, unfamiliarity with aquatic environments and marine recreational activities, language, possible alcohol and drug use, and general disorientation. The employment of lifeguards is increasingly recognized as an appropriate risk management and quality service response, as other popular injury prevention initiatives may not be as successful with tourists. This article examines the law and practice relating to the supply of lifeguards in tourist settings, suggesting that quality customer service has moved beyond reliance on static safety signage.

Key words: Lifeguards; Tourism; Legal responsibilities; Risk management; Water safety

Introduction

The terms “lifesaver” and “lifeguard” are used around the world to describe individuals with special training stationed to prevent accidents and to respond to life-threatening emergencies in the aquatic environment. Often the two terms are used interchangeably and in most cases the general public are not aware of any distinction (Newspoll, 2009). However, for legal reasons it is important to note that generally a “lifesaver,” at least in jurisdictions like Australia, refers to a volunteer whereas a “lifeguard” is someone employed to provide aquatic safety services.

Lifeguards are often employed by local government councils and by companies running tourism and leisure businesses, including theme parks, cruise ships, hotels, and resorts. They provide supervision in open water environments (the ocean, surf beaches), lakes, lagoons, rivers, and swimming pools. In a widely cited statistic the United States Lifesaving Association (USLA) reports that the chance of drowning at a beach protected by lifeguards is estimated to be less than one in 18 million (Branche & Stewart, 2001). The vast majority of drowning events each year occur at unguarded locations (USLA, 2016). Expert opinion is that most drowning cases are preventable through a variety of

strategies, one of which is to provide lifeguards in public areas where people are known to swim and to encourage swimming in those protected areas (International Life Saving Federation [ILS], 2015).

This review first considers the vulnerability of tourists in aquatic settings and the need for them to receive additional assistance and supervision, both as a legal responsibility for tour operators and as a quality service for customers. Signage is then discussed, because the widespread use of a “No Lifeguard on Duty, Swim at Your Own Risk” notice is a common way of warning the public they must take responsibility for themselves around water. However, evidence suggests that by itself this practice does not adequately discharge all legal duty of care and quality customer care responsibilities for tourism operators. The review then examines the role of lifeguards: their training, qualifications, and service activities. A case study from Fiji is offered to demonstrate the value of lifeguards in a tourist resort setting. The review concludes that static signage by itself is not enough and the employment of lifeguards has many benefits in keeping tourists safe around water.

Tourists and Water Safety

Drowning is a leading cause of tourist deaths worldwide (Leggat & Wilks, 2013). Contributing factors may include poor swimming ability, being in an unfamiliar environment and participating in unfamiliar activities, preexisting medical conditions, especially cardiovascular, and risky holiday behaviors (Wilks, Dawes, Pendergast, & Williamson, 2005). An unfamiliar environment and unfamiliar activities such as body surfing at an ocean beach can be further compounded by language barriers where a visitor may not be able to read signs only presented in the local language or to follow directions from a lifeguard (Wilks, 2005). Overall, in the marine environment international visitors have been recognized as an “at risk” group (Australian Water Safety Council, 2004) requiring additional assistance from tourism operators at the destination.

From their extensive review of water safety and drowning prevention, Cortés, Hargarten, and Hennes (2006) recommend that travelers should always swim in areas supervised by a lifeguard as the presence of lifeguards increases favorable

outcomes should a submersion injury occur. They also recommend that travelers should choose to stay in hotels that provide lifeguard supervision and inquire about the possibility of hiring lifeguards for a large group or party situation. The reason for this is anecdotal evidence suggests that in large-group party settings, with multiple adults and children swimming and playing around water, children may be at increased risk because oftentimes, no one adult is appointed supervisory responsibilities. Lack of appropriate supervision is a persistent risk factor in most child drowning incidents (Moran, 2009) with tourism settings, in particular, full of additional distractions (gCaptain, 2013).

