

STATEMENT in the matter of:
SYDNEY TO HOBART YACHT RACE-1998

Place: Sydney Water Police

Date : 3 March 2000

Name: David Charles Upston
Address: Marine Area Command, Sydney Tel. No.: 02 9692 5411
Occupation: Senior Constable of Police STATES:-

1. This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable for prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

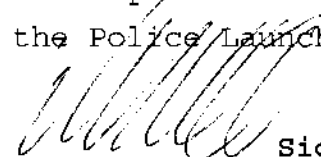
2. I am 42 years of age.

3. At 7.00am on Saturday 26th December 1998 I was rostered as Operations Coordinator for the New South Wales Water Police, in support of the Waterways Authority for the 1998 Sydney to Hobart Yacht Race. I produced operational orders for the day and they were issued to launch crews after a briefing.

4. About 10.30am I boarded the Waterways Control Vessel with officials from the Waterways Authority, Australian Volunteer Coast Guard, Royal Volunteer Coastal Patrol and Cruising Yacht Club of Australia. The vessel headed out to a vantage point on the western side of race start line just west of Bradleys Head. By 11.00am all support craft were in position and the spectator fleet controlled. At 1.00pm the race commenced and by approximately 1.45pm all competing yachts had cleared Sydney Heads and were heading either to an easterly rounding mark buoy or heading south.

5. About 3.00pm I returned to the Water Police Base where I then boarded the Police Launch Nemesis as master with Constables

Witness: _____


V.S. MACKIE
DIS/C

Signature: _____



STATEMENT (continued) in the matter of: SYDNEY HOBART YACHT RACE - 1998

Name: David Charles Upston

MAGUIRE, BROWN AND DAVIDSON as crew. We were tasked to head south from Sydney to Eden and conduct a series of operations.

6. On boarding the Launch I was informed by my crew that a Storm Warning has been issued and winds were expected from the west between 45 and 55 knots. I can recall viewing that Storm warning issued by the Bureau of Meteorology. I then had a conversation with Senior Sergeant JAMEISON of the Sydney Water Police, I indicated to him that our plans to conduct operations further off the coast will have to be altered to high winds and heavy seas expected. I suggested the trial electronic equipment we had on board would most likely be damaged in those conditions. He agreed with me and our operational orders were changed.

7. Later that afternoon we were contacted by Sydney Water Police to alter our present course and make for Wollongong Harbour then convey a radio technician and equipment to the HMAS Young Endeavour Telstra Control, due to HF (high frequency) radio failure. Young Endeavour was then to rendezvous with Nemesis 2 miles east of Wollongong. After repairs the technician was returned to land and both vessels headed south. That evening I set a course for Kiama where we moored for the night.

8. On Sunday 27th December 1998 we conducted further operations close inshore and headed for Bateman Bay where we moored for the night.

9. At 7.00am on Monday 28th December I contacted Sydney Water Police and was informed to head directly to Eden as a result of several yachts in the fleet sinking and a search is currently under way for missing yachtsmen.

Witness: _____

Signature: _____

STATEMENT (continued) in the matter of: SYDNEY HOBART YACHT RACE - 1998

Name: David Charles Upston

10. About 4.00pm we attended Eden, and were met by Sergeant BUCKLEY of the Sydney Water Police. We were appraised of the current situation and tasked to search for the Business Post Naiad (BPN), a 'Farr 40' design sloop, which was approximately 45 nautical miles east of Eden. I was informed that the yacht had two deceased persons on board and that the other crewmembers were winched from the vessel earlier.

11. After a further conversation with Sergeant BUCKLEY it was decided to refuel the Launch and prepare for a departure in the early the next morning.

12. At 5.30am on Tuesday 29th December I departed Eden Heads with a crew consisting of Constables MAGUIRE, BROWN, HANSEN and DAVIDSON.

13. At approximately 12.15pm the yacht was sighted at 37deg 16min south and 151deg 57min east, 110 nautical east of Eden. I manoeuvred Nemesis alongside PBN. I could see that the vessel was low in the water and that the mast was broken in two places with a large portion of the mast lying and lashed to the deck on the starboard side. I could see that the boom was attached to the mast with the sail furled along it. It was attached to the deck on the port quarter. There was a blue sail in the water and was attached to the bow.

