

SENIOR CONSTABLE UPSTON

Q1 This is an electronically recorded interview between Senior Constable David Upston and Richard Fisher on Monday, the 15th of March, 1999, at Launceston CIB. The time on my watch is now 8.45. And also present, seated to my left is Detective Senior Constable Gray. Mr Fisher, as I explained to you earlier, Detective Senior Constable Gray and myself are making inquiries into the 1998 Sydney to Hobart Yacht Race. And we've been speaking to people either directly or indirectly involved in the race. Do you agree that we had a conversation in regards to that matter, over a period of time today?

A Yes, previously to recording this interview.

Q2 O.K. For the purpose of the interview, could you please give me your full name, date of birth and address please?

A Richard Daniel Fisher. 83 New World Avenue, Trevallyn in Tasmania. And my date of birth is the 2nd of September, 1967.

Q3 O.K. Could you please give me your occupation?

A I'm a licence surveyor in Tasmania.

Q4 O.K. And the reason why we've come to speak to you today, is that we've been given information that you were in fact a measurer on a, on a number of occasions for yachts that entered the 1998 Sydney to Hobart Yacht Race. Is that correct?

A Yeah, that's correct. I believe that there was only

one yacht that I measured that was in the Hobart race, in that year.

Q5 O.K. All right. So you only ever measured one yacht for the 1998 Sydney to Hobart Yacht Race?

A From memory, there were. I've measured a number of yachts.

Q6 Yes.

A But I don't believe that any of the others were, other than Business Post Naiad, were in the race.

Q7 O.K. So, you are in fact, a qualified yacht measurer?

A Yes, I believe so.

Q8 O.K. And how many times would you have measured yachts in the period of your employment as a surveyor?

A Just let me clarify, one minute there. I don't, I measure yachts as a, a pastime. Not under the guise as myself, as a, as a, a business surveyor if you like.

Q9 Right.

A It is, it's a hobby for me. It's something outside of work. So I don't do it as a work related thing. I believe I measured, at the order of eight to 12 boats for the, prior to the 50th Sydney to Hobart.

Q10 Yes.

A And there's probably been, of the order of, five, five or six more than that. But on and off, there's been a lot of little measurements and initial measurements that, that make up the whole.

Q11 O.K. And to obtain your qualifications as a, as a qualified surveyor, what did you do to get that

position?

A As a qualified surveyor?

Q12 Yes.

A I undertook a, a four year undergraduate degree at the University of Tasmania. And I undertook a, a further year of postgraduate study to gain first class honours in surveying. And further to that, to become a licensed surveyor, I undertook a prescribed period of, of practical surveying, about two years and then had to sit a series of examinations culminating in an oral exam in front of the, the Surveyors Board of Tasmania.

Q13 So, in fact, you, from, from, from that information, do you, you're fully qualified and, in fact, you've gained your qualifications with honours. Is that correct?

A That's correct. In, in, in surveying which I guess is measurement science.

Q14 O.K. How did you come to measure the vessel? I, I'll rephrase that. What was the name of the vessel that you, you measured for the 1998 Sydney to Hobart Yacht Race?

A I did a, undertook a partial measurement of Business Post Naiad.

Q15 O.K. And how did you come to actually measure the Naiad?

A At that particular time, or over the, a period of years?

Q16 Well over a, over a period of years

A I guess, initially, Bruce Guy contacted me and said,

"Look, I've bought this Far Forty", from, I'm not sure where. I gather it was the Swuzzlebubble 4 or 6, or some number.

Q17 Yes.

A "And I want to have it IMS rated". And, I think, it would have been back in about '94, or '95 or something like that.

Q18 Mm.

A When, when he initially contacted me, we knew that it, it had an IOR certificate, therefore the hull shape had to be measured, we knew that for a fact. And I think I contacted Tony Mooney at the AYF at that stage, and I also spoke to John Honeysett in Hobart, who is the, the Tasmanian senior measurer, to find out what initial measurements other than the hull had to be taken. There were some initial rig measurements and sail measurements, but a lot of that data, on the original IMS certificate, was transposed from the IOR certificate.

Q19 O.K. I'll show you a document that you, in fact, have produced for my perusal, but prior to going through the document, I'll just ask you a question in relation to these documents. And there's a series of documents here. I'll bring your attention to a, an IMS rating certificate. O.K?

A Yes, yep.

Q20 What can you tell me about the IMS rating certificate?

A The IMS rating certificate, in my understanding, is a

certificate that, that is used to compare that boat to other boats, for the purposes of fair handicapping.

Q21 O.K. And do you understand fully the term of a stability index?

A No. I'd have to say, no, I don't understand it fully. It, it really is just a number to me. And it's a number that I know, obviously, is related to, to the yacht's stability. But how that impacts on, on real life performance and so forth, no, I, I have to say, no, I don't understand it fully.

Q22 O.K. And do you understand the term, "calculated limited positive stability, limit of positive stability"?

A No. Again, I'd have to say I don't fully understand the term. I know, obviously, that it's on the certificate and I know that it relates to the other value that you've just discussed, but beyond that, it really is just a number to me, on the certificate.

Q23 O.K. So it would be fair to say that your position as a, as a measurer would not necessarily say that you are a naval architect and you'd need to know any, any information regarding that certificate?

