

SENIOR CONSTABLE UPSTON

Q1 This is an electronically recorded interview between Senior Constable David Upston of the Sydney Water Police and Gary Clapham at 23 Queens Road, Melbourne, Victoria. The time on my watch is now 9.55pm and also present, seated to my immediate left is Detective Senior Constable Stuart Gray from the Bega Detectives. Gary, as I spoke to you earlier and informed you about, that Senior Constable Gray and myself are making inquiries about the 1998 Sydney to Hobart yacht race, and we are speaking to people either directly or indirectly involved in the race in some form and we would like to speak to you about your role in the 1998 Sydney to Hobart yacht race as a, as a safety inspector here in Victoria. For the purpose of the interview, would you like to please state your full name?

A Yeah. My name is Gary Clapham.

Q2 And your date of birth?

A 26th of March, 1952.

Q3 And your business address?

A Is Police Communications Division, Victoria Police Centre, 637 Flinders Street, Melbourne.

Q4 And your occupation?

A I'm a Senior Sergeant of Police.

Q5 Right. O.K. What can you tell me about your involvement in the 1998 Sydney to Hobart yacht race?

A In the yacht race itself I sailed as the sailing master and watch captain on an Adams 45 called Ocean Road.

I'm also a safety officer for the Ocean Racing Club of Victoria, and I carried out several safety inspections prior to the race for Victorian boats that may have entered the race.

Q6 O.K. And can you give me your sailing experience?

A Yeah. I hold a Master Class 4, Fore and Aft Sailing for 600 Mile Offshore, I hold a Marine Engine Driver Class 2 Certificate and I hold a, an Ocean Yachtmaster A.Y.F, which is the Australian Yachting Federation Instructor Examiner, and Offshore Racing Skipper Instructor Examiner's Certificate.

Q7 O.K. And as the safety inspector for the Ocean Racing Club of Victoria, can you please tell me what your role there is, and what that includes as a safety officer?

A O.K. I'm on the general committee of the Ocean Racing Club of Victoria and part of my duties there are, is to run all the safety inspections for, for Victorian yachts competing in Ocean Racing Club of Victoria's races in Bass Strait. It's a job I've held for about 2 and a half years and I was just, just a safety inspector prior to, to serving on the committee when I took over the chief safety officer's job about 18 months ago. I'm also the chairman of the Victorian Yachting Council Safety Subcommittee which reports to the Australian Yachting Federation on safety issues involved in yachting.

Q8 O.K. And as far as a safety check is concerned, what, what, what actually happens with a safety check?

A O.K. Once a year we require all yachts to undergo a safety inspection for the category of race in which they're competing, and the safety inspections that the Ocean Racing Club do are for category 2, or category 1 if they're doing Sydney Hobart. Most of the Victorian races are only category 2 at this point of time. I have basically designed a couple of forms in which I check against the safety requirements as defined in the Rules of Racing A.Y.F. Blue Book and, and I check items against, items on the yacht against the, the requirement or the forms that they need or the things that they need.

Q9 O.K. I show you a form here that's, that's, that's headed, Ocean Racing Club of Victoria Safety Equipment Compliance Form. Is this the form that you, you designed - - -

A Yeah.

Q9 - - - for various categories in the race - - -

A Yes. That's correct.

Q9 - - - or races?

A This is a form that I designed about 18 months ago when the new book, or the new racing rules book came out, there wasn't a, a decent form, and after a meeting with the New South Wales group we decided we'd try to be universal in the types of forms that we were using between the different States, and I created this one on one that they, the New South Wales Yachting Federation had already worked on and adapted it to Victorian

conditions, some of the requirements that, that we needed that were separate from New South Wales. And we've used that form in all our ocean racing for the last 2 years.

Q10 So this, this form is a, is a general form that can be used for several categories of race?

A That's correct. It can be used from category 1 to category 7 by any of the safety inspectors.

Q11 And this form also is forwarded to the C.Y.C.A. of Australia, the Cruising Yacht Club of Australia, for vessels that enter the 1998 Sydney to Hobart yacht race?