14. I could see the body of a yachtsman lying in the cockpit of the vessel with its head near the companionway. The body was wearing red wet weather clothing. I then instructed Senior Constable Brown to board the BPN and appraise the situation. Brown boarded the vessel and informed me that deceased in the cockpit was that of a male. I now know that person to be Phillip SKEGGES. Senior Constable Brown then went below deck for a short period of time then informed me that there was a deceased male

Witness: _____

Signature: _____

STATEMENT (continued) in the matter of: SYDNEY HOBART YACHT RACE - 1998

Name: David Charles Upston

wearing wet weather clothing lashed to the bunk face down on the port side. I now know that person to be Bruce Raymond GUY. I then instructed Senior Constable Brown to take still photographs and video of the bodies in situ as the sea conditions were not favourable to transfer them onto the police launch.

EXHIBIT: I PRODUCE THOSE PHOTOGRAPHS AND VIDEO.

15. At 2.10pm a tow line was attached to the BPN and the tow commenced to return to Eden.

16. About 11.00am on Wednesday 29th December 1998 we towed the Business Post Naiad into Eden and maneuvered the yacht alongside the Greenseas wharf. There I had a conversation with Sergeant BUCKLEY, Detective Senior GRAY of Bega Police and others. The vessel and the deceased were photographed. I then assisted with the transfer of the deceased from the vessel and into a government contractor vehicle. I was then relieved of duty.

17. On Thursday 30TH December 1998 I travelled to Sydney via car with Constables MAGUIRE, BROWN and DAVIDSON.

18. On Monday 1st January 1999 Detective Senior Constable GRAY and I travelled to Hobart and conducted a number of inquiries.

19. On the 9th March 1999 At the Sydney Water Police I interviewed Peter WILLIAMS.

EXHIBIT: I PRODUCE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

20. On the 11th March 1999 at the Hobart CIB I interviewed John SAULL, Errol PYKE and Henry FINNISS.

Witness: _____

Signature: _____

STATEMENT (continued) in the matter of: SYDNEY HOBART YACHT RACE - 1998

Name: David Charles Upston

EXHIBIT: I PRODUCE A TRANSCRIPT OF THOSE RECORDS OF INTERVIEW.

21. On the 12th March 1999 at the Hobart CIB I interviewed Mark ASPINALL.

EXHIBIT: I PRODUCE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

22. On the 22nd April 1999 at the RAAF Base, Edinburgh, South Australia I interviewed Paul CARPENTER.

EXHIBIT: I PRODUCE A TRASSCRIPT OF THAT RECORD OF INTERVIEW.

23. On the 23rd April 1999 at the Adelaide CIB I interviewed Michael MARSHMAN.

EXHIBIT: I PRODUCE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

24. On the 13th June 1999 at the Sydney Water Police I interviewed Tony MOWBRAY.

EXHIBIT: I PRODUCE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

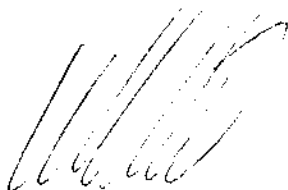
25. On the 15th June 1999 at the Sydney Water Police I interviewed David GOTZE.

EXHIBIT: I PRODCUE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

26. On the 26th June 1999 at the Sydney Water Police I interviewed Darren SENOGLES.

EXHIBIT: I PRODUCE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

Witness: _____



Signature: _____



STATEMENT (continued) in the matter of: SYDNEY HOBART YACHT RACE - 1998

Name: David Charles Upston

27. As a result of inquiries Senior Constable GRAY and I were perusing documents summonsed from the Cruising Yacht Club of Australia. These documents were surveys forwarded to the club from owners and crews of yachts who participated in the 1998 Sydney to Hobart Yacht Race.

28. I noticed in the survey from the yacht 'RENEGADE' that one of the crew had drowned and was subsequently resuscitated by other crew members.

29. On 31st July 1999 in Adelaide I interviewed Jasper BOWERING, Malcolm FRANCIS and Trevor McHUGH who were all crew of the yacht 'RENEGADE'.

30. As a result of these interviews it was ascertained that 'RENEGADE' suffered a 360 degree roll when Jasper BOWERING was on deck. The vessel re righted with mast and sails intact. It was indicated that the period of roll was approximately 6 minutes. This time was established due to the fact that after the resuscitation of BOWERING and placing him below decks, battery acid from the lead acid batteries used to start the engine and power the electrical system had drained from the batteries whilst the vessel was inverted.

31. It is my opinion that the vessel stayed inverted for this length of time due to the mast and sails remaining in tact.

EXHIBIT: I PRODUCE A TRANSCRIPT OF THOSE RECORDS OF INTERVIEW.

32. On the 31st July 1999 in Adelaide I interviewed Fenwick THOMPSON an employee of Quinn Marine and David WAIT a former employee of Quinn Marine.