Lack of supervision was highlighted in an innovative study by McKay, Brander, and Goff (2014) who investigated the relationships between coastal tourist parks in New South Wales (NSW), Australia and the hazard rating and extent of lifeguard patrols of their nearest surf beach. They found that the vast majority (91%) of NSW coastal tourist parks are closest to surf beaches rated as hazardous to swimmers. Of these beaches, 35% are completely unpatrolled by lifeguards while another 61% are only partially patrolled (<25% per year). These findings raise important questions regarding the provision of lifeguarding services on these beaches, the availability and dissemination of beach safety material, and the legal duty of care of tourist park operators.

Of particular concern is the risk of tourists being caught in rip currents at unpatrolled beaches. Rip currents are strong, narrow offshore flows of water that occur on many of the world’s beaches and represent a serious hazard to swimmers. Brander and his colleagues (Brander, Dominey-Howes, Champion, Del Vecchio, & Brighton, 2013) reported that in Australia rip currents account for an average of 21 confirmed human fatalities per year—more on average than bushfires, floods, and cyclones combined. They are also the main cause of lifesaver and lifeguard rescues (Brighton, Sherker, Brander, Thompson, & Bradstreet, 2013). Several studies confirm that international tourists are at particular risk in this area—being unable to recognize a rip and when shown a color photograph of a beach that includes a rip they nominate the rip area as the place they would choose to swim (Ballantyne, Carr, & Hughes, 2005; Williamson, Hatfield, Sherker, Brander, & Hayend, 2012).

Although public media campaigns about beach and water safety may be effective for local residents (Hatfield, Williamson, Sherker, Brander, & Hayen, 2012), international tourists in “holiday mode” are less likely to be reached by television, brochures, or even social media (Wilks, Kanasa, & Pendergast, 2015) so lifeguard supervision at the water is a critical component of injury prevention.

Legal Duties for Tourism Operators

Tourism operators, like other businesses, must comply with local legislation and this will vary across jurisdictions. Two examples are offered to demonstrate this for lifeguard services. In *Roberts v Iberotravel Limited* the plaintiff Kevin Roberts, aged six at the time of the incident, suffered a near drowning event while on holiday with his family in Majorca. Kevin was found floating unconscious in the swimming pool and was carried by another guest to the hotel reception. Even though there were many guests at the pool when the incident occurred, none offered to help. Kevin sustained catastrophic brain damage. Under Spanish law the hotel had a responsibility to provide pool attendants who could swim and were trained in life saving and the practice of artificial respiration in cases of asphyxia from immersion in water. His Honor Justice Gibbs found:

There is no evidence that any staff or other person connected with the hotel and who was in any way trained in lifesaving or resuscitation responded to the emergency. . . . In short there was, as I find, a complete absence of any significant staff, equipment or procedure to deal with any drowning emergency.

His Honor found the hotel negligent both in relation to Kevin’s immersion and their failure to resuscitate.

In Hong Kong, Chapter 132 CA of the Swimming Pools Regulation, Section 12 “Life Saving and First Aid Attendants” provides that:

Every licensee of a swimming pool shall cause to be in attendance at the pool, at all times during which such pool is open to bathers, not less than 2 lifesaving attendants possessing valid certificates of competency in life saving and first aid issued by an association approved by the Director for that

purpose and certifying a standard of competency not less than that of a holder of the pool lifeguard award of the Hong Kong Life Saving Society. (L.N. 39 of 2005)

What this means is that all public pools in Hong Kong must have two lifeguards on duty in order to remain open. According to the Food and Environment Hygiene Department there are 1,130 licensed private swimming pools in Hong Kong. They are all under the management of the private sector, including hotels, residential estates, club houses, youth centers, schools, and universities. In addition, there are a total of 41 gazetted public beaches and 43 public swimming pool complexes managed by the government’s Leisure and Cultural Services Department, all requiring lifeguards in attendance.

It is now well established in law that those in charge of beaches owe a duty of care to swimmers using beaches under their control (Williams, 2008). Usually local councils have this responsibility for beaches as a “public space” but hotels and resorts can also become involved through a duty of care owed to their guests. In *Enright v Hyatt Cooloom Resort* an American businessman drowned at an unpatrolled Australian beach while a guest of the resort. His widow sued the resort and the local government council that had control of the beach. The court systematically reviewed the risk management mechanisms the resort had in place to prevent a drowning incident. Justice Moynihan found that it was reasonably foreseeable that someone might swim in the surf and drown on an unpatrolled beach, but that the facts in this case did not support a breach of the defendants’ duty of care as the resort had gone to considerable lengths to provide a safe swimming environment for its guests. One of these measures was the provision of a lifeguard at a private beach belonging to the resort. Unfortunately, the deceased swam outside the patrol hours and at the nearby unpatrolled public beach.

