

Opening Statement of Michael Kingston

1500 01 March 2023 Committee Room 2, LH2000, Leinster House

The Joint Committee on Transport and Communications Networks meeting regarding pre-legislative scrutiny of the Merchant Shipping (Investigation of Marine Accidents) Bill 2022.

I would like to thank the Chair and all members of the Committee for the opportunity to appear today, and the Committee Secretariat for their enormously hard organizational work and for affording Ciaran McCarthy and I such courtesy and assistance. We deeply commend the Committee members for the earnest manner in which you are continuing the business of Ireland on behalf of Irish society, on so many issues, and in this case, the protection of our maritime sector.

The fact that we are here today is symptomatic of that work, that desire to ensure our citizens are afforded the opportunity to be heard in the development of important legislation, and I would like to sincerely complement the members of this Committee for the manner in which you have engaged and negotiated on a cross-party basis for the good of Irish Society on this issue.

I again make it clear that, although I have quite a lot of experience working with multiple world Governments, International Organizations, and the United Nation's International Maritime Organization, as does Ciaran McCarthy, we appear here today in our personal capacities.

We come here again with solutions to help the Committee and indeed the Government, through the Transport Department, to get this legislation right. When we were last here on 29th January 2021, we said that the Department of Transport must take a step back, and listen, so that collaboratively we learn from the mistakes of the past, and work together for a better future, one that will save lives in the maritime community: our merchant seafarers, pleasure craft users, fishers, and emergency services; one that will protect the environment, and will save millions in wasted resources surrounding unnecessary tragedies.

We are pleased that the Department have now finally issued Heads of Bill aiming to rectify our very serious breaches of European and International Regulation confirmed in the CJEU Judgment of 09 July 2020 in respect of the way we as a nation have been investigating marine casualties, which has been wholly inadequate and incorrect.

It is now 25 months since we asked in this Committee for urgent action in respect of these failures to be taken, and we would like to remind the Committee and make it clear, that we said in January 2021 that there was no need for another review, that it was clear what needed to be happen here, and we specifically referred, in detail, to the obvious and clear recommendations of the 1998

Report of the Investigation of Marine Casualties Policy Review Group initiated by Sean Barrett T.D in 1996, analyzing international best practice and recommending that it was imperative that the MICB be independent, and competent. Last week Minister Ryan stated that *“the 2000 Act implemented the 1998 Review and ‘established an independent State body to investigate marine casualties’*”. For the extensive reasons we explained to this Committee that statement is totally incorrect as the 1998 Report inexplicably went against its own findings in its conclusions to say that, *‘because we are a small country’* we can ignore international best practice, and it accordingly advised that the Chief Surveyor and the Secretary General or/ her his nominee should be on the Board, and that accordingly the MCIB was doomed from the start.

We also explained to the Committee, that in 2009 Minister Noel Dempsey, in light of the United Nation’s 2008 Casualty Investigation Code, and then the 2009 EU Directive, ordered that an independent Maritime investigative Unit be set up, and we referenced that a report had been carried out. This Committee, acting in the best interests of Irish citizens, asked us to provide model legislation to assist in urgently bringing proper legislation forward, and we gave specific advice in our Note to Committee dated 02 February 2021. Very disturbingly, we were then, through a third party, provided with details that a Report by Barrister Roisin Lacey was completed on 25th August 2010, with draft Heads of legislation, that the Department never disclosed to this Committee during pre-legislative scrutiny of their unnecessary interim bill, which wasted our time. It is clear from the Roisin Lacey Report that it was commissioned because of the impending deadline for the transposition of the 2009 Directive. What Minister Ryan said to this Committee last week, suggesting that it was something to do with an over-all Government approach to amalgamation of agencies following Column McCarthy’s earlier report, is utterly misleading, and shows that Minister Ryan has not read the Lacey Report.

The Lacey Report, and the draft Heads it attaches, whilst aimed at establishing a multi modal Accident Investigation Office, which is what should have been done at this stage, rather than go through 3 rounds of legislation, at great cost to the Irish tax payer, (considering the Draft Heads of Bill following that hugely expensive Report are just sitting there), is highly relevant to the current Heads of Bill before the Committee. There are extremely important suggestions in the report, with detailed reasoning, that make sense for the proposed Marine Accident Investigative UNIT that do not appear in the current draft Heads, that I will elaborate on today. It is imperative that this Committee consider those recommendations in order to complete a proper report so that the proposed legislation is fit for purpose.

The Committee will also remember that Ciaran McCarthy and I explained that the 1998 report recommended the urgent codification of maritime regulation that is haphazard and frankly all over

the place. The inclusion of other proposed legislation regarding SOLAS and Renewables in the draft Heads re-emphasizes the need for urgent codification. I also question, given this haphazard approach, why the Department have not included provisions for the ratification of the 2012 Cape Town Agreement for Fishing Vessel Safety in the draft Heads, and also failed to do so in the Interim Bill, given commitments Ireland have made to implement it by October 2022 in signing the 2019 Torremolinos Declaration. Ireland are frustrating the international effort to implement this Convention which will help protect fishers all over the world, with many associated benefits.

Finally, in relation to the draft Heads that we are being asked to consider it is incorrect not to disclose the report by Captain Steve Clinch, which in turn refers to Roisin Lacey's Report. It is not a proper and open process to ask this Committee to consider Heads of Bill, without disclosing these reports. Additionally, it is critically important for the fundamental rights of those who have suffered tragedy that they see these reports, in the interest of justice, and therefore in the public interest. It is incorrect and misleading to give the impression that the Court of Justice Judgment against Ireland gave a clean bill of health in respect of the manner in which reports were completed. They did not look at the reports. The simple fact is that they have not been carried out independently or competently. How we have arrived here today, and some of the representations that have been made to both this Committee and the Oireachtas over time, which are, in the very least misleading, is a very serious matter for the Oireachtas, given the consequences for Irish citizens, and not least the issue of faith we as a society place in public officials and the standard of ethics expected of them.

I, with the advice of Ciaran McCarthy, am here to discuss all these issues and elaborate on further detail

We are all proud of Ireland and want to help our nation to get things right, and we are, collectively, are getting there.

Thank you Chair.

Michael Kingston

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