Witness: _____

Signature: _____

STATEMENT (continued) in the matter of: SYDNEY HOBART YACHT RACE - 1998

Name: David Charles Upston

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33. On 20th September 1999 at the Australian Maritime College Survival Center I interviewed Rob SILBERBERG.

EXHIBIT: I PRODUCE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

34. On 13th October 1999 at the Sydney Water Police I interviewed David WITT.

EXHIBIT: I PRODUCE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

35. On 9th November 1999 at Canberra I interviewed Brian WILLEY.

EXHIBIT: I PRODUCE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

36. On 22nd December 1999 at the Pymont Police Station I interviewed Phillip GIFFIN.

EXHIBIT: I PRODUCE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

37. On 2nd February 2000 at Manly I interviewed Michael RYNAN.

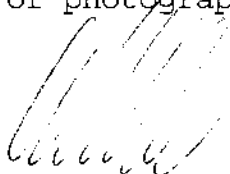
EXHIBIT: I PRODUCE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

38. On 17th February 2000 at the Sydney Police Center I interviewed Peter SHULTES.

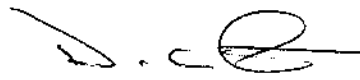
EXHIBIT: I PRODUCE A TRANSCRIPT OF THAT RECORD OF INTERVIEW.

39. During the recovery of the Business Post Naiad I caused a number of photographs to be taken.

Witness: _____



Signature: _____



STATEMENT (continued) in the matter of: SYDNEY HOBART YACHT RACE - 1998

Name: David Charles Upston

EXHIBIT: I PRODUCE PHOTOGRAPHS NUMBERED 1 TO 15

40. During the investigation it was brought to my attention a collision between the vessel NOKIA and SWORD OF ORION had occurred at the start line. An e-mail of the incident was sent by Mr Rob KOTHE owner/master of SWORD OF ORION to the CYCA after the incident. I made a number of inquiries in relation to that collision.

41. From all reports damage was sustained to the rear starboard quarter in that a staunchion punched a hole through the deck. This necessitated the staunchion being replaced on the deck slightly aft of its original position. The hole was covered by perspex. This damage required immediate repair as this staunchion supports the lifelines on the starboard side of the vessel.

42. Damage was also sustained to the mast, which required Darren SENNOGLES to shimmy up the mast and inspect what he believed to be a damage. Upon closer inspection the damage was in fact a bump in the aluminium. A discussion occurred between SENNOGLES and KOTHE. It was decided to continue.

43. During the storm the SWORD OF ORION was rolled twice through 360 degrees. The first roll caused the mast to break. As a result the boom was lashed to the starboard rear staunchion which had been previously repaired.

44. During the second 360 degree roll Glyn CHARLES was washed overboard. The boom broke from its lashing causing the starboard quarter deck area to lift.

45. The boom then struck the wheel and caused considerable damage. CHARLES was then seen some distance away from the vessel.

Witness: _____

Signature: _____

STATEMENT (continued) in the matter of: SYDNEY HOBART YACHT RACE - 1998
Name: David Charles Upston

46. During inquiries Darren SENOGGLES attended the Sydney Water Police and produced a orange coloured lanyard with markings written in black " NO 3 SWORD OF ORION RBYC (CROSSED OUT) CYCA B (CROSSED OUT) 2006 NO 3. The lanyard had a stainless steel clip and the stitching which was partially torn, at the other end the stainless steel clip was missing and the stitching had completely torn. Darren SENOGGLES informed me that this lanyard was attached at one end to a strong point on the SWORD OF ORION and the other end was attached to the harness worn by Glyn CHARLES at the time the vessel rolled. Darren SENOGGLES reports that he did not see Glyn CHARLES being washed overboard and did not see if the boom hit CHARLES. Darren SENOGGLES informed me that he removed the lanyard prior to being rescued.

EXHIBIT: I PRODUCE THAT LANYARD.

47. Darren SENOGGLES further supplied me with a complete harness and lanyard marked similarly however the lanyard numbered 3 and the harness numbered 5

EXHIBIT: I PRODUCE THAT LANYARD AND HARNESS.

48. During the investigation Mr Rob KOTHE attended the Sydney Water Police and produced a lanyard marked similarly however the lanyard numbered 4 and the harness numbered 6.

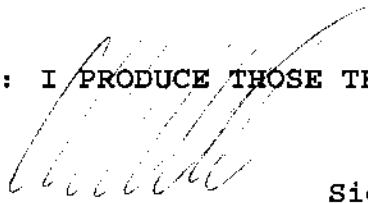
EXHIBIT: I PRODUCE THAT LANYARD AND HARNESS.