It is now not only “reasonably foreseeable” in law but an established fact that tourists on holidays will swim in pools and beaches outside designated opening times (Garcia, 2013; Wilks, 2008; Wilks et al., 2005) and that being on holidays in an unfamiliar environment they may need extra assistance in and around water. Knowing this, many government authorities, hotels, and resorts are now employing professional lifeguards. In the State of Queensland,

the Australian Lifeguard Service supplies salaried lifeguards to five lagoons and 77 beaches on behalf of 16 local government councils, one corporation, and nine state government departments.

In addition to safety, employing lifeguards provides a range of guest services for international hotels and resorts. For example, Walt Disney Parks and Resorts (2008) report that across its corporate group it trains more than 1,200 lifeguards a year. To gain a better understanding of lifeguard employment a search of job vacancies was conducted for this review, using the employment site Job Monkey (<http://www.jobmonkeyjobs.com/>) under the headings hotel/resort/lodging and lifeguard. The search revealed a range of leading hotel and resort brands currently offering positions, including the Wyndham Hotel Group, Hyatt Hotels and Resorts, Marriott International, Four Seasons Hotels and Resorts, Disney Parks and Resorts, and Fairmont Hotels & Resorts, to name a few.

An extract from one advertised position (Fairmont Hotels & Resorts, Jaipur, India, <http://www.jobmonkeyjobs.com/career/12134379/Lifeguard-Jaipur>) captures the intent of the lifeguard role in tourism and hospitality:

Lifeguards. At Fairmont Hotels & Resorts, ensuring the safety and wellbeing of our guests and visitors is an integral part of our operations. As a Lifeguard, your attentiveness and commitment to safe practices will facilitate enjoyable aquatic and waterside experiences for our guests.

Summary of Responsibilities

Reporting to the Security Manager, responsibilities and essential job functions include but are not limited to the following:

- Consistently offer professional, friendly and engaging service
- Welcome guests to the pool facility and ensure they have a safe and enjoyable experience
- Assist in the cleanliness and the daily upkeep of the pool area
- Guard and safeguard all guests/members using the pool facility
- Ensure guests are aware of all services and activities available at the pool
- Ensure that proper pool testing has taken place prior to guests using the facility
- Ensure all guests are registered prior to using the pool and are aware of the rules of the facility

- Provide a high level of guest satisfaction and safety through effective communication
- Follow departmental policies and procedures
- Follow all safety and sanitation policies
- Other duties as assigned

The Fairmont advertisement highlights the dual roles expected of the lifeguard in guest safety and in broader customer service. This is a consistent theme across the advertised lifeguard positions on the site reviewed and raises the question as to whether the common practice of merely placing a sign reading “No Lifeguard on Duty, Swim at Your Own Risk” adequately discharges all legal duty of care and quality customer care responsibilities?

Signage

“A sign, no matter how appropriate, is not an automatic, absolute and permanent panacea” writes Justice Ipp in the 2006 case of *Great Lakes Shire Council v Dederer*. In that case a young boy was injured jumping off a bridge that had clearly visible “No Diving” pictorial signs. Similarly, commenting on the near drowning of a 4-year-old boy on a Disney cruise ship maritime lawyer Jim Walker (2013) observed that “a ‘no lifeguard on duty’ sign does not legally exonerate a cruise line, or a hotel, or an amusement park. It simply raises the issue whether the sign was legally conspicuous enough to provide an effective warning to the parents.”

One of the difficulties of signage in tourism is that people on holidays in an unfamiliar environment often do not pay attention to signs (Brannstrom, Brown, Houser, Trimble, & Santos, 2015; Matthews, Andronaco, & Adams, 2014). In an inquest into the drowning deaths of three overseas visitors and one Australian on the Sunshine Coast of Queensland, Coroner Taylor (2004) noted:

Static warnings in the form of signs erected at frequently visited beach sites perform an important role in informing members of the public. However, the evidence establishes that they have only limited impact for two reasons: Firstly, and most importantly, because they are information sources of last resort and offer information at a time when anticipated enjoyment is likely to distract intending swimmers from serious contemplation of the subject of the message.