A No, absolutely not, no. My understanding is that my main role is to just gather the data, that's in take, take the measurements and provide that information back to the AYF. I've, I've got no skills in naval architecture and, and, you know, don't, don't, certainly don't, don't profound to, to know anything

about it.

Q24 O.K.

A And I guess further to that is that, owners have asked me, well, "What if I change the propeller what's the effect going to be?". And on a number of occasions I've had to say to the owners, "I don't know". Straight out, as simple as that.

Q25 O.K.

A Crystal ball gazing, all I can do is measure the numbers and shoot that data off to Sydney.

Q26 All right. Prior to passing you the document, I'll just bring to your attention another document, within the series of, of, of pages. There seems to be a pro forma with some handwritten figures?

A Yes.

Q27 And the number on the top left hand side is a, a section of the yacht, a name of the yacht, which is Naiad. And in the right hand side is a column with 7115. What can you tell me about that form?

A Can I have a look at that?

Q28 And its association to the IMS certificate?

A This is a copy of the, the measurement pro forma data, that I collected on, on Naiad. This is what, the form that I filled information out on, the measurements that I've taken to send back to, back to Sydney. And I note that this, in fact, related to a measurement date of the 18th of September, '98. And a floatation date of the 18th, 18th of the 7th, '98. And the critical

comments on here, I believe, would be that I've said, "Boat re-inclined after removing internal ballast. Mast weighed, crew weight altered, headsail re-measure and a new spinnaker". So the headsails and the new spinnaker were measured at a separate time to measuring the inclinations.

Q29 O.K. So, it would be fair to say that there is a direct relationship between that form there, and the information that was transposed from that form, onto the stability, on information that will ultimately turn up with a stability rating?

A On the final certificate, yes, I believe so. I believe the, the process would be that someone at the AYF in Sydney would receive my measurement data, on the pro forma and I, I dare say they type it in the computer and re-issue a certificate.

Q30 O.K. Now, I'll also, I'll show you the document again, with the IMS rating certificate on the, on a yacht named Naiad.

A Yes.

Q31 Known also as Business Post Naiad. O.K. Now, we'll have a look here. I'll draw your attention to a date on this certificate where it says that the certificate is not valid after the 30th of the 6th, '99.

A Yes.

Q32 O.K.

A Yep.

Q33 And we'll look at down in this section here, the

stability index of 102.8?

A Yes.

Q34 And then I'll draw your attention to the calculated limit of positive stability, 104.7?

A Yes.

Q35 Now, are you aware of the categories that yachts race in, in the Sydney to Hobart Yacht Race?

A Not categories as such, I guess it's all, my understanding in terms of categories, I guess that's come out of the blue, the blue book we sail under, I believe that, that all, all races in the Sydney to Hobart is category 1.

Q36 O.K.

A That's my understanding.

Q37 Yes. That's, that's right. And is there a direct correlation between a category 1 race, and a, a limit of stability that you're aware of? Or a stability index?

A I'm not aware of it, of, of there actually being one. However I believe that after the 50th Sydney to Hobart, that the, the number that the boat had to reach at that stage, was 115. And I, I don't know officially since then, has it changed up or down. There was some talk, you know, that I've heard around the traps, that it, it may have gone down but I didn't know that officially, one way or the other.

Q38 O.K. Well, let me inform you that we know that there is a limit of the stability index of 115 degrees for

entrance into the Sydney to Hobart Yacht Race. Do you agree with that?

A Yes I, I now agree based on information that I've, that I've gained in the last three or four days.

Q39 O.K. So you've made inquiries yourself, and you now know that the limit of, the stability index into a category 1 race is 115 degrees.

A The, I haven't inquiries myself. I've had a discussion with Steve Walker, who I believe made inquiries of the CYC, who, and again, this is just what's been told to me, that the, for new boats it's 115, and for boats with an existing record of races of some description, it was 110.

Q40 O.K. So if, well, for your information that there is, there is two classes of racing. There's a PHS class -
- -

A Yes, O.K.

Q40 - - - which you are aware of?

A Yeah, I am aware of performance handicap and IMS.

Q41 O.K. And the PHS is a classification given to, like you said, performance handicap and it does have a stability index, I understand, of 110 degrees, which will allow a grandfathering effect, do you understand the terminology of grandfather?

A Yes, yes.

Q42 O.K. If a grandfathering, to bring it up to 115 degrees.

A Well, I wasn't aware that that was the case.

Q43 O.K.

A I, I assumed that, that, that the PHS and IMS were just methods of calculating the results rather than entry categories.

Q44 O.K.

A They're probably not, I assumed that someone could enter under the different categories.

Q45 All right.

A But - - -

Q46 Well, let me rephrase that. I slightly misled you there. It's where the vessels of a stability index of less than 115 degrees, and greater than 110 degrees, will be admitted to race - - -

A Right.

Q46 - - - under that category.

A Not - - -

Q47 And performance on the previous performance.

A Not under IMS.

Q48 Not under IMS.

A O.K. Yep.

Q49 Now, I'll also draw your attention now to a document in the series of documents that you produced earlier, which is dated, I'm just trying to draw your attention to two certificates.

A I, I believe they're dated the same dates.

Q50 Just bear with me for one moment. O.K. The, the second certificate, dated, not valid after the 30th of the 6th, '98, and it shows a stability index of 110

degrees, 110.3.

