

SENIOR CONSTABLE UPSTON

Q1 This is an electronically recorded record of interview with Senior Constable David Upston of the Sydney Water Police and Stephen Ross Walker at the Launceston CIB on Tuesday, the 16th of March, 1999, and the time on my watch is now 10.57am. Also present and seated directly to my left is Detective Senior Constable Stewart Gray from the Bega Detectives. For the purpose of the interview, Steve, would you like to mention your full name, please?

A Stephen Ross Walker.

Q2 And your date of birth?

A 1st of the 10th, 1993, 1953, sorry.

Q3 That's O.K. And your address?

A 84 Jackson Street, Wynyard, Tasmania.

Q4 And your occupation?

A Self-employed sailmaker.

Q5 O.K. And do you agree that prior to the commencement of the interview we had a conversation with you in regards to different matters that Senior Constable Gray and myself are making inquiries into the 1998 Sydney to Hobart Yacht Race and we had a discussion over a number of issues?

A Yes.

Q6 O.K. Do you also agree that you last spoke to Detective Senior Constable Gray on the 28th of December, 1998, at, at Eden?

A Yes, that's true.

Q7 O.K. We, do you also agree that you told us that you, on the, on the 28th of December and today that you were a crew member on the Business Post Naiad, also known as Naiad, and previously Swuzzlebubble?

A Swuzzlebubble 6, yes, I was a member of that crew.

Q8 O.K.

A In the Sydney Hobart.

Q9 All right. Now, we'll bypass a lot of the information that you were, on the race and all matters surrounding the race.

A Which you've already got, yeah.

Q10 Which we've already got. And I'd like to have your understanding of the IMS rules, which you told us that you were aware of, which was a category that Business Post Naiad entered into during the race.

A Business Post Naiad was an entry in the Sydney Hobart race under the IMS rules.

Q11 Yep. And what can you tell me about the IMS rules?

A It's, it's a method measuring boats to give it a handicap to try and equate different designs and different sizes of boats to each other, so you can actually get a race winner, so, the IMS rule is an international measuring system is designed to try and equate boats so there's, in brackets, a fair handicapping system, to equate boats and at the end of the race when you've got your finishing time, that's multiplied by a factor determined by the IMS rule to give you a handicap result.

Q12 O.K. And 1998 Sydney to Hobart Yacht Race, is a category, a specific category, are you aware of the categories and the stability index of those categories?

A I wasn't aware of the stability index of those categories but I was aware that the Sydney Hobart was category 1.

Q13 O.K.

A And we were certainly, if that category is an AYP, Australian Yachting Federation, category for safety requirements and we'd gone through the boat and we complied with that category as far as we knew.

Q14 O.K.

A I wasn't aware of the, the figure there that you got on those.

Q15 All right. Well, let that, let me draw your attention to a booklet, Offshore Racing Council - - -

A Yes.

Q15 - - - international measuring, international measurement system - - -

A Yes.

Q15 - - - IMS regulations 1998.

A Yep.

Q16 I'll go to page 3 of the booklet where section 201, part 2 of that relates to the limits of exclusions and section 201, stability index, and under the number of lines it mentions the ORC race category of 0, 1 and 2.

A Yes.

Q17 Now the minimum stability indexes to the right of those

figures relate to those categories, is that correct?

A That's correct.

Q18 And it shows category 0 is 120 - - -

A Yes.

Q18 - - - and in fact that relates to a degree or a stability index, is that right?

A That relates to a stability index which is used in the rating of the IMS boat, of the IMS handicapping system.

Q19 O.K. And would you agree that category 1 is 115 degrees?

A Yes, I would.

Q20 And would you agree that category 2 is 110 degrees?

A I would.

Q21 O.K.

A Those are recommendations as far as I know, it says at the bottom of the paragraph there that it could be changed, depending on what the race instructions say, so they are recommendations, depending on what the race instructions say.

Q22 All right. Let me now take you to the notice of race, 1998, Telstra Sydney to Hobart Yacht Race. O.K. And this is a booklet - - -

A Yeah.

Q22 - - - and in the booklet it clearly defines the ruling as far as the notice of race is concerned for IMS categories, and that shows a section 6.2.2, section b, and it states, "Comply with a minimum stability index for ORC race category 4 events, and in brackets, IMS

regulation 201 - - -

A Yep.