Secondly, these signs often appear with—and in the case of some signs—in much the same style as regulatory signs. In such cases the urgency of the message is likely to be lost if it is perceived as no more than just another regulatory prohibition such as by way of example, “No dogs allowed.”

I acknowledge and commend the considerable efforts devoted to establishing signage efficacy and adoption of a uniform standard. However, I recommend that further consideration be given to formulating a style of notice of life threatening dangers that is compelling by reason of prominence, clarity, and strength of message. Despite any improvements in style which may be able to be introduced, static signage remains an information source of last resort.

The view that static signage is an information source of last resort, or at least is not to be relied upon exclusively, is also shared by Surf Life Saving Australia (2007). The organization emphasizes the fact that the use of coastal safety signs, water safety signs, and beach safety flags “should not replace the need for proper safety education and instruction, or for training in accident prevention and the actions to be taken in the event of an emergency, or for the provision of lifeguards” (p. 70).

Lifeguard Training and Qualifications

Although there are some variations across jurisdictions, lifeguards are generally trained to a very high standard. Using the Australian Lifeguard Service (ALS) as an example, Table 1 shows the requirements for the Ocean Lifeguard role in Queensland. The codes relate to nationally recognized vocational education qualifications. Lifeguards must be 18 years

of age or over and demonstrate high levels of fitness, excellent rescue and people skills.

In addition, there is a fitness component that at all times the Ocean Lifeguard must be capable of completing an 800 m pool swim (completed in a pool no smaller than 25 m in length) in under 14 minutes. Further, a lifeguard must complete a Mission in less than 23 minutes on an ocean course, which involves a 400 m swim, 800 m run, 400 m rescue board paddle, and a second 800 m run. Finally, complete:

- A 100 m rescue tube rescue of a patient 100m out to sea and return, and
- A 200 m board rescue of a patient out at sea and return.

Recalling that rip currents are the main cause of lifeguard rescues (Brighton et al., 2013) and considering that rips can reach speeds of up to 1 m/s and quickly carry a swimmer considerable distances offshore into deeper water (Brander & Short, 2001) the fitness and stamina of ocean lifeguards is critical to their role.

Lifeguard Activities

Depending on their location lifeguards are called upon for a range of safety services. Using the Australian Lifeguard Service Queensland again as an example, Table 2 shows the range of actions performed.

Preventive actions include shark alarms (123), searches (39), and lost children (198), as well as actively moving bathers away from rip currents and back to swimming in the designated patrol zone between the red and yellow flags. First aid includes

Table 1
Qualifications and Minimum Requirements: Ocean Lifeguard

Surf Life Saving Bronze Medallion/Certificate II in Public Safety (Aquatic Rescue)
HLTAID003: Provide first aid
HLTAID007: Provide advanced resuscitation techniques
PUAEME004A: Provide emergency care for suspected spinal injury (spinal management or equivalent)
Silver Medallion Basic Beach Management (including components PUATAE002B, PUAOPE027A, BSBFLM312C)
Current motor car drivers license (provisional or higher)
Queensland marine license and a Queensland personal water craft (PWC) license
Hold or be able to obtain a Queensland Working with Children Blue Card

143 major wounds, 18 suspected spinal injuries, 51 fractures, 2,723 minor cuts/abrasions, 1,471 “other” such as treatment for heat stroke and severe sunburn.

First aid is an increasingly important responsibility for hotels and resorts (Wilks, 2013) and an area where lifeguards can offer valuable customer care. For example, Moran and Webber (2014) reported on 8,437 incidents where New Zealand lifeguards provided first aid to beachgoers. Most injuries treated were minor (82%), with about half being cuts and abrasions. Interestingly, 54% of injuries were sustained in the water but one third (32%) were attributed to land-based activities, particularly walking/running on the beach.