A Yes.

Q51 Right. And a calculated limit of positive stability of 112.9 degrees.

A Yes.

Q52 O.K. Obviously, there's an anomaly between those two for the same vessel?

A M'mm.

Q53 What I'd like to do now is just pass you these series of documents, and can you explain, in chronological order, why you've put them in - - -

A Why I've put them in - - -

Q53 - - - in that order and can you explain the rest of those documents to me?

A O.K. The documents that, that I've given you was a photocopy of the records that I had on file about the boat. And I put them in oldest to, to newest and there are a couple of additions to go into that, that I've located later down the track. The original, or the first piece of information there, was an old IOR certificate for the boat called Swuzzlebubble 6, I was right, which in fact became renamed as Business Post Naiad. So that was an IOR certificate from, from a previous owner. There are two pages to that. After that, the, is a, a hull, a hull measuring instrument log sheet that I completed, and this is actually my field log sheet. It was, I think it was rewritten before I sent it to the AYF, from when I,

from when I actually measured the boat with the hull measuring instrument for it. And that is taking sections down each side of the boat in order to determine the hull shape. The next sheet is the pro forma for the, the measurement of the propeller installation on the boat. The next sheet, dated the 4th of 10th, '95, is obviously a, a measurement sheet that I've handwritten on a, a mainsail measurement. And probably, the next, the next sheet is a fax from myself to Tony Mooney at the AYF. And I believe that probably took place prior to measuring the, measuring the hull of the boat and basically I've asked Tony Mooney, would you like me to read what it says?

A Yes.

Q54 "Tony, with regards to the measurement of the Far Forty Naiad, ex-Swuzzlebubble 6, the owner could only supply me with what would only be described as a poor quality copy of its IOR certificate, KA26858. Is there any chance of sending/faxing me a better copy of it so I can transfer the data to the IMS sheet. Many thanks, Richard. P.S. I don't think my freeboard", actually, this is interesting. That, that would indicate this was sent after I measured the hull shape.

Q55 Yes.

A "P.S, I don't think my freeboard hull measurement stations agree with the IOR ones. Is this O.K. or do I need to do new inclinations?". So, I think what actually occurred then was the freeboard and stability

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measurements were taken from the IOR certificate and transposed onto an IMS certificate. And, one of the other pieces of information that I've got, or other records that I've got, is actually the pro forma sent back from Tony Mooney to myself, with quite a bit of information written in red, that he's transposed himself from the IOR certificate. The next piece of paper, pardon me, is, I believe the, the updated IOR certificate that Tony Mooney has faxed back to me, a bit clearer to read. The next sheet is my pro forma that I filled out after, it would've been when, when I first, I beg your pardon. When, it was the pro forma with the data that I knew, transposed off the IOR certificate onto it. And the comment there is "New hull measurement. Inclinations from IOR. measurements from the IOR except for new main sail". So, obviously I've measured the hull shape and the main sail.

Q56 All right.

A Everything else has been transposed across from the IOR certificate.

Q57 O.K.

A The next is a fax from myself to Tony Mooney, dated the 26th of the 10th, '95. "Tony, I've managed to get to Naiad this morning. Have taken the following, hopefully final measurements." To, which there are mast measurements involved there.

Q58 Yes.

A And the weight of the main sail.

Q59 Yes.

A There's a little bit of other information there, but nothing of relevance. I guess the only thing of relevance here is that I've said to Tony, he needs a, "Bruce needs a certificate in a hurry because he's about to leave to do the Melbourne to Burnie race". The next sheet, dated the 11th of 3rd, '97, is a handwritten sheet by myself which is obviously a measurement of the new mainsail. The next sheet is my pro forma with that new main sail data written on it. Now, the next sheet, after that is dated the 18th of the 7th, '98. And is the, the piece of paper that I wrote the inclination test measurements on, on, before the last Sydney to Hobart. It's the 18th of the 7th, '98. And also the, the freeboard measurements I've written on to that piece of paper. And would you like me to bring to your attention now the, the additional measurements that I took at a later date?

Q60 Yes, yes, yes. They would

A The, the day that I measured Naiad, on the 18th of the 7th, '98, was ideal conditions and I measured the boat at Port Yacht Club, with Bruce Guy, Bruce Guy and myself and attendants. Wind virtually non-existent and wave conditions, literally dead flat. We did the in the boat checks first. We put a second spinnaker pole on the side of the boat and set up for the inclination test. Mounted the manometer on the stern

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of the boat and proceeded to do the inclining test, transferring the weights across by dinghy. We then we removed the, the second spinnaker pole from the boat, put the normal spinnaker pole back in its normal position and in the dinghy proceeded to, to go around and measure the, the freeboards of the boat. What will show out is that, we measured the aft, it's either starboard or port quarter first on one side. We went, and I've, and I've obviously written that down. Two of us were in the dinghy, chatting away, we've gone to the, the bow of the boat and I've measured one side and then the other. And I believe that I've kept them in my mind before sitting down and writing them in the, writing them on my pad. And then, because it's very easy to flip under the bow of the boat when measuring, and then we've gone to the to the, the aft, either starboard or port side, whichever was left, and measured that. And that was all that took place that day. And I also note on a bit of paper I've written "fixed lead weights removed", on the boat. Subsequently, I'll explain how that occurred in a minute. But I've re-checked those forward freeboard measurements and discovered that I believe that I transposed the two figures after the decimal point and that, that was checked by an on water measurement.