Q22 - - - refer and of course that is - - -

A That's, that's that booklet - - -

Q22 - - - that booklet that I just showed you a minute ago,
is that correct?

A Yes, that's correct.

Q23 O.K.

A Which to me indicates that the stability factor should
have been 115.

Q24 O.K. I'll draw your attention now to a document which
in fact is an IMS rating certificate which was for the
Naiad, is that, can you see that - - -

A Yes, I can.

Q24 - - - document there, and that's, that's correct. And
this - - -

A 15th of October, '98.

Q25 Right, which was the certificate issued?

A Yes.

Q26 And I now draw your attention to the stability index of
the Naiad on that particular measurement was 102.8.

A Yes, now there's also, there's two, that's the
stability index - - -

Q27 Right.

A - - - and there's actually a calculated stability index
somewhere, which is - - -

Q28 Let me draw your attention to that now - - -

A Yes.

Q28 - - - which is the limit of positive stability - - -
A Yep.
Q28 - - - on that is 104.7 degrees. Do you agree with that?
A Yep. Now isn't that one that they're talking about in the rules?
Q29 What it says in the rules that you shall take the greater.
A Yes, yes.
Q30 O.K.
A So, in fact we, we would've rated 104.7.
Q31 Exactly.
A Yes.
Q32 What can you tell me about that, knowing that the certificate in fact reads 104.7, where in fact the category for the IMS rating is 115, a minimum of 115. What can you tell me about that?
A It's obviously low. If we go back into the history I think a previous rating certificate, we were and, the previous certificate was issued when?
Q33 There's a previous - - -
A 25th of September
Q34 '98, right, where it was measured, the 29th.
A Yep. 105.6.
Q35 105.6.
A 106.2.
Q36 No, 109.5.
A .5, yes.

-

Q37 What would that indicate to you?

A That the boat was stiffer when it was measured previously.

Q38 But would it also indicate that at, either it does or doesn't comply with the category 1 race, even under the previous certificate?

A Well, that was, I think this was a set of measurements that was taken before and there was some freeboards were wrong, so that it was actually re-measured - - -

Q39 Right.

A - - - for the October setting.

Q40 But it clearly shows that, in the second measurement, if there were some anomalies in the measurement - - -

A That would've made it worse.

Q40 - - - that it's made it worse.

A

Q41 Is that correct?

A And the boat was probably trimmed exactly the same and there was no difference.

Q42 O.K.

A Except apparently there was a mistake in the freeboard readings and the boat was re-measured.

Q43 Yep.

A It may have been slightly, there may have been slightly different gear on board or maybe water in the bilges that contributed to that on the first or second time, I don't know.

Q44 All right. Well, we have information from the measurer

that there's certain standards that he's to take.

A Yes.

Q45 Right. Prior to measuring a vessel - - -

A Yes.

Q45 - - - and I understand that he's complied with all of those.

A He would, Richard's meticulous.

Q46 And who is the person that you know?

A Richard Fisher.

Q47 O.K. And he's measured the boat on a number of occasions before?

A Yes, he has, yes, he's meticulous, he's a surveyor by trade, he's meticulous and he's very honest.

Q48 Right. And if - - -

A He won't take any hanky-panky.

Q49 O.K. And if, in fact, he's made a mistake, has he brought it to, are you aware that he's brought it to the attention of the Australian Yachting Federation?

A I think on the first measurements there of, in September there was a mistake - - -

Q50 Yep.

A - - - and it was brought to his attention and then he went back and - - -

Q51 And re-measured.

A - - - and re-measured it, yes.

Q52 O.K. So, he's very open about the mistake that he made - - -

A Yes.

Q52 - - - and, in fact, it was re-measured prior to the commencement of the race?

A Yes.

Q53 O.K. And you're also aware that when you apply, make application for the, for the race, right, that you must supply a current IMS certificate - - -

A That's right.

Q52 - - - if you are going into that category.

A Just to enter the race you have to, yes, and particularly the IMS section.

Q54 Right.

A And even to be in PHS, I think you've got to prove that the boat's been measured somehow, either by assessment or whatever.

Q55 O.K.

A Under IMS previously, it may not be in that state now.

Q56 And it is true to say that the IMS certificate doesn't have to be valid - - -

A That's true.

Q56 - - - but you must show that if there's any alterations been made that you must prove those and also show those?

