BALANCING TOURISM AND SAFETY: THE CASE OF JET SKIS

Jeff Wilks

In Issue 2 of the Travel Law Quarterly of 2010 jet ski accidents were examined. This article extends the discussion by examining the coronial recommendations stemming from the death of a British tourist in Queensland, Australia and the government’s response that attempts to balance tourism interests and safety in jet ski hire.

Following the death of British tourist Dr Sridhar Shekar in a jet ski accident on Queensland’s Gold Coast in 2008, Coroner Hutton put forward tough recommendations to improve the safety of Personal Watercraft (jet ski) hirers. The recommendations included:

- Licensing of hire and drive personal watercraft drivers
- Personal watercraft drivers to wear a helmet
- Annual covert audits of hire and drive personal watercraft providers
- Developing enforcement guidelines and facilitating information sharing between enforcement agencies

In response to Coroner Hutton’s recommendations Maritime Safety Queensland undertook an 11 week consultation process with stakeholders, analysed the safety record of the industry and made comparisons with risk in other adventure activities. All 26 providers of hire and drive personal watercraft currently operating in Queensland participated in the process and there were a total of 82 written submissions. Not surprisingly, the majority of stakeholders who responded during the consultation process did not support Coroner Hutton’s recommendations for compulsory licensing or jet ski drivers having to wear a helmet (see Table 1). Respondents were more likely to support the four regulatory options presented in the consultation paper as an alternative to mandatory licensing.

Table 1: Summary table of stakeholder feedback

<table>
<thead>
<tr>
<th>Coroner recommendation</th>
<th>Stakeholders in favour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensing</td>
<td>19%</td>
</tr>
<tr>
<td>1A. Regulatory options to licensing:</td>
<td></td>
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<tr>
<td>Assess driver skills and abilities with an approved competency standard</td>
<td>65%</td>
</tr>
<tr>
<td>Engine governors</td>
<td>65%</td>
</tr>
<tr>
<td>Safety management plans to comply with the national leisure craft section</td>
<td>78%</td>
</tr>
<tr>
<td>Set up personal watercraft areas</td>
<td>62%</td>
</tr>
<tr>
<td>Mandatory helmets</td>
<td>9%</td>
</tr>
<tr>
<td>Annual provider audits</td>
<td>79%</td>
</tr>
<tr>
<td>Publish enforcement guidelines</td>
<td>91%</td>
</tr>
</tbody>
</table>

2 Hutton, J. Inquest into the death of Sridhar Shekar, Coroners Court, Southport, Queensland, Australia, 11 March 2010.
At the conclusion of the consultation process Maritime Safety Queensland made the following recommendations (reported here verbatim):

1. Not require mandatory licensing of all hire and drive personal watercraft drivers but implement ALL of the following four regulatory options:
   - Providers to assess the skills and abilities of each rider to operate a hire and drive personal watercraft against an approved competency standard and record the competency of each rider on an approved competency assessment record
   - Providers’ safety management plans to comply with the requirements of the leisure craft section of the National Standard for Commercial Vessels – with the exception of operating restrictions outside smooth waters and age restrictions on pillion passengers (minimum pillion passenger age is 12 under the leisure craft section, but Maritime Safety Queensland recommends a minimum of 8 years of age consistent with motorcycle requirements).
   - Require all hire and drive personal watercraft to be fitted with a device to govern power to restrict maximum speed to 30 knots within two years. In the interim Maritime Safety Queensland will also gazette a 10 knot limit for hire and drive personal watercraft in high-traffic speed zones and periods.
   - Consult with local government partners and other stakeholders to investigate the need for more personal watercraft exclusive use areas similar to those implemented for hire and drive personal watercraft ‘pens’ on the Sunshine Coast.

2. Not make helmets a mandatory requirement for use of a personal watercraft.

3. Support the coroner’s recommendation for every personal watercraft hire and drive operation to be audited (including covert audits) using quality assurance methods at least once in every 12 months of operation.

4. Publish enforcement guidelines for enforcement agencies as well as information sharing.

The failure to fully adopt Coroner Hutton’s recommendations has been criticised, with suggestions the government is protecting this specialist niche of the tourism industry, which generates about AUS$21.8 million annually. Marine Infrastructure Minister Craig Wallace defended his decision not to impose mandatory licensing requirements but agreed that “… the Gold Coast’s tourism industry was in too bad a state to risk any more business closures or job losses”.

In particular, the consultation process revealed that introducing mandatory licensing in the neighbouring state of New South Wales had a significant economic impact on the industry. The youth and adventure tourism target markets would be especially threatened in Queensland.

In trying to balance the interests of tourism and safety the government argues that there are ways to achieve an equivalent level of safety other than requiring jet ski drivers to hold a mandatory licence. The first of these ways is to assess drivers against an approved competency standard – this includes providing a detailed briefing, demonstration and familiarisation. An important condition is that providers agree to terminate a hire during the assessment if the
driver fails to perform any of the required competencies to a satisfactory level. Similarly, an important element in the model safety management plan supplied by the government is the inclusion of a rule that one warning terminates the hire. This means that providers agree to terminate the hire if a driver intentionally or irresponsibly demonstrates unsafe operation of the jet ski, or does not demonstrate an understanding of the safety briefing. This last point is very important when dealing with international visitors where language barriers may prevent genuine understanding of a briefing and expose tourism operators to claims of negligence.

Since excessive speed is often found to contribute to jet ski accidents the dual initiative to restrict hired jet skis to a maximum speed of 30 knots through engine governors and introducing speed limits in designated activity zones appears to be a sound safety measure that does not significantly detract from the adventure tourism experience.

On the topic of helmets, Maritime Safety Queensland reports that it could not identify any country that presently mandates the use of helmets by personal watercraft riders. Medical and safety evidence considered during the consultation process suggested that helmet wearing by personal watercraft riders:

- Caused accelerated fatigue
- Reduced the rider’s ability to move their head in order to use peripheral vision, and
- Increased the risk of neck injury – particularly the likelihood of serious neck and spinal injuries.

On the basis of this evidence Maritime Safety Queensland decided not to make helmets a mandatory requirement for use of a personal watercraft.

Finally, Maritime Safety Queensland has supported the coroner’s recommendation that every personal watercraft hire and drive operation be audited (including covert audits) using quality assurance methods at least once in every 12 months of operation. Given that a 2010 state-wide audit (unannounced visits but not covert) uncovered serious non-conformance breaches by 26 of the 28 hire operators, this most recent commitment is critical if safety is to be genuinely improved.

The Queensland consultation process acknowledged that personal watercraft riding is an intrinsically high-risk activity. Between 1 January 2000 and 31 December 2009 there were 84 reported marine incidents involving hire and drive personal watercraft in the state, including one fatality and 19 serious injuries requiring hospital admission. Achieving a balance between tourism interests that offer a unique adventure-type activity and protecting the safety of first-time and inexperienced jet ski riders is a special challenge. The Queensland experience of adopting specific regulatory responses to a coroner’s recommendations may provide useful guidance to jet ski operators and government agencies in other jurisdictions. However, as Maritime Safety Queensland notes:

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"... if providers do not comply with these changes or the changes are not effective in improving the safety record of the industry then further consideration will need to be given to implementing the coroner’s recommendation that all hire and drive personal watercraft drivers be licensed".

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