Q61 O.K. Do you want to documents?

A Yeah.

Q62 Yes.

A The, the next document is a copy of the measurement inventory that I took in 1995, which was the first time that I've obviously inclined and done the freeboard test of the boat, and I actually requested this to be sent back to me, a copy of it sent back from the AYF, such that I knew what, what needed to go on the form for the, for the new one because as we, we checked the only, the only information, or sorry, the only alteration that I believe was that the, the glassed in lead was removed. So it was a simple matter of transposing the, the information from one measurement inventory to the other.

Q63 I'll just ask a question there - - -

A Yes.

Q63 - - - to interrupt. Do you know the exact weight of the glassed in lead that was removed?

A No, I don't.

Q64 O.K.

A No, I don't. The only, and in fact, I didn't, didn't see it. I, I heard a bit of literally heresay, and this is, may or may not be correct, I remember the figure of, of 150 kilos somewhere but I don't know whether that's, that's correct or not.

Q65 All right.

A So, but I, I would have to categorically say, no, I don't know the weight that was removed.

Q66 O.K. Do you just, while we're on the removal of lead, has there been any other occasions that lead has been

removed?

A From this boat?

Q67 From this boat, that you're aware of.

A I, until the discussion that I had with Steve Walker last week, I believe no, there was no lead removed. But from what Steve had led me to believe, there was some loose weight removed when he first purchased the boat. Now, I would assume that that lead was removed after the first certificate was issued, based on the IOR data, but probably prior to my first inclination of the boat in 1995.

Q68 All right. And, and by using the term "loose weight", you're basically, what are you saying? Is it, is it, lead ingots or glassed in?

A I don't know.

Q69 All right, O.K.

A That's a question you'd have to ask Steve.

Q70 Yes.

A No, I don't know.

Q71 O.K.

A He, he said there was some weight around the motor, is what - - -

Q72 All right.

A Whether it was bolted on, I, I don't know.

Q73 O.K.

A The next page is a measurement condition check list and inventory, which has gone through, with the owner prior to the inclination and freeboard test. The next page

is the, the measurement inventory that was filled out and basically transposed from the one that I had faxed back from the AYF. Pardon me. The next page is the pro forma sheet that I filled out after the inclination test and the comments on that was, "boat re-inclined after removing internal ballast. Mast weighed, crew weight altered, headsail re-measure, new spinnaker".

Q74 O.K.

A The next page after that is a fax from myself to Tony Mooney. Would you like me to read this as well?

Q75 Yes.

A "Tony, sorry about all the effing around with Naiad. Owner faxed me a copy of his certificate and asked question, 'Why crew weight was 758, not 780?'. Thought at first you had cocked it up but I was wrong. Looks like floatation data has limited it to that. Then I noted stability index, which is vastly different to previous. Could you please check input data for me. I have a suspicion that I have the two freeboard measurements transposed. Any chance of running a test certificate with them, the other way around? Ie, FFM equals 1.037 and FAM equals 1.321. I can confirm this by re-measurement this Sunday, at opening day. Sorry about all the stuffing around". After that here's a, a series of certificates that I believe were faxed to me from Bruce Guy. Basically, I, I think he dug out all these old certificates and, and faxed them through to me. I, I believe occurred this time, it's,

yeah, dated the 7th of the 10th, '98, on the top of them - - -

Q76 All right.

A - - - from Tighter Fittings, which is his place of business. And I think he faxed those through to me when we were trying to fathom what, what data, if anything, had, had gone wrong. Had we transposed something incorrectly. Do you want me to refer to each one of those, or you're happy with that?

Q77 No, no, no. Those, there's no anomalies in those though, is there?

A I, I don't believe so.

Q78 But you can believe so, O.K.

A No, I don't believe so.

Q79 Yes.

A which one we're going to get to O.K. Then we come to his valid certificate from, valid 30th of the 6th, '98, which was the one he raced on the previous season. And the one after that is a certificate dated, not valid after the 30th of the 6th, '99, with a GPH of 626.2. This, I believe to be the certificate generated from my inclinations and freeboards that I measured onboard with, with Bruce Guy prior to the question of, was there a measuring error there or not. So I believe that, that was generated then. After that is a fax to Tony Mooney, dated the 15th of the 10th, '98. And this is obviously as a result of me re-checking it, the freeboard

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measurements. It reads, "Tony, looks like I misread tape. Numbers should be FFM 1.231, FAM 1.037. Also, another owner has asked about the cost of test certificates. Could you please fax me the fees." The next, next page is a copy of the adjusted certificate faxed back to me from Tony Mooney. And this, again is dated not valid after 30th of the 6th, '99, and with a GPH of 627.8. And I believe that I faxed, I believe I did fax this onto Tony Guy, as soon as I got it, because I know, knew he had some urgency about getting his entry in for the Sydney to Hobart. And the next page - - -

Q80 Bruce Guy or Tony Guy?

A Bruce.

Q81 You said, Tony, that's all.

A Did I?

Q82 Yes.

A Sorry.

Q83 That's all right.