A Yeah. As I understand it, yeah, they, the Cruising Yacht Club accept our form because it's exactly the same, or almost exactly the same as the New South Wales one, and they accept our safety inspectors as being inspectors on their behalf. And so the form is sent up to New South Wales and it's my understanding that the C.Y.C. accept that.

Q12 O.K. I'll now show you a form that's the, that's a, a faxed document or it's, it's a document that appears to be faxed from the, that's headed, The Ocean Racing Club of Victoria Safety Equipment Compliance Form, and it's a form that's been completed for the vessel, Not Negotiable. Is that correct?

A That's correct.

Q13 What can you tell me about that form?

A This is a, an inspection I conducted back on the 21st of November, '98 for the owner of the vessel, Michael Dolphin. It was, the inspection was actually conducted at Royal Melbourne Yacht Squadron and the vessel was in the water in its pen, which I think is in C row at Royal Melbourne Yacht Squadron. This is the third time I'd inspected the vessel. I'd previously inspected it twice, two other years, and I was familiar with the vessel. As I went through I marked off each of the items as I checked them and, and wrote down the appropriate dates where dates were required and further information's required, and that's my signature at the form and the signature of Michael Dolphin, the owner -
- -

Q14 O.K.

A - - - at the bottom of the form.

Q15 Is it the case that you also conduct several spot checks during the year?

A That's correct. We have the power to that. It, we probably do it once or twice a year, not always on every boat, but they're random across the entries in a, in a fleet.

Q16 O.K. And is it the case that you've, during those spot checks you've, you've, you've asked for certain items to be produced and you've agreed with those items to be compliant with what's on the form?

A That's correct.

Q17 And would it be fair to say that you've looked at lifebuoys and had them checked?

A That's correct. I have had a look at lifebuoys.

Q18 And flares?

A And flares, and inspected their dates for operation.

Q19 And life jackets?

A I've inspected life jackets. Generally speaking I, with life jackets I will inspect one, I won't count up the number that are on board during a spot check.

Q20 O.K. And you've also checked life, correction, you've also checked E.P.I.R.Bs?

A E.P.I.R.Bs I check for date of expiry and operation.

Q21 O.K. And on any occasion have you also checked on the vessel, Not Negotiable, the safety harnesses that must be required to be carried on

A I have. In previous years I've, on my very first inspection I inspect everything that is required. On my second or third inspection I randomly select some items. Safety harnesses is one of the items that, that I do not insist on seeing because in most cases they're a crew responsibility to bring onto the yacht with them, and generally speaking the boat will not have them there unless I've asked for them.

Q22 O.K. Well, I draw your attention to item 5.2 Safety Harnesses (A-S-2-2-2-7 or equivalent). And there's a number 6 and what appears to be in the right hand side a column, in the right hand side column, a tick. I would also like to inform you that I've spoken to the

owner of the boat, Michael Dolphin, recently and prior to the start of the Sydney to Hobart yacht race he mentioned that you in fact conducted a spot check on the vessel and, when you mentioned safety harnesses to him, I was informed that he did not have the harnesses at the time of spot check. What can you tell me about that?

A Yeah. That's correct, at that point of time because I'd previously inspected his vessel and, and knew that he had them. When he didn't have them this time, I explained that I was quite happy that it was a crew responsibility to provide the harness and I gave him the tick in the box for those harnesses.

Q23 O.K. What can you tell me about Section 5.2, Safety Harnesses and the A-S-2-2-2-7 ruling?

A Basically it says that the, that there must be a harness on board for each member of the crew and it must have a, an Australian Standards 2-2-2-7 certificate on, well, not certificate, label on the harness. Whenever I'd have checked harnesses, if they haven't had that label, I have not permitted them to be carried.

Q24 O.K. Is it the case that many yachtsmen or, or yachtspersons enter races and in fact supply their own harness?

A In most cases, yes. My experience, nearly every crewman provides his own harness. I compare it to any other piece of safety equipment like a helmet in car

racing. You would provide your own helmet that fits your head. Harnesses need to be adjusted to a person and a boat harness is generally not used. Even though on the boat I sail on, there's six harnesses in our inventory, they're never used because everyone has their own.