49. With the exception of the lanyard worn by CHARLES these items were subject to tests numbered SR99/006, SR99/007 and SR2000/002 by RTA CRASH LAB.

EXHIBIT: I PRODUCE THOSE TEST REPORTS.

Witness: _____

Signature: _____



STATEMENT (continued) in the matter of: SYDNEY HOBART YACHT RACE - 1998
Name: David Charles Upston

50. From our inquiries Detective Senior Constable GRAY and I were informed that Glyn CHARLES was paid by Mr Rob KOTHE to enter the race 1998 Sydney to Hobart Yacht Race as crew on the SWORD OF ORION and also supply information on another race which was to be conducted overseas. Detective Senior Constable GRAY and I contacted Mr Chris TURNER from WORKCOVER.

51. Chris TURNER was invited to participate in the RTA CRASH LAB tests. As a result six blue coloured lanyard marked TS19029; TS19030; TS19031; TS19032; 5A-5B and 6A-6B which were similar in design to those off the SWORD OF ORION were manufactured under supervision of Chris TURNER and subsequently tested by RTA CRASH LAB. Mr Chris TURNER was then asked to supply a summary of that involvement.

EXHIBIT: I PRODUCE THAT TEST REPORT AND SUMMARY.

52. On Wednesday 8th March 2000 I had a conversation with Ruth PLUMMER, a director of TUFF Marine Accessories and formally TUFF Marine Australia. As a result of the 1984 TECHNISEARCH LIMITED test report which stated "THE DUMMY WAS RETAINED BY THE HARNESS. THE STICHING BROKE FOR A TOTAL OF 80mm LENGTH OF WEBBING AT THE LINE ATTACHMENT, BUT THE REMAINDER HELD. THE WEBBING DID NOT SLIP OR SLACKEN AT THE BUCKLE OR ADJUSTING DEVICE." A conclusion was given "PASS." Ruth PLUMMER stated she thought it odd that the harness would pass with that remark.

53. As a result of inquiries I had a conversation with Mr Rob MATTHEWS a crewmember of BUSINESS POST NAIAD he produced an orange coloured BURKE brand lanyard with a stainless steal clip at either end, and close to the clip the letters B.G. He further informed me prior the death of Mr Bruce GUY (owner/master of Business Post Naiad), GUY had trouble with his lanyard. Whilst GUY was moving

Witness: _____

Signature: _____

STATEMENT (continued) in the matter of: SYDNEY HOBART YACHT RACE - 1998

Name: David Charles Upston

about the vessel the stainless steel clip at one end of the lanyard had faulted twice, the spring activated retainer had slipped past the holding lugs, hence the wearer could not be released from this end of the lanyard.

54. I believe this did not attribute to the death of GUY however, this matter causes concern for the wearer if occurs and rapid disengagement is required.

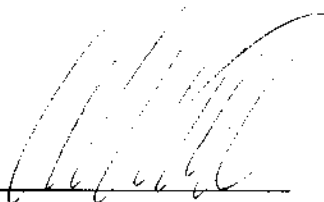
EXHIBIT: I PRODUCE THAT LANYARD.

55. As a result of inquiries a selection of crew from various vessels participating in the 1998 SYDNEY TO HOBART YACHT RACE were interviewed. Several raised concerns for the types of clips used on lanyards.

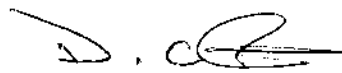
56. It is a requirement by the race director that a safety inspection be carried out on all vessels seeking to enter the race. An authorised safety inspector conducts a safety check of equipment in the presence of the owner or representative, and then it is then forwarded to the CRUISING YACHT CLUB OF AUSTRALIA after it is signed as part of the application package.

57. The Safety Inspection form states that the harness and lanyard should comply with AUSTRALIAN STANDARD 2227 or equivalent. As a result of these interviews there were a number of problems associated with lanyard clips, where the wearer was unable to release the clip or the clip released without warning or human intervention.

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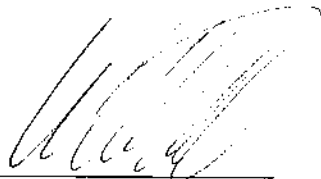
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STATEMENT (continued) in the matter of: SYDNEY HOBART YACHT RACE - 1998
Name: David Charles Upston

58. Mr Hugh HURST of the Australian Maritime College conducted several tests into the operation of lanyards.

EXHIBIT: I PRODUCE THAT REPORT.

Witness: 

Signature: 