A The, so the last page, and it's a fax from myself to Bruce Guy at Tighter Fittings and I, and it wasn't dated but I believe it to be immediately after the fax back from the yachting federation, and it reads, "Bruce, copy of certificate from AYF. Please note the crew weight and stabilities. Maybe you need to put some weight back in, or reposition some, some existing? Regards, Richard".

Q84 O.K. You mentioned earlier that you had, in fact

measured 12 other boats.

A Basically, give or take - - -

Q85 Give or take - - -

A But I couldn't be certain.

Q86 O.K. We mentioned here that there's been a couple of anomalies made - - -

A Yes.

Q86 - - - in, in the measurement through these documents. Has any previous inaccuracies, in relation to the boats that you measured, ever been found?

A I don't believe so.

Q87 O.K. So this, this in fact is, after all your experiences, and the first time that you've made a slight anomaly and you, in fact picked it up yourself?

A Yes, I believe so. I'm just trying to think. I think there may have been some difficulties with a, a hull shape coming out of the hull, the hull measuring instrument from the boat that I..... that I think I measured in Hobart, but I think that was resolved.

Q88 O.K.

A But, but I could be wrong. But I believe, yes, this is the first one that's

Q89 All right. So, there's been an anomaly made - - -

A Yes.

Q89 - - - and, and picked up?

A Yes.

Q90 And you had conversations with certain people?

A Yes.

Q91 Who were the conversations with?

A O.K. The, the second last certificate was obviously issued by the AYF.

Q92 Yes.

A That certificate came back to Bruce Guy, directly I believe. Bruce rang me up and said, "The, the crew weight on it is not what I specified. Why, why is that?" And I didn't know. I had to think about it for a bit. We had some discussion with, I believe Tony Mooney at the time, at the AYF. He indicated that the crew weight was limited to an upper and lower figure based on the, the measurement data, the inclination of freeboards and hull shapes of the boat. And based on that data, it limited to a certain number which was below what, what Bruce would like.

Q93 O.K.

A And, I guess Bruce wanted that number because he added up his crew numbers he expected to use and done some rough calculations in weight, and that was it. So, I had, had a discussion with Tony Mooney and that was borne out in those, in those faxes. At first I thought I might have because the and aft freeboard measurements are not too far dissimilar. I thought that I might just have obviously written one in the wrong, wrong entry, the and aft and the aft Tony, I believe ran those tests and rang me back and said, "No that's, that's just not, not the answer. There's something screwy going on". And I

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said, "O.K. I'll go and check, re-check that". And was, again in the fax that I've went down and checked it on, on opening day. Physically on the open day of the PTYC. I came ashore after sailing myself and went out with, in the club dinghy with my wife and Sam Edmonds and we checked the starboard side of the boat and it was laying at, at water, it was on the water. I checked the starboard aft measurement and that agreed with the measurements I'd already taken. And went forward and checked the freeboard measurement and it was quite clear then as to, as to what error I'd made, and that's written onto the sheets that I've, pardon me, included in those documents.

Q94 O.K. And then what, what conversations did you have with perhaps Bruce Guy after that?

A I don't recall seeing Bruce that, that afternoon after sailing. Obviously, it must have been, yeah Monday or Tuesday at work, because I knew Bruce was in a hurry. I sent the, the new data back to Tony Mooney at the AYP by fax, and again that fax is there. I don't believe that I heard back from Tony after that. And I don't believe that I had the, I had, the, the certificate just got faxed back. I don't believe there was any conversation that took place. I sent that fax onto Bruce at Tighter Fittings, and I noted on the bottom what, what I've already stated, that, note the crew weight and, and note the stability that's there. Because when, when the first certificate came through

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Bruce was concerned about his crew weight and I believe he might have looked at the stability. It was probably myself that raised the question of the stability then to Bruce and said, "Look Bruce, are you sure you'll get into the Hobart with that?", because as I said earlier, in the back of my mind, 115 as I believe the number. So I've sent Bruce the, the updated certificate and I've made note on the facts, check, you know, are you happy with this, basically.

Q95 What, what did Bruce say to your question to him, will you get into the Sydney to Hobart Yacht Race with this certificate?

A I believe on the first time he said, I'll check it out. At a subsequent time, and I, I can't state when or where, but I believe I had another discussion with Bruce and asked him, "Are you sure your stabilities were right to get into, into the Hobart?" And he replied then that, something to the effect of yes, they're O.K, they accepted my entry. And subsequent to that, I asked Steve Walker, at the Port Yacht Club, the day the crew was there cleaning the boat or preparing it, ready to go back in the water for the race. I actually ran into Steve in the carpark and said "Was your entry accepted?", you know "Did you get in with the stability that you had?" and "Was it all O.K?". And, I wouldn't like to quote him, but I, I think he said that Bruce had checked it out and it was all O.K. It was something to that effect.

Q96 O.K.

A So I believe that on two occasions including the fax, that I spoke to Bruce about it, and on one occasion I spoke to Steve Walker about it.

Q97 So, it would be fair to say that you were uneasy about the stability ratings on the boat, on, on the Naiad with the information that you understood about the 115 degrees?

A Yes. Uneasy, not, not to the, not in terms of safety because to me, the 115 or that stability number was not in my mind as a safety issue.

Q98 Yes.