A Yes. That's right.

Q57 O.K. And there's also a number under PHS, there's also another, a number of other options that you can take - - -

A That's right.

Q57 - - - to be eligible for the race?

A Yes, the stability factor under PHS only has to be 103, as I understand it.

Q58 O.K. Let me draw your attention to the PHS category, and, yes, with, with, just prior to going to that, O.K, well let's go to that PHS 6.2.3, the yacht shall have a minimum length, length overall of 9 metres and a maximum length overall of 26.0 metres, and that's section a and then we'll go to b, now, it says, "these yachts must have a stability index or limit of positive stability (whichever is the greater, correction, whichever is greater), of not less than 103 degrees".

A That's correct.

Q59 Now, what's your understanding of that?

A It means that it, it would mean that a boat is less stable than the boat racing in the IMS division. So it a little bit, it seems a little bit cack handed. I would've thought perhaps you may have wanted to go the other way.

Q60 I also bring to your attention now a document that has been supplied to us which is out of a previous, correction, which is out of a different print, but with the same international measuring system from the offshore racing council, where it shows, section 205, stability, a limit of positive stability (LPS), "a yacht shall not be issued a valid IMS certificate if her IMS upper limit of positive stability is less than 103 degrees".

A That's, that's, I don't know how that, I don't know the

ins and outs of that, but that's certainly as it reads.

Q61 Well, would it be fair to say that in the notice of race, 1998, for PHS categories, the terms in section b of that and also which I've just read in the document are similar but there are also anomalies with the wording of the two?

A It would appear so, yes.

Q62 All right. Would it be fair, let me inform you that we've made certain inquiries in regards to, to these
- - -

A Yes.

Q62 - - - anomalies and it's a fact that if a yacht is measured and a stability index is greater than 103, a certificate is issued, or less than 103, a certificate will not be issued.

A That could well be the fact.

Q63 O.K. And, in fact, the programming of that, it just it
- - -

A Won't do it.

Q63 - - - it won't do it. It won't allow it to do. O.K. Now, I'll take you to the grandfathering in the notice of race, section 6.1.7, and it says, "Yachts which have been accepted for entry into previous Sydney Hobart Race, which do not comply with the stability requirements of 6.1.4", which is IMS category, O.K. "for IMS or 6.1.5 for PHS", which is performance, performance handicap, "yachts that have a stability index greater than 110 degrees, may be eligible for

-
entry provided no structural or ballast alterations have been made, that would reduce the yacht's stability. The race committee will be the sole judge of the eligibility of the yacht, subject to this notice and it amends IMS rating, regulation 201". So, what do you understand from that statement?

A It would appear that you could read that to say that both categories have to be 110 degrees or greater. I've also heard that, like it's been discussed amongst yachtsmen, that if you can prove that your boat is seaworthy and, and stable when it's done other races in severe conditions, even though it may actually have a lower stability factor, they may, the race committee may judge that, that the boat is seaworthy, and, and, and can therefore enter the race. There are clauses which, I think that's probably the bit at the bottom where the race committee will be the sole judge.

Q64 Exactly.

A And it's, it's their, it's their call as to whether they'll accept your entry or not.

Q65 But it's, is it fair to say that it's, under grandfathering, it clearly indicates that the stability index under PHS, which is the grandfathering of - - -

A Yes.

Q65 - - - yachts, that should be not less than 110 degrees.

A And yet they're saying 103 degrees in, in the next clause. 6.2.3B.

Q66 So, would it be fair to say that that's a little bit

confusing, wouldn't you say?

A It is confusing, yes.

Q67 O.K. But, in lieu of the information that I just told you that where the 103 degrees is, is mentioned, that in fact that is saying that just that a certificate won't be issued. It still doesn't - - -

A If it's less than 103 degrees.

Q68 If it's less than 103 degrees.

A Yes.

Q69 But it's still not the fact that you aren't eligible because you don't meet the requirements of the grandfathering clause of 110 degrees and certainly not the IMS category of not less than 115 degrees?

A That would appear so, yes.

Q70 So, in saying that, let's go back to the, the IMS certificate.

A Yes.

Q71 O.K. Which I showed you, which was the certificate issued so that the vessel could enter the race.

A So it had an IMS certificate for its current age.