Q25 O.K. I'd like to show you a apparatus which is marked, Line 7, and it is a yellow piece of ribbon or, or strapping, webbing, with two stainless steel clips at either end or a stainless steel clip at either end. And also on the piece of webbing there's a stitched tag, says, Line 7. What can you tell me about that?

A Well, I am familiar with this type of strap. It's produced by the Company, or, under the trade name of Line 7 as well. It's my opinion that they are not complying with A-S-2-2-2-7 and for that reason I have not permitted them to be marked as a safety harness during the inspections I've carried out. Generally speaking, that type of harness is used only in, or that type of strap is used in conjunction with a harness that's fitted to a, a wet weather jacket which does not comply, has no over the shoulder type fitting, and it has never complied in my knowledge.

Q26 O.K. I show you another apparatus which is a Stormy Seas brand P.F.D. which stands for personal flotation device, type 1. What can you tell me about that harness?

A O.K. Again, with this - - -

Q27 Oh, correction, what can you tell me about that P.F.D?

A Well, the P.F.D. shows, does display the P.F.D Australian standard but not a harness Australian standard. And in fact I do permit as P.F.Ds this type of harness is acceptable as, sorry, this type of P.F.D. is acceptable as a P.F.D. but not as a safety harness. They are two separate items and I, I personally use a similar type of, of P.F.D. but not a harness.

Q28 O.K. What would you say that this lanyard and P.F.D was supplied to me by a crew member off the vessel, Not Negotiable, as one that was used in the Sydney to Hobart Yacht Race?

A It doesn't surprise me that it's been used, but it certainly doesn't comply with the regulations. And if I was to conduct a spot check during the race, that would fail.

Q29 So under no uncertain terms you would certainly reject that device that we've shown you now if it was produced for the use as a - - -

A Yeah, under the rules, yes, definitely.

Q29 - - - an appropriate safety harness and lanyard?

A Yeah. No, I would definitely say that is not a harness, and I would require them to produce a harness that complies.

Q30 I notice that you've brought some documents along with you. Would you like to explain those to me?

A Yeah. Basically I've produced, I've taken over as, as I said earlier, the chief safety officer of the Ocean

Racing Club. I went through our list of authorised officers and found several had not been, had been doing for several years without any sort of upgrading or checking or anything else, and what I've tried to do bring us all into line with the, the new rules. So what I've produced is a big handout that I sent out to each of them after I spoke to them on the phone. I have guidelines for safety officers which lists all the items on our form and, and what to look for and, and how, you know, how hard to be basically, whether it'd be really hard or not, be hard on 'em or whether, you know, we allow some things to sort of, I won't use the term, slip by, because it's not quite correct, but in some things it's created through ignorance rather than anything else and we won't fail them instantly because they haven't got it right, but we'll tell 'em to fix it up. We'll allow them to, the time to go and fix the problem. And that's what this safety guideline basically says to do and it lists, as I said, each item. And under Safety Harnesses here, what I wrote was that there'd been a fair bit on this topic over the years. Mind you, this was written also 2 years ago. A harness needs to comply with A-S-2-2-2-7-1992 and shall be branded with the S.A.A. mark or equivalent overseas standard. Basically if they don't have the Australian standard they are out. Rope lanyards are accessible, are acceptable if they are branded, you will hear all sorts of reasons why the boat doesn't

have them, such as that they are with the crew, etc. The fact is they have to be on board when you carry out the inspection or the boat does not comply. And that's my comments written 2 years ago. And generally that's how we run our inspections down here.

Q31 Mmm.

A Hand in hand with that, the next item is a safety inspection and it's the instruction for owners. This is an instruction designed to assist the owners in preparing for an inspection, because there's nothing worse than us going down and they're not ready or they don't have the right gear or, and it's not there or it's not on the boat and they, they use every excuse under the sun. So we send this to them now and we'd say, This is how we want it done, along with a little diagram about how we want everything laid out. So instead of spending 6 or 7 hours doing an inspection, we've cut it down to about 2 hours if they're properly prepared.

