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1.0 Introduction

1.1 These submissions are supplementary to those made on behalf of Father Francis Michael Mulcahy which were provided to the Royal Commission on 10 June 2014. A copy of these is provided herewith. They are in response to amended submissions dated 12 August 2014 made by Counsel Assisting. Those submissions will be referred to as “SSCAA”.

1.2 For ease of reference, these submissions will generally adopt the same topic headings as the SSCAA.

1.3 Unless otherwise stated, we maintain our previous submissions and shall identify what parts of those submissions already address and deal with matters raised in SSCAA. Additional submissions will be made where considered necessary. Accordingly, these submissions should be treated as supplementary to and not in substitution for our previous submissions.

1.4 These submissions are directed to paragraphs 161 – 228 of the SSCAA and Available Findings 5, 6 & 7 specifically directed at the circumstances of a meeting said to have taken place in 1990 at which Jennifer Ingham (“Mrs. Ingham”) alleges that she disclosed her abuse at the hands of Father Rex Brown to members of the church including, but not limited to, the Bishop of Lismore and Father Mulcahy.

1.5 Again, for the sake of convenience only, the alleged meeting will be referred to as “the 1990 meeting”. That is not to suggest any acceptance that such a meeting occurred.

2.0 Summary of Submissions

2.1 SSCAA does not identify any evidence of probative value that justifies Available Findings 5, 6 & 7.

2.2 SSCAA invites the Commission to disregard evidence that it characterises as of no assistance in resolving factual issues. While that evidence clearly does not support the findings urged, that is no basis to disregard it. In fact, that evidence casts considerable doubt upon the credibility and reliability of Mrs Ingham’s evidence. It is therefore not proper to disregard it.

2.3 On the other hand, other evidence of a speculative or indirect nature, involving judgments that are matters for this Commission, is submitted by SSCAA as being of some value, when they are clearly not.

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1 SUBM.0004.007.0044

2 SSCAA, page 44

3 In particular, that of Professor Dooley, Colin Riches & Bishop Satterthwaite

4 In particular, elements of Deacon Wallace’s evidence and Bishop Jarrett’s evidence
2.4 SCAA invites the Commission to treat the conflicting evidence of Mrs Ingham and Father Mulcahy in ways that are forensically inconsistent. Had Mrs Ingham’s evidence been subjected to the same critical and pedantic approach as SCAA has taken to that of Father Mulcahy, her evidence would be rejected outright. The approach taken in respect of that evidence in our previous submissions represents the proper course.

2.5 There is no proper reason to prefer the evidence of Mrs Ingham over that of Father Mulcahy.

2.6 The only proper conclusion to draw is that Mrs. Ingham was mistaken as to the attendance of Father Mulcahy at the 1990 meeting and that her recollection in this respect is flawed and unreliable. In any event, the evidence of Father Mulcahy is to be preferred.

2.7 Therefore, the Commission cannot reasonably be satisfied that Father Mulcahy attended the 1990 meeting and/or learned of Mrs Ingham’s abuse as alleged.

3.0 The Meeting in 1990

3.1 The evidence in relation to this matter is discussed at paras 4.8-4.59, with submissions made at paras 5.1-5.21 of our previous submissions.

3.2 As SCAA correctly point out at [163], the evidence of Mrs Ingham and Father Mulcahy, where conflicting, must be assessed in light of the circumstances and the evidence of other relevant witnesses.

Circumstances in which the 1990 Meeting was arranged (SSCAA [164]-[173])

3.3 These paragraphs tend, in the main, to revisit and repeat matters discussed at length in our previous submissions. Rather remarkably, after doing so, they culminate in the submission that Professor Dooley’s evidence does not assist the Commission. They point to a level of admitted confusion on Prof Dooley’s part about aspects of information presented to him and recorded. Some significance is then placed upon the fact that certain records of Professor Dooley, involving two group sessions, were no longer in existence. SCAA appear to suggest an inference that something of significance might have been contained in them.

3.4 The Commission must consider the facts that can be found on the basis of the Dooley evidence and, if appropriate, the inferences that can be properly drawn therefrom. The Commission can only consider the evidence as it was provided to the Commission. No assistance may be taken from speculating about what might have been in evidence that was not received.

3.5 Professor Dooley’s evidence is significant because it is the closest in time to the events of the 1990 meeting. If anyone was going to record the fact of a meeting held, or to be held, it would have been Professor Dooley. These circumstances are highly relevant: that Mrs Ingham was
seeing Professor Dooley as part of her healing process. Yet no mention is made in his records of the 30 March 1990 individual consultation.

3.6 The timing is acutely relevant. The uncontested evidence of Father Mulcahy is that he was only, relevantly, in Lismore from the end of January 1990 to 30 March 1990. That means, for Father Mulcahy to have been at the 1990 meeting, it had to have occurred during the period from the beginning of February to 29 March 1990. One would expect that a meeting that was alleged to have been so important to the Mrs Ingham’s healing process and that happened within 2 month prior to the 30 March 1990 individual consultation would have been front of mind so as to have been discussed and minuted at that consultation. The fact that no detail of the 1990 meeting or the happening of the meeting, itself, is contained in the notes of that meeting supports the proposition that the 1990 meeting, either, did not happen or did not happen in the 2 month window during which Father Mulcahy was in Lismore and, thereby, a potential attendee. The significance of this matter is addressed in our previous submissions at [4.14]-[4.43].

3.7 The proper way to treat Professor Dooley’s evidence is that it is contemporaneous documentation from a treating professional that fails to support, and, therefore, calls into question Mrs Ingham’s account of a 1990 meeting.

What was said at the 1990 meeting?

3.8 At [179], SSCAA attempts to draw some form of inferential nexus between Mrs Ingham’s treatment with Professor Dooley and the likelihood that she disclosed her abuse at Father Brown’s hands. This may have been credible, had Professor Dooley’s evidence and his records positively identified a meeting and what she claims to have disclosed. Without it, the mere fact that Mrs Ingham was seeing Professor Dooley does not add to or increase the likelihood of that disclosure. Further, as mentioned in the preceding paragraphs, it undermines any likelihood of the accuracy of her account of the disclosure.

3.9 Further, SSCAA raises, but does not attempt to address, a very serious matter also raised in our first submissions. That is, on all the evidence available (including that of Mrs Ingham)\(^5\), as at the time of the 1990 meeting, neither the church nor Father Mulcahy had any knowledge of Fr Brown’s conduct toward Mrs Ingham and two other females. Therefore, what Mrs Ingham now reports as having been said by Fr Mulcahy (in a vacuum of other information about the

\(^5\) Exhibit A to Mrs. Ingham’s statement: STAT.0074.001.0019, being an email dated 30 August 2012 to Mr. Pat Mullins. A key passage is set out in paragraph 4.14 of our previous submissions. As the extract makes clear, the earliest recollection was not of a group of senior clerics or a bishop that could not be visualised. It was with “the then Bishop and another priest”.
meeting) could not be factually correct. In this respect, the matter is treated exhaustively in our first submissions at [4.26]-[4.36] & [5.11].

3.10 SSCAA acknowledges, at [177], but makes no attempt to address Fr Mulcahy’s