Q72 Yes. And it clearly states as I pointed out to you a minute ago, that it's positive stability index, which was the greater - - -

A Yes.

Q72 - - - of the stability index, and the limit of positive stability of 104.7 - - -

A .7, that's right.

Q72 - - - still does not clearly reach the 110 of even the grandfathering clause.

A No.

Q73 And clearly doesn't meet the clause of 115 degrees for the IMS.

A No.

Q74 On that - - -

A But the grandfathering clause it says that you can have it down to 110.

Q75 Exactly.

A Yeah.

Q76 But it still doesn't alter the fact - - -

A No, no.

Q76 - - - that the Naiad had the greatest of, the greater of the figures of 104.7.

A Yes, does the actual rule say that it may be in the race committee's discretion to be less than that or

Q77 No, it, it says that it shall not be less than 110 degrees, to enter a PHS under the grandfathering clause.

A Yep, where was that?

Q78 Over here.

A Sorry.

Q79 Under "grandfathering".

A context of - - -

Q80 No, please - - -

A It would appear to me that you can't have a stability

factor of 110 from that 6.1.7 grandfathering clause,
the way it is written.

Q81 Well, that's right and in fact I suppose you could
glean from that that if you had a stability index of
110 degrees - - -

A We would've been - - -

Q81 - - - or greater - - -

A We would have been accepted as entry.

Q82 But not under IMS, only under the PHS category.

A No, no, for IMS yachts as well.

Q83 Yes.

A So, so that if you'd done a previous Sydney Hobart and
you were in the IMS division they would accept a
stability index of 110 degrees and what that
effectively doing is effectively saying the boat is
seaworthy.

Q84 Well, let me, let me clarify that.

A

Q85 Yeah, let me clarify that just slightly, right. If you
enter under a, under an IMS certificate, right.

A Yes.

Q86 To go into the IMS category, the IMS certificate must
read greater than 115 degrees. 15, 115 degrees or
greater.

A If you're a new boat, if you're an old boat 110
degrees.

Q87 Yes, but you can't enter the IMS rating.

A Yes, you can. Yes, you can.

DETECTIVE SENIOR CONSTABLE GRAY

Q88 read that - - -

SENIOR CONSTABLE UPSTON

Q89 Under the grandfathering

A Yes, under grandfathering, you can.

Q90 O.K. O.K.

A So, in fact because Naiad have actually done a previous
Sydney Hobart Race - - -

DETECTIVE SENIOR CONSTABLE GRAY

Q91 She could have been grandfathered.

SENIOR CONSTABLE UPSTON

Q92 Yes, she could have been

A She would have, she would have been grandfathered.

DETECTIVE SENIOR CONSTABLE GRAY

Q93 She was eligible for grandfathering.

A Yes, she was eligible for grandfathering.

Q94 But she didn't meet that.

A No.

Q95 As far as - - -

A That's, that's correct.

SENIOR CONSTABLE UPSTON

Q96 O.K. So clearly we can see that it didn't reach the
110 degrees - - -

A No.

Q96 - - - and the entry form was accepted and the yacht was
allowed to race. What do you say about that?

A The boat was measured and Bruce wanted to get the entry
form in as quick as possible, so it was in on time and

to get the entry accepted.

Q97 Yep.

A And it's not uncommon for owners to enter - - -

Q98 Yes.

A - - - and then - - -

DETECTIVE SENIOR CONSTABLE GRAY

Q99 It contradicts itself.

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Q100 Yep. Sorry.

A Sorry. And then - - -

Q101 So, he's through - - -

A Well, he's trying to get the entry in - - -

Q102 Yep.

A - - - and to get it done. It's not uncommon for people to make changes to their rating, whether it be a different sail size - - -

Q103 Yep.

A - - - maybe ballast or whatever, to actually put in their entry with their old rating certificate and then when they've got the new certificate, fax or post that off to the CYC to be put in with their, their entry.

Q104 Mm.

A And I think what's happened here is Bruce when he's entered initially has sent the old rating certificate, which, in which case I think we're about 113, was the one issued in '96, I think.

Q105 M'mm.

A That would've gone in with the entry, he would've had

a note on it to say that this is our old one and we're in the process of getting the new one issued and I'll send you the copy of that in due course. The other reason for getting the, the new certificate was to actually, we had actually pulled the mast out and got the mast weighed and, because our mast was aluminium and relatively heavy and strong, it was, the handicap rule automatically defaults you to a certain figure, which is to a disadvantage of a boat with an old, heavy mast.