Q32 Mmm.

A So I'll produce those. I'll also produce a Radio Inspection Certificate which is required in Victoria by the Ocean Racing Club for any vessel entering a, a race. They have to have a radio technician check their radio and sign the certificate as operating properly, and in addition to that before the race they have to do a radio sched. If they don't come clearly over the radio sched, they are disqualified from starting. And

lastly I produce a Crew and Next of Kin List which I produced. On the back of the Crew and Next of Kin List is also a safety check list for category 2 races, which is our main category in Victoria, in which the yacht owner or skipper has to sign saying he has all this equipment when he starts the race because, at the end of it all, the safety inspection only guarantees the equipment was there on the day the inspection was carried out and not at any other time. So we require all owners to, to sign a declaration that, when they leave in the race, they have the correct equipment and that, as I say, we can back it up then with a spot check either at the finish or beforehand and disqualify them if they don't comply.

Q33 O.K. This, this form that we've just spoke about now, that, would one of these be filled out prior to the Sydney to Hobart yacht race?

A No, it's not, it's a requirement for Melbourne racing only.

Q34 Only?

A For the Ocean Racing Club. As far as I'm aware, in Sydney Hobart you do a Crew Next of Kin List but you do not do a, a safety check declaration.

Q35 So what we're saying now, that the, the Safety Equipment Check Compliance Form that, that was signed by you and also the owner for the 21st of the 11th, 1998, obviously there was a mistake or there, something was amiss was far as the safety harnesses, and I am

aware that none of the harnesses that were taken on the, on the 1998 Sydney to Hobart yacht race complied with the Australian 2-2-2-7 standard.

A Right. I can't comment on what they carried on the race.

Q36 Yeah.

A All I can say is on the 21st of November, which is the day I did the inspection, that they didn't have the harnesses on board and I was quite happy to, because I'd previously inspected them, to allow them the latitude of, of not having to produce them. I, I was aware that they'd raced previously, and my spot inspections previously had had them with the correct harnesses. And I have no idea what they used during the race or, or on the race at all.

Q37 Well, what are your comments then as far as a yacht competing under rules and regulations and instructions of the 1998 Sydney to Hobart yacht race that continues in a race where obviously the safety equipment doesn't comply as far as the safety harnesses?

A Well, I think it'd be very foolish to, to enter a race where you don't comply with the safety instructions. I mean, there's been a lot of accidents over the years and several of them fatal, not quite with the Sydney Hobart but certainly with other races, and I think it would be remiss of anybody to start without the right gear.

Q38 Do you feel that, in that light, that there should be stricter or other types of, of checks that will ensure that these regulations and rules are complied with?

A I'm not really sure how you would do it. I believe spot checks is probably sufficient, and certainly a requirement for spot checks at the completion of a race. And that is something that, that has not been happening. Even though the facility is there to do it, I'm aware that it's not done. If we compare it to, to car racing and your first, second and third winners are put over the pits and scrutineered after the race to, to ensure they comply, and I think that that's probably a logical way to, to handle your spot checks for ocean racing, is to say, O.K. first, second and third in each class that wins, you will have safety inspections at the completion - - -

Q39 Mmm.

A - - - to ensure that you met all the rules.

Q40 Yeah.

A I can't see any other way of being able to do it fairly and effectively.

Q41 In relation to these, to this Line 7 lanyard, with the two, I suppose they're Karabiner type looking things, aren't they, connectors, is there anything you can tell us in relation to, to these from your experience?

A Yeah. From my experience I personally do not use the locking type. One of the reasons for that is that I have found that they are very difficult to unlock in

certain conditions and certain occasions. There was an accident in Bass Strait involving a yacht called Apache about 3 years ago, and the boat rolled over and the helmsman on that boat, was a guy called Mark Thompson, was held underwater because he couldn't unlock the locking fitting. The boat remained upside down for approximately 10 minutes before it was rolled back up the right way, and the end result is Mark Thompson is now in a wheelchair and severely disabled and I believe that it would, it directly related to that type of locking pin.