A It was just a, purely a number that you needed to have your boat up to get into the Hobart. So yes, I was a little bit uneasy to the point of, the reason I was uneasy was that if Bruce didn't get in, I didn't want him to have done all that preparation for nothing.

Q99 All right.

A That was my reason for being uneasy.

Q100 All right.

A It wasn't from a safety point of view.

Q101 O.K. To enable these figures to be transposed onto various pieces of paper and then sent off, what procedures would you take to ensure that the figures are generally correct about the boat - - -

A Are you - - -

Q102 Is there a standard procedure that you do, that you'd run through to check these figures, or to check

anything on the boat perhaps?

A Certainly transposing figures from my, whatever I've, the field data sheet, onto what I sent to the AYF. My normal procedure would be to, to copy them out onto the, onto the pro forma and then go back and check both ways. And I guess the reason that I do that is that it's a, it's a standard surveying practice that I employ in, in transposing any figures from one sheet to another.

Q103 Is there a, is there a physical check that you would do on the vessel, either inside or outside the vessel prior to conducting the measurement?

A Yes, there's a, there's a measurement, measurement inventory that's, that's taken prior to the inclining test and a check list of equipment on board and so forth. Prior to the measurement that we're talking about, we've gone through, myself and Bruce, we went below to get the sheets and so forth out in order to do the inclining experiment, and at that stage I was sitting below the companionway steps on the starboard side I believe. And I asked Bruce about, was there any water in the tanks, and he said, told me that they were dry. Was there any fuel on board, and he indicated that there was literally cupfuls. Just enough to get him back out to the mooring and so forth. I looked forward, forward of the, the main bulkhead under the mast and there was no gear stowed up there. That would normally be moved back onto the companionway floor. I,

I looked aft into the boat, down the side that I was sitting on, and did not see any gear floating around in there. And that, that would include sails. I don't, I don't believe I saw any sails on board the boat.

Q104 O.K. I received information that, that weight of approximately 300 kg, has been removed from the vessel over a period of time. With the anomalies in the certificates, the IMS certificates, it shows in fact that the vessel was trimmed by the stern from one set of measurements to the following set of measurements by approximately 287 kilos, 267 kilos. What would you say about that?

A I guess, I can't, I can't explain why that's occurred. My, my belief is, yeah, I guess my role was, was literally to take the measurements as I saw them. I asked Bruce, you know, what was removed from the boat, and he said that the lead that, that was previously shown on the certificate. I didn't measure the weight of the lead. I didn't think it was, I didn't think I was required to do it and, so other than what Bruce has told me he's pulled out of the boat, and the measurements I've taken, I certainly could not explain why there's that anomaly there.

Q105 O.K. Senior Constable Gray?

SENIOR CONSTABLE GRAY

Q106 Now, in relation to the conditions of the first measurement - - -

A Yes.

Q106 - - - in the situation in the water - - -

A Yes.

Q106 - - - what were the conditions like?

A The conditions, it was very early in the morning. Whatever date, it was either Saturday or a Sunday morning. Absolutely ideal conditions for measuring a boat. There was literally wind. We were on the inside of the, the the pontoon at the Port Yacht Club, so I, I would have thought that, actually I think it might well have even been a slight sou-westerly. But certainly less than 2 or 3 knots. So, virtually no wind to speak of and in that position, in that breeze, almost glassy calm. Very, very still.

Q107 O.K. If we could just suspend the interview for a change of tapes. It's 9.29pm. This interview is suspended.

INTERVIEW SUSPENDED

INTERVIEW RESUMED

SENIOR CONSTABLE GRAY

Q108 The time is now 9.34pm, on my watch. This interview between Senior Constable Upston and Mr, Mr, Mr Richard Fisher is continued. Mr Fisher, we were just discussing the conditions of the first measurement. I believe you finished with the words glass-like conditions?

A Yes, I think they were glass-like.

Q109 O.K. I wonder if you could take me to the conditions of the second measurement.

A Yep. The, the second measurement was at the completion of the open day race at Port Yacht Club. We'd brought our trailer sailer that I was racing on the shore. We packed that up so it was, it was getting quite late in the day and I believe most of the boats had returned to shore. The breeze from memory would have been, a nor-westerly, a west, nor-westerly. I think that the breeze by that stage would have been down to maybe 5 knots or less. Maybe, maybe even three, you know, 3 to 4 knots, that sort of thing, with a slight residual slop left over from the, the stronger breeze earlier in the day. So the, the wave height at the boat was probably at the order of 40 to 50 mil, but when we, when we went alongside the boat, I made sure that, for example, when we measured the aft measurement, obviously the boat was pointing into what little breeze there was, I made sure that the dinghy was on the up, up wave side, up wind side of where I took the measurements. So effectively it had, it had the effect of flattening the water out behind the boat. And likewise, when we went to take the freeboard measurements, we, we held the dinghy out in front of the boat somewhat again to, to flatten out the water but I'd suggest that the wave height would not have exceeded, in, when it was shielded by the, by the dinghy, exceeded of the order of 25, 30, 35 mil. That, that, at that, at the most, and that was from peak to trough. When I, when I held the tape. I've got a,

it's a, it's a tape measure actually handed to me by Ian McKelvey, Ian McKelvey was the previous measurer to me, had, had constructed it and it's a, it's an old broken tape measure with, that's broken at around about the 3 to 400 millimetre mark with a string coming off the bottom of that, with a knot on that. And then below that is a, literally a lead fishing sinker, so the lead sinker holds it out straight and you can hold the tape up. And the, the knot is zero. I recall recalibrating, if you like, checking the length between the knot and a whole number, probably 3 or 400 mil on the tape measure at the time. Because I can remember saying to Sam Edmonds, "There you go, a good surveyor always calibrates his tapes". So, I can remember calibrating it at the time and I can recall holding the tape measure and moving it up and down so that I've got the average meniscus of the water, the level of water, evenly above and below the, the zero knot at the bottom of the line, and I can remember doing that at, at both ends of the boat.