Q106 Yeah.

A So, we actually pulled the mast out and physically weighed it and then put that in, that was the main reason for getting it re-done and that gave us a lower IMS rating.

Q107 M'mm.

A Also we hadn't had the boat rated for nearly two years, mainly because we've been racing AMS in the Melbourne Hobart and Melbourne Devonport races the previous two Christmases, so it wasn't necessary to have an updated IMS rule, and we'd also, in that period, we'd taken out 300 kilos of weight, so, to get, to get a new certificate we had to have the stability factors done, because that lead had come out, and also because the mast had come out and been re-done and there may have been some, some minor changes to some sail dimensions there as well.

Q108 Yeah. All right. I'll, I'll draw your attention to an

IMS rating certificate, which is not valid after the 30th of the 6th, 1996 - - -

A '96, yes.

Q108 - - - and in the fact the boat was measured on the 30th of September, '95.

A Yes.

Q109 And it shows a stability index of 143 degrees and a limit of positive stability of 146.4 degrees. What do you say about that?

A I really don't know, because it's the first time I've seen that one. There was one issued after that - - -

Q110 Yep.

A - - - which showed us, and I, I hadn't actually seen that certificate. The first one I have actually seen of the boat was the following one, I think.

Q111 Well, in fact, I'll, I'll draw your attention to another certificate, which is also not valid after the 30th of the 6th, '96. It appears to be measured on the same day - - -

A Yes.

Q111 - - - but issued a number of days after - - -

A Yes.

Q111 - - - on the 30th of November and in fact it then shows a stability index of 117.9 degrees - - -

A Yes.

Q111 - - - and a limit of positive stability of 120.9 degrees.

A That was the first certificate that I was

aware of.

Q112 Right.

A One can only assume that there must have been a mistake and it was re-done.

Q113 O.K.

A For some reason, I don't know. But 146 is enormously stable.

Q114 Yes. But it would, would it be fair to say that if it was correct and - - -

A I don't

Q114 - - - a large amount of the lead was taken out.

A We, we had actually taken it out from when Bruce first got the boat - - -

Q115 Yep.

A - - - when he first got the boat approximately 300 kilos came out and that would have been in '94, I think.

Q116 Yep.

A And then in, approximately '97, another 300 kilos was come out.

Q117 Right.

A

Q118 So that's a total of 600 kilos of lead has been taken out of the boat in a number of years.

A I've actually measured it - - -

Q119 Yep.

A - - - for David Lyons and it was actually 680 kilos as I've measured it.

Q120 Right. Right.

A Under measurement, not weight.

Q121 Yeah.

A I've actually physically measured the lead and then put the specific gravity to it - - -

Q122 Yep.

A - - - and that's come to 680 kilos.

Q123 Right. Right.

A And but against that we've probably put approximately 250 to 300 kilos of fitout in the boat to make it into a cruiser/racer for IMS.

Q124 Right. So, it's had a lot of alterations done to the weight and also internally over a number of - - -

A I wouldn't say a lot of alterations to the weight, I mean 3, if you've got a net gain of 300, a net loss of 350 kilos, that's, that's not much, and for it to actually go from 146 to 105 is pretty perplexing to put it mildly.

Q125 Yeah, yeah.

A I don't think, 350 kilos could not do that.

Q126 Yeah, but 600 kilos could.

A No.

Q127 No.

A 600 won't either.

Q128 O.K.

A That would be in the order probably 2,000 kilos.

Q129 O.K. O.K. So there's a huge discrepancy as there as well.

A That's why I think the boat was probably re-measured, to bring it back to 120, because the 146 was probably quite obviously wrong.

Q130 So, in fact it's, it's a possibility that the measurer could have been wrong there as well.

A That's - - -

Q131 Supplying those figures.

A It's possible.

Q132 O.K. But that's only, we're assuming it.

A The stability in, like the stability index to actually do the measurement for that is, is quite tricky.

Q133 All right.

A And a small variation like, people were cheating the rules years ago by measuring their boat in fresh water and that made the boats more stable.

Q134 Yeah.

A We weren't into that, but, but the salinity would change where the boat

Q135 Of course. Yep. O.K. Taking all that into account, the certificate as issued with the limited positive stability of 104.7.