In a different environment Hunsucker and Davison (2011) analyzed 56,000 rescues from a lifeguarded waterpark. They found that 62% of the rescues during a typical season will be children younger than 12 years and 42% of the rescues will occur in 1.52 m (5 ft.) of water or less. They concluded that lifeguard training needs to emphasize that the shallow water has to be watched just as carefully as deep water and the need for strict parental supervision for children aged 12 years and younger in an aquatic environment.

Delivering Lifeguard Services

Although corporations like Disney and Club Med employ large numbers of in-house lifeguards, economies of scale suggest that smaller operations such as independent hotels and resorts, water parks, and providers of aquatic recreation, all of which have legal duties of care to their customers, might consider outsourcing lifeguard services.

In 2004 Surf Life Saving Queensland commissioned accounting and management firm Ernst & Young to provide a cost/benefit assessment of the provision of in-house professional lifeguard

services compared to outsourcing (Ernst & Young, 2004). The assessment was in response to serious issues facing lifeguard services in Australia, in particular media reports highlighting the high risk and potential liabilities of local government authorities and service providers associated with the supply of lifeguard services. The issues covered in the report are still very pertinent today.

Through stakeholder workshops, interviews with government officers, and industry representatives the project confirmed the benefits of outsourcing lifeguard services for some operations, especially in terms of:

Value for Money

- Service provider supplies all necessary equipment, as well as qualified staff
- Service provider takes responsibility for ongoing staff training, roistering, accreditation, and employment obligations for lifeguards
- Client gains extra staff with first aid, CPR and emergency management skills and equipment if required for incidents not directly related to the water environment

Quality

- Lifeguards will have consistent standards of accreditation and training, with certification from an internationally recognized water safety agency
- Client can draw on expertise for broader risk management planning, such as appropriate signage and identification of areas where client may be exposed to risk

Transfer of Risk

- Inclusion of lifeguards under the service provider’s insurance cover
- Freeing up client’s time and resources if the lifeguard service is externally managed
- Use of already developed and tested expertise, written manuals, policies, and procedures by outsourcing the lifeguard service.

Tourism and Hospitality Benefits
From a Lifeguard

As the Ernst & Young (2004) analysis shows, there are many benefits for hotels and resorts in employing lifeguards, in addition to their traditional sentinel and supervisory roles. In their workplace

Table 2
ALSQ Lifeguard Actions During
the 2014–2015 Season

Lives saved (rescues)	1,435
Resuscitations (CPR)	10
First aid treatments	12,458
Marine stings	5,756
Preventive actions	522,462

lifeguards have a responsibility for aquatic risk assessment and management, including signage review. Depending on their terms of employment they can also be responsible for compliance with industry guidelines and developing an emergency action plan. Examples of industry guidance are the Royal Life Saving Society-Australia (2007, loose leaf continuous updates) "Guidelines for Water Safety in Hotels, Motels, Camping and Caravan Grounds"; the Federation of Tour Operators (2007) "Preferred Code of Practice," and the more recent ABTA (2012) "Tourism Accommodation Health and Safety Technical Guide." Although each has no formal, legal, or regulatory status they nevertheless represent the best advice of expert personnel.

Even when they are not directly supervising guests in the water lifeguards are a valuable resource in first aid and emergency response for the property, as demonstrated by the following case study.

Outrigger on the Lagoon Fiji Resort

Van Den Enden (2009) provided some useful insights into resort lifeguard training in Fiji. He reported that following a major incident in 2003 where two guests from a neighboring resort drowned in the lagoon and two staff were hospitalized as a result of their rescue attempt, the Outrigger on the Lagoon Fiji Resort requested assistance from Surf Life Saving Australia. Two lifeguard training programs were provided. The initial program involved an aquatic safety and risk management assessment (including signage), staff training, and advice on lifesaving and rescue equipment. In the months following the initial training program 20 guests were rescued, of which 18 belonged to nearby resorts.

During the second program a holistic approach to water safety and first aid was implemented. This saw the integration of security staff and bar staff into the training as first responders, especially at night, and increased total coverage of the resorts' aquatic areas, child care center, rooms, and gym. Following the training, staff reported they had successfully treated a variety of injuries, including first response to a serious car accident outside the resort.