Q110 O.K. And do you recall prior to the commencement of this interview, we discussed a number of issue in relation to crew weight significance? And it's quite apparent that there has been some emphasis by Mr Guy, Mr Bruce Guy, in relation to crew weight.

A Yes.

Q111 And we discussed this, previously discussed this?

A Yes.

Q112 And as a result, Senior Constable Upston made a phone call to Mr David Lyons - - -

A Yes.

Q112 - - - who's a naval architect, who knew previously?

A That's correct, yep.

Q113 O.K. And the information that was passed to Senior Constable Upston was that the significance of body weight on the vessel and the outcome, or the result, resultant of stability index, is that there was no such action.

A Yes.

Q114 Yes, O.K. Prior to that conversation with Mr, Mr Lyons, did you have the same views of that?

A Yes, my, my understanding was, and I think our discussions had alluded to that, that my understanding was, the crew weight on the rail was effectively modelled by some, by their velocity prediction program in order to determine how fast the boat would go upwind, as in, had addition ability, or moment based on the crew weight out there. So, it could effectively stand up in a stronger breeze and, and go a lot quicker. So, that was my understanding of that. The, in the faxes, faxes brought out earlier, that when Bruce Guy questioned me about crew weight, why, why is my crew weight being limited to a number, prior to that, I knew there was a range but had not realised that the inclinations and freeboards and, and

hull shape was going to limit it to, to a number below what he wanted.

Q115 Right. Your qualifications that you obtained from university was a Bachelor of - - -

A A Bachelor of Surveying.

Q116 O.K. And I believe you gained a masters in that, is that - - -

A No, I gained first class honours in that.

Q117 O.K.

A And I guess I should also add that in my final year of my degree, my final year project was, in fact a study of the, the hull measuring instrument used by, by all the IMS measurers to gain the, the hull shape of the boat.

Q118 Have you ever acquired any registration, so far as measuring boats, or does that come with the degree?

A No, sorry. To clarify that, my, my university degree and registration as a surveyor is completely independent of, in terms of qualifications I believe, completely independent of the requirements to measure a boat. I believe that anyone can measure a boat as long as they've been, I think, nominated by their state measurer and approved by the AYP.

Q119 Right.

A So, the path that I've, how did I become a measure is a good question. Ian McKelvey was the previous measurer in the north of the State to me. Ian had retired and was heading to Queensland basically for

the, for his winters, which is where most of the boats are being measured. And I guess he, he knew me. I've had a long association with their family, and knew that I was a surveyor and said, "Would you like to be a measurer?". And I guess to qualify as a measurer, he got me to participate in at least one measurement. I think it might have even been on a boat called McBess, something like that. And there could well have been another boat. I think there was another boat involved. I know one was at Yacht Club and I think one was at Port So, literally measure the boat with him, do all the measurements together. And he basically gave me all his measuring equipment and, I guess at that stage, he must have had conversations with John Honeysett, the State measurer in Hobart, who at that stage I didn't know. And he recommended me to the AYF as being a suitably appropriate person, I guess, for the whole, the measuring of IMS.

Q120 O.K. So far as the measurement inventory form's concerned, which I'll just show you, in your documents here which you pointed out previously.

A Yes.

Q121 And you're aware of that document, aren't you?

A Yes.

Q122 And, you're aware of the certain requirements in relation to that document?

A Yes.

Q123 That is the recording of forms, the initialling of

things - - -

A Yes.

Q124 And obviously the final signing of things.

A Yes.

Q125 And that's, sorry, do you want to say something?

A No, that's fine.

Q126 And the form I'm showing you is the form with a picture of a boat on it and dated 18/7/98.

A Right.

Q127 Well go to the next form, and this checklist also, which is one to 21?

A Yes.

Q128 Is initialled, is checked by the owner?

A Yes

Q129 And it's initial was checked - - -

A Yes

Q129 - - - by yourself?

A Yes.

Q130 O.K. So, with regards to those two documents, those two pages, in your view, they have been completed as per the sheet, or as per the rules and regulations on those forms and the measurements?

Q131 I, I believe so. I guess when, when Bruce and myself have initialled those it was a matter of, as I said earlier, we looked around down below in the boat and I went down and asked Bruce, I, I, I couldn't say that I asked him every question, but a lot of, a lot of these were clearly obvious to me. For example, you know,

heads, bowls, sinks, etcetera are dry. That was pretty obvious at the time. And then Bruce has gone down and initialled them all and then followed by myself.

Q132 O.K. That's fine.

SENIOR CONSTABLE UPSTON

Q133 O.K. We've spoken about my conversation tonight with David Lyons.

A Yes.

Q134 And we agreed on certain things. Were you in a position, when you spoke to David Lyons on other occasions - - -

A Previously?