A Yes.

Q136 Sent away to the Cruising Yacht Club of Australia
- - -

A That would, that would have been sent after the initial application for entry was sent - - -

Q137 Yes.

A - - - so they would have had the old certificate of 120

plus that one would have been posted to them, that would have sent to them.

Q138 O.K.

A Yes.

Q139 O.K. Irrespective of that, the second certificate's been sent away that you know of.

A Yes.

Q140 O.K.

A And I, I knew that the boat's stability factor was 105, I hadn't seen the notice of race since July - - -

Q141 Yep.

A - - - when Bruce and I had been through it and we knew our old stability factor was 120.

Q142 Yep.

A It was always my understanding that the boats had to be 115 - - -

Q143 Yep.

A - - - under IMS to be into it and when Bruce, Bruce sent off the new thing and our entry was accepted and came back and he rang me up and said, I'd spoken to Bruce and said, "We've probably got a stability problem here, we're going to have to put some lead back in, because the boat's not 115", but I, we hadn't entered in an IS for two years, so I didn't know whether they'd actually changed that index or not and having read the notice of race some previous four months, it, it slipped my mind in that respect, but I did say to Bruce on the phone, "Well, why have they accepted our entry

with our stability factor's 105?", and he said, "I don't know, but they've accepted it".

Q144 When did you have that conversation with him?

A Just after that certificate was, probably a couple of weeks after that certificate was - - -

Q145 Sent back to you.

A - - - sent back to us. So he actually, it was sent back and Bruce sent it off to the CYC, obviously with, to amend his entry, his earlier entry, and I'm not sure exactly what those dates were. He just rang up and said, "We're right, we're in", and I said, "Well, Bruce, have they changed the stability factors?".

Q146 And what did he say?

A Bruce said, "Well, they must have, they've accepted our entry", and I said, "Well", I said, "Well, it's possible", I said, "I haven't checked into that for a couple of years", and not having the had the notice of the race in front of me to go back and read, I, I couldn't question him on that, at that point.

Q147 Mm. Mm.

A But I just took it for his word that, that they had changed the limits of where you could enter.

Q148 O.K.

A And - - -

Q149 So, you - - -

A - - - 'cause that's the way that I took it at that time
- - -

Q150 You were quite surprised that you were admitted to

entry?

A Well, I was expecting us to have to be 115 degrees.

Q151 Mm.

A But I - - -

Q152 But that, of course, that 115 is to be eligible for the IMS category.

A That's, that's right, yes.

Q153 Yeah. And that brings me back to what I was saying before.

A But if we'd been in the performance handicap it would've been 103 degrees.

Q154 No, it's 110 degrees.

A Well, there's two conflicting things in the notice of race there.

Q155 That's right.

A Yeah.

DETECTIVE SENIOR CONSTABLE GRAY

Q156 You can't enter the race if you're under 110.

A Under one clause it's 110, under another clause it's 103.

Q157 No, it's an interpretation, yeah. It's an interpretation.

A Yes.

SENIOR CONSTABLE UPSTON

Q158 If you wish I'll just, I'll just go through it quickly again. We talk about the PHS category, right - - -

A Yes.

Q158 - - - the Performance Handicap.

A Yes, I know, I'd agree with that.

Q159 That, what this 103, let me tell you for a fact that this 103 degrees has nothing to do with your eligibility into an IMS category - - -

A No, no, no, no, I realise that.

Q159 - - - or a grandfathering clause.

A No, no, I realise that.

Q160 O.K.

A But we could've entered the race under the Performance Handicap Section and our stability factor would have been greater than 103, so we would have been accepted.

Q161 No.

DETECTIVE SENIOR CONSTABLE GRAY

Q162 No.

A Under that clause?

SENIOR CONSTABLE UPSTON

Q163 No. What that's saying, forget all about this here.

A Yes.

Q164 What that there is saying is that an actual certificate, just the certificate, will not be issued if it is not less than 103 degrees. It's still saying that you can get a certificate which is greater than 103 degrees or 103 degrees and greater, but you'll still not be eligible to enter the race, because you don't fall into a clause of 110 degrees or 115 degrees and greater.

A That's totally confusing and I could probably disagree with you on that.

-
Q165 Well, you can, I understand - - -

A But I mean it's confusing, full stop.