Q42 Mmm. And if you look at this, this locking pin here, you see that the little arm is basically held back by two little nipples on the side of the, the - - -

A Yeah, hook?

Q42 - - - hook or Karabiner, whatever you want to call it. And do you think it's quite conceivable that that can be knocked over, that nipple?

A Yeah, that can certainly be bent under the force of a load. I have seen people washed overboard on a number of occasions and the shock load on that fitting when that occurs on a, especially with a big bloke, is going to shear that fitting probably straight off. I have some concerns with safety lines that involve wire or what we call jack stays, which these things hook onto, which involve fitting a wire swage on, because you get two or three people who get washed overboard with a wave and the load is loaded on that swage, it pulls out

basically. So I recommend for jack stays that they do use the seat belt webbing material, but it's stitched rather than swaged, wire swaging. So that's another thing that I sort of - - -

Q43 Mmm.

A - - - I don't knock them back if they've got wire jack stays, but I try to persuade them into investing into, in new jack stays.

Q44 Is it the case with vessels that sail under category 1 races, that in fact that jack stay, it's now a requirement that that is made of a webbing material?

A I would have to look back at the book but I, I know that this year they brought in the webbing, they defined webbing material and prior to this set of rules they didn't. It's my understanding wire is still acceptable - - -

Q45 Mmm.

A - - - for this year, or for ocean racing currently under the rules.

Q46 Mmm.

A I mean, I can check before I leave here, if you like.

Q47 Mmm. Do you have any further comment in relation to the race itself last year from your side of things, actually sailing it?

A From my side of things I really believe that, and it's common not just with the Sydney Hobart but with many races, that sailors and yachtsmen generally find it

hard to tell the difference between sailing to survive and sailing to win.

Q48 Mmm.

A And there are times when one has got to use some discretion and sail safely, and in doing so I don't think the conditions were that severe that, that a lot more boats could've survived. A lot, I think, I believe a lot of the boats got into trouble because they didn't know how to sail safely in big storms. How do you get that experience is a different question, because you can't deliberately go out into those storms and the only way you can get it is go out and practice. So generally speaking from my point of view I, we didn't have any problems but we've sailed in those conditions many times. And whilst I, I found the waves exceptional, I didn't think the wind was any different than some other gales that we're been caught in.

Q49 How did you, how often have you sailed the Bass Strait in your 25 years of sailing?

A I sail, I do about five Bass Strait crossings to Tasmania each year, so I've probably crossed it well over 120 times. I do heaps of deliveries and most of my sailing's in Bass Strait.

Q50 Mmm.

A So I, as I say, I'm very familiar with Bass Strait and, and the way it changes and, and the seas that you can get. As I said earlier, the seas on this particular occasion were the biggest I'd ever seen in that period

of time. But by the same token, I didn't think the wind was that exceptional - - -

Q51 Mmm.

A - - - and I think the seas were probably created by the, the eastern seaboard current, wind against tide effect. So I think that's what made them stand up, because we had a, an exceptional current running down the east coast. It went right out into Bass Strait when I originally looked at it before Christmas, and certainly when we looked at it after Christmas after the race the, that current has been pushed right back up the east coast so the storm had a fairly major effect on the current - - -

Q52 Mmm.

A - - - and I think that that's what created the big seas.

Q53 Mmm.

A But who really knows?

Q54 Mmm. And so far as the tactics which were employed by your boat during the race, there was a decision to sort of take shelter at Eden, is that right?

A That's correct. We got to about 25 mile off Gabo in, into Bass Strait and it was about 6.00pm on the 27th and we decided that, while the seas were as big as they were, we were quite comfortable during the daylight, we could see 'em, and, and steer through them and, I mean, the odd wave was coming over the boat, but generally we were quite comfortable. But we felt that at, once it

got to dark we wouldn't be able to pick the waves and we would then stand a chance of being broached, so we took a decision, and it was a very easy decision to make, to turn and head behind Gabo and wait for the storm to blow out before we continued. Once we turned and headed back, we were under a storm jib only and we were making pretty good speed and we decided that Gabo was probably not the most secure place to hide out and we were quite comfortable and, and we went to Eden instead.