At the completion of the second program the resort had 13 staff from Activities and Security

qualified at the Surf Rescue Certificate and/or Bronze Medallion level, 5 Rescue Water Craft operators, 4 Silver Medallion Patrol Captains, and 30 staff qualified in first aid. The development of skills, especially in first aid, benefitted all areas of the resort and extended into the wider local community. (Wilks, 2010)

Conclusion

The common practice of placing a sign reading "No Lifeguard on Duty, Swim at Your Own Risk" at unsupervised water sites will continue because, in many cases, it will be argued by those in control of the site that it is a reasonable measure under the circumstances. If so, this decision should take into account:

A consideration of the magnitude of the risk and degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the defendant may have. (per Justice Mason in *Wyong Shire Council v Shirt*)

In the case of international tourists, the decision should take into consideration their recognized "at risk" status due to factors such as poor swimming ability, unfamiliarity with aquatic environments and marine recreational activities, language, possible alcohol and drug use, and general disorientation. The decision should also be made after a proper risk assessment and factoring in other considerations such as the value lifeguards bring to the guest experience, particularly the many subtle preventive actions of guards that ensure guests are assisted to stay safe.

This combination of both safety and quality service for guests is reflected in the advertisements for lifeguard employment by many international hotels and resorts. For example, a part-time lifeguard position advertised at Hong Kong Disneyland Resort is described as:

At the Hong Kong Disneyland Resort, dream jobs do exist. After all, a company built on:

imagination and wonder means the work will definitely be interesting. The job of Lifeguard Cast Members at the Hong Kong Disneyland Resort is

to ensure the well-being of our Guests, keep pool areas clean, answer Guest questions, and provide information and assistance. (<http://www.jobmonkeyjobs.com/career/13030984/Lifeguard-Part-Time-Hk-Disneyland-Lantau-Island>)

One of the difficulties in fully capturing the value of lifeguards for hotels and resorts is the lack of publicly available information on the job they do. Limited statistics on first aid treatments and rescues (lives saved) involving tourists/visitors provide some indication (Harada, Goto, & Nathanson, 2011), but they tend to be figures collected by government agencies or lifesaving associations and mostly relate to public beaches. It would be valuable to fully appreciate the range of preventive actions undertaken by lifeguards, actions that avoided rescues and injury in the first place, particularly in hotel and resort swimming pools and lagoons. Similarly, the range of positive guest services lifeguards provide in addition to their safety role. This information would greatly assist tourism operators should an accident occur, as it puts quality customer care in perspective.

In summary, hotels and resorts have legal and practical duties of care to their guests that clearly go well beyond putting up and relying on a sign saying “No Lifeguard on Duty: Swim at Your Own Risk” (Wilks, 2013; Wilks & Davis, 2003). Static signage is only one component in a comprehensive water safety program (Cantrill, 2008; ILS, 2015), with the employment of lifeguards increasingly recognized as a very appropriate risk management and quality service response.

Learning From the Past, Looking to the Future

The *8th International Congress on Coastal and Marine Tourism* confirmed that the marine environment is full of the color, excitement, and magic that makes for a wonderful tourism experience, especially for visitors enjoying new and novel activities in and around water. However, the sea, in particular, can be unforgiving and mistakes made around water are often serious or even fatal. The tourism industry does not like to talk about things going wrong, so risk management and visitor protection are difficult areas to work in as they seem to go against the “ethos” of tourism. This is not the case.

Going forward, we should see safety not as a negative but rather a key feature of quality customer service. Lifeguards employed to assist visitors and enhance their enjoyment in aquatic settings are a good example. By treating safety as an important element in genuine customer care we can add value to research and practice across a range of marine tourism experiences.

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Biographical Note

Jeff Wilks is Managing Director of Marine Tourism Australia, a company specializing in travel health, safety, and security. Dr. Wilks is a qualified lawyer, a health psychologist, and is Adjunct Professor of Health at Griffith University, Queensland, Australia. He has worked as a scuba diving instructor, has written extensively on marine safety, and serves as Co-Editor of the journal *Travel Law Quarterly*.

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