Q134 - - - prior, prior to today?

A Prior to today, yes..

Q135 Yes.

A I believe about a month and a half, two months ago. It was after the, after the Christmas events. David rang me up and I believe he told me he was representing the CYC in the investigation that was subsequently going to hand information to yourself. And I had a lengthy conversation with him, that was only, only terminated by my mobile phone running out of batteries.

Q136 All right. And what was the, the general, you know, context of that conversation?

A I guess it related primarily to what measurements I had taken. Be it the first time we measured it with, with Bruce as we've just discussed. And then finding the, the error and going and, and re-measuring those, those

-
measurements. So, it, it involved mainly about, around that and I guess I had some philosophical discussions about measuring the boats with him and, you know, what I thought the limitations of the system were.

Q137 O.K. Now fully understanding the categories of vessels and the limits of stability - - -

A Yes.

Q137 - - - for category 1 races, and knowing now that the limit is 115 degrees, and clearly it shows on the documents that we have here in front of us now, that the stability index of the Naiad, prior to entering the race, was clearly below that minimum figure of stability index. And having that being committed to race, how do you feel about that?

A (NO AUDIBLE REPLY)

Q138 Well, its acceptance to race?

A Its acceptance to race? Well clearly if, if the bottom line was 115, then I, I would have to suggest that it shouldn't have been accepted. Maybe they, they had some other grandfathering, as you put it earlier, or maybe they've said, look, the boat has been in the race multiple times before, therefore we should accept it. But if, if their bottom line is 115, then I think the numbers speak for themselves. It's pretty, pretty clear.

Q139 Let me make it clear to you now that for a vessel entering a, an IMS section of the race with a valid IMS rating certificate, there's no grandfathering.

A Right. So therefore it should not have been accepted as an entry.

Q140 Have you got any other thoughts about that?

A Yeah, I have got some thoughts on that. Then again, some of this is a bit, is, is what I believe to have taken place. I believe, because Bruce was keen to get his entry in and get accepted as an entry, I believe that he would have entered the race, or filled out his entry form and submitted his old certificate with it. I don't believe that certificate would have been one of the two, either the one that was in error, or the current one. So, I dare say it was probably the previous certificate. So, I dare say he sent that in, and I dare say, he's, pardon me, he's made notice to them that, you know, this is my last year's IMS certificate. I'll forward a new one to you when it comes through. Now, I can't recall the numbers on that, but maybe that, those numbers were high enough to, to have been accepted and maybe he's, when he's faxed that, or, or sent the subsequent certificate through to them, it could possibly have been a, been an oversight. But again, that, that's only my assumption as to what's occurred. I guess, I guess I feel very disappointed that if, if the boat shouldn't have been accepted as an entry, based on what you've told me, that it was. And I guess I feel very disappointed that, although I know I spoke to Bruce on two occasions and faxed him saying, look, you should be, you know, to

the effect of, will you get in with this number? And the fact that I spoke to Steve about it. I feel disappointed, I guess a little bit in myself that, that maybe I, it's, it's a real big what if. What if I had have rung the CYC and said, "Look guys, do you think you should accept this entry?". I feel, I feel quite happy that I've, with myself, that it wasn't my duty to have done so. I don't think it was my duty as a, as a measurer. And I guess as a mate to Bruce, I don't think it was my duty because I didn't know the implications of that number. I always thought of the number as a, a number in terms of rating, rather than a number in, in terms of, of safety. Yeah, I think that's about all I'd like to say on that.

Q141 O.K. Is there anything else you'd like to add in relation to anything that we've spoken about tonight?

A Certainly, based on the, based on the events that have occurred, I now have concerns that, me as a measurer, is not equipped by the AYF or by whoever, with enough knowledge to interpret the numbers that we measure, adequately. I personally, I, if, if I had a chance to, to know the implications of a lot of stability for example, I would certainly have acted upon that. My, I've, I've undertaken, and it was prior to Christmas, undertaken a course on yacht race, yacht race management conducted by Tony Mooney and Steve Sutch of the AYF in Hobart. And in that, they spelt out very clearly, safety is number 1 and fairness is number 2.

So, based on that, if, if I could, you know, act in a, a manner that could make it safer, geez, I, I wouldn't hesitate.

Q142 All right.

A I guess the other thing I should point out, with regard to safety, is that I've never measured a boat in terms in terms of fitout and safety equipment on the boat. And therefore, as I said earlier, all the measurements I've taken, my mind's always been in the mind-set of racing rather than, rather than safety.

Q143 All right.

A Yeah, I guess that's all I'd like to say, thanks.

Q144 It may be the case, and I don't know, but it may the case that, so far as the AYF is concerned, it's not your role to determine the final figure. It's your role to produce the figures which will, in turn, produce a final figure, to have, you know about both could be a conflict. Do you know what I'm saying?

A That, yeah, that could be a fair comment, yeah. My, my, my honest belief is that my role was to measure the numbers as, as I see them. And my knowledge of, of, although I'm, you know, heavily committed in sailing, my knowledge as to the implications of, of a little bit of extra lead or a different prop on the boat, or whatever, I, I couldn't give the owners that answer.

Q145 O.K. The time on my watch is now 9.57. This interview is now concluded.

INTERVIEW CONCLUDED