Q55 Right.

A And waited in Eden about 15 hours before we left and continued the race.

Q56 Right. And your boat ended up 15th overall, is that right?

A Yes, that's, that's correct, we finished, we were the first boat to finish for 1999, finishing at 5.00am on New Year's Day.

Q57 Mmm.

A So - - -

Q58 Very good. Anything else you'd like to say? Anything you can think of which - - -

A No, not, I, I think I've pretty well said everything - - -

Q59 Yeah.

A - - - that I, you know, it, it was an exceptional race. It was an exceptional storm, I was in the '93 Hobart and I was in the '84, two big storms, and I felt that

those storms were probably more uncomfortable 'cause they went for longer and were certainly pretty hard storms.

Q60 Mmm.

A This just had exceptional seas. The seas were the, the thing about this situation, not so much the wind but the sea.

Q61 Mmm. O.K. All right. One more thing, Gary, you mentioned earlier that you hold a Commercial Qualification Master Class 4?

A Yeah.

Q62 And I understand that you've held an active role in Police Search and Rescue for a number of years?

A That's correct.

Q63 And you've, again, as you just told us, you've, you've sailed in the Bass Strait on many occasions and also to New Zealand?

A That's correct.

Q64 As far as you're concerned with the Sydney to Hobart yacht race, obviously the conditions down through the Bass Strait can be quite treacherous. Can you see anything that you would like to improve, either the, the category of the race or, or vessels in general, that can add to the overall safety of, of the crew and the vessels concerned?

A It's very hard to, to, I would suggest, make it a category 0 race, because there isn't a category 0 race in Australia at this stage. There, the Sydney Hobart

used to be category 0 a few years ago, and I'm saying quite a few years ago. I think it changed about 15 or maybe even 20 years ago to category 1, and that's because there are really no defined rules in category 0. Basically category 0 is your round the world racing type races, and the race committee can set whatever they want for category 0 safety. So from a universal point of view or a, or a, a international point of view, we're using very similar rules to those that were defined by the Ocean Racing Club of England for the Royal Ocean Racing Club, and we try to keep all our gear similar so it doesn't matter where we go in the world when we're competing in things like the Admiral's Cup or stuff like that, that we generally comply with the rules and there's not too much alteration. So I tend to think category 1's the logical one to use for the Sydney Hobart.

Q65 Category 1, did you say, or category - - -

A Category 1, yeah. I, I don't think it needs to be a category 0. I just think it's a prestige race and so you get some inexperienced crews go along, and I think they have to be very careful about looking at the crew experience on each boat, and that's probably one thing they could look at.

Q66 Mmm.

A But I think the safety gear itself, the rules are very clear on it and, and they're very good and there's not,

you know, if we sit, if we actually make sure that they have what they're supposed to have - - -

Q67 Mmm.

A - - - and, that, that, we would solve some of the problems - - -

Q68 Mmm.

A - - - that occurred last year.

Q69 Mmm.

A But complacency - - -

Q70 Mmm.

A - - - affects everyone, unfortunately.

Q71 So in light of what's happened and what we've spoken about today, you'll, will you go and make certain recommendations to the, to the Ocean Racing Club of Victoria?

A I certainly will be. We've got a meeting tomorrow night in which I've got several things raised on the agenda already about inspections and how we're goin' to do things, because we've been looking at it, actually we started looking at it prior to this year's race. We've had a couple of races where people have been injured and we've lost a couple of boats coming back from races. So we started to address the problem about 2 years ago, 3 years ago. We actually have a search and rescue plan for all our races and all that sort of stuff has been prepared in advance. We haven't had to use it yet but - - -

Q72 Mmm.

A - - - I mean that doesn't mean anything. At least we're reasonably prepared.

Q73 Mmm. All right. Is there anything like, you'd like to add now?

A No, I'm quite happy about it.

Q74 O.K. The time on my watch is now 10.27. This interview is now concluded.

INTERVIEW CONCLUDED