Q166 I can understand it is totally confusing but I can tell you for a fact that that is the case. Because - - -

A That might be the intention but that's not as it's written.

DETECTIVE SENIOR CONSTABLE GRAY

Q167 No. agree.

SENIOR CONSTABLE UPSTON

Q168 Exactly. I agree.

A That may well be the case but that's not as it's written.

Q169 That is exactly right, that's fine. Detective Gray?

DETECTIVE SENIOR CONSTABLE GRAY

Q170 So, what is the significance, do you think as a yachtsman, about having minimum stability index limits?

A (NO AUDIBLE REPLY)

Q171 Why are they there from your -?

A I, I would say that they're there for reasons of safety to make sure that the boats are stable at certain forms. Mind you the rule's not perfect and those stability indexes don't apply that fairly to a number of boats. Some boats would pass that easily and be less stable than other boats that don't pass it. In the case of Business Post Naiad, it was an IOR boat, it had IOR humps on it, and at certain points those humps would make the boat relatively unstable and it may be that the boat was measured at that point, which meant,

which is probably the case, since the boat was 300 kilos lighter, that's probably lifted it out of the water marginally and it's probably changed the position of those humps on the water line, so that when you measure it, the boat is initially, relatively unstable, and that stability factor index is, is showing that. The other thing that can happen is if you take, depending on how the boat's trimmed in the water, either stern down or stern up or bow down or bow up, that can also affect the stability factor. I've known boats that have actually gained a stability factor when they've taken 100 kilos off the bottom of their keel, I mean that, it's a quirk, boats aren't perfect and it's not perfect answer to stability. But it is counted for the thing and there's got to be some form of stability rating and that's what the Sydney Hobart people are choosing to use.

Q172 Does it surprise you that based on the facts that we've presented to you today and the facts that you're aware of, does it surprise you that in fact that entry was accepted by the racing committee?

A Yes, it does.

Q173 And how do you feel about that?

A I guess initially I was, probably a little bit angry at it, actually.

Q174 Right.

A We've lost two people, perhaps if we'd had that, if we'd had to go and put that lead back in to get it to

the rate, we may have been able to carry the storm jib past the 85 knots and it was too much and perhaps we might not have rolled the first time, perhaps we might not have had two deaths, it's all if, buts and maybes, and it's not the perfect, there's not a known answer to that, but it's just your initial feeling when you find that out, and it wasn't until last Friday, which was about the 14th that I realised that we didn't actually rate on the stability for the race, we were actually lower on our rating certificate, and that initially made me quite angry.

Q175 Do you as a yachtsman consider that it's certainly the responsibility of organising authorities to ensure that everything complies?

A That's the, well, that's why, yeah, they're one of the people, it's one partly the owner and partly the organisers, the organisers set the rules and it's for the owners and the organisers, the owners to try to come up to that and for the organisers to enforce it and I would expect, usually the organisers are expected to enforce it, yes. But stability is not a simple cut and dried case, although as you read it in there, even the rules as - - -

Q176 The facts - - -

A - - - are quite, the facts in the notice of race are even quite confusing.

Q177 Do you think it's a possibility that what we discussed there for PHS, part a and part b, that there's been a

misunderstanding, so far as that reading of 103?

A It's possible.

Q178 Mm.

A It's possible. And it's possible that the, whoever's taking the entry at the CYC too has probably misinterpreted the, the rating rule. The and I don't know who did it, whether it's the secretary or the committee that someone could, of course they've got entries for both IMS and PHS, they may have thought that we were a PHS entry and said that's right, 103 degrees. I mean they could be as confused as we are.

Q179 Yeah.

SENIOR CONSTABLE UPSTON

Q180 O.K. Would you like to say anything else about the way the race was organised or give you an opportunity to say that how things were, how you feel about things at at all the things of the safety that you'd like to raise?

A I guess we were concerned after our first roll when we sent out our Mayday and trying to keep in touch with Telstra Control, the radio communications were to my way of thinking, well, one our radio wasn't working that well, because all we had was a..... laying on the deck, but we did have other aerials, but that was working as well as anything and the only way we could talk to Telstra Control was through relays and that makes it, always makes it difficult, but the amount of time that Team Jaguar took on the air was,

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was not good, to put it mildly, and my feeling is that the radio communications, I dare say that the two officers there, with the equipment they had did they best they could, but to my way of thinking it was perhaps inadequate, and I also think perhaps, you know in hindsight and seeing what we've seen that the weather forecasting wasn't brilliant and perhaps people knew that we were going to get more than 55, 65 knots, and didn't pass it on to us at an early enough stage to get out of it. I, I don't know the answer to that. You could say that we should've radioed up Melbourne radio and found out all the land base stations for Bass Strait from Cape right through and Cape through and made our own conclusions, but we didn't do that, perhaps we should've. If we had done and seen that it was 70 to 80 knots at a few of those land base stations at 10 o'clock in the morning, we probably would've gone back to Eden, thinking that it was coming our way. To my way of thinking that sort of thing should be on the, the weather information we were given was basically from New South Wales, and it was the New South Wales and Victorian south coasts and just the start of the Bass Strait and all the weather information from the west, from the land base stations, which was giving the indications that it was really going to howl, just wasn't passed on to us in the, the weather forecast given us to by Telstra Control. We, we put too much faith in Telstra's weather forecasting

basically. I did ring the weather bureau Christmas Day in Tasmania but all the weather faxes we discussed the low that was in Bass Strait, he really didn't know what it was going to do, he thought it could've as easily dissipated as easily intensify but he said, you could at least bet 50, 55 knots out of it one way or another through varying lengths of time, but he thought at that point that it could've been that, but it could easily dissipate and you may only get 30, 35 knots out of it, so, we'd done our homework inasmuch as that was concerned, as far as we could before the start of the race, we also went to the weather briefing, had all the weather facts that the race people issue, we also had our own weather facts on board, which at half past 3.00, didn't show that that the low had intensified into, into nearly a cyclonic low, it was still a, a U-shaped low, and at that point it was probably blowing 50, 55 knots, which you'd expect out of it and it wasn't until a couple of hours later that it went, "cyclonic" and blew and we were experiencing 85, perhaps 90 knots in breeze from probably 4.30 in the afternoon, through to probably 10 o'clock Sunday night, the 27th. It's a hard one to answer. Obviously when you have something as shocking as happened to us happen, you do a lot of soul searching and you don't like losing mates and you think, what if, what if, what could have been done.

Q181 Mm.

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A There's not, there's not a perfect answer. But I think really the weather forecasting that's issued by Telstra Control is inadequate and not enough frequency for racegoers. There was another thing that quite infuriated me during the time. They were issuing a weather forecast of 45 to 55 knots and then they were reading out rules saying that it's up to each owner and skipper to decide whether to race or not. That, I mean here we are out there sailing in 55 knots and they're reading this out on the radio repeatedly, and you think, well, what the hell's going on, you know, with, it's 55 knots, we're expecting that, we can cope with that, do they know something that we don't know or what. We were at a point of no return, either we keep going into Bass Strait or we turn back. If we turn back, we're going to go back into rough water you just don't know, but I wasn't impressed with that. I mean if they were reading that out they should've been giving us some good reason to turn back and to get in. I just wondered did they know that it was going to blow more than 55 knots.

Q182 Mm.

A That really, and that angers me somewhat.

Q183 And just quickly, you mention that you were in a Melbourne to race some time ago, you mentioned to us it felt, that the boat felt a little tender, with the 300 kilos out.

A Um - - -

Q184 Tender, what do you mean?

A Yes, the boat was in, we were probably in 50, 55 knots of breeze at the time and the boat, after we'd taken out the second lot of 300 kilos, which was approximately 18 months, two years ago, and that was the first race we'd done in a heavy breeze with it in that state and she did feel more tender, and I think the boat would've performed better if we'd actually had that 300 kilos back in it. I spoke to Bruce about that on a number of occasions and in another race we were beaten by a Far Forty that was obviously a little bit lower in the water than us and rough water, and I said, "Well, Bruce, I think he's probably beating us because he's got more lead in her, and the boat's heavier in the water and more stable". And Bruce's opinion was all round the boat was probably faster in it's lighter state, my opinion was it was probably, I thought that it would perhaps have been better with the extra 300 kilos in it, but that's just a personal thing and my judgement would, if it'd had been my boat I would've put it in, but Bruce was the owner and that's his, it's his prerogative to race his boat as he wishes.

Q185 O.K. The time on my watch is now 11.39. This interview is now concluded.

INTERVIEW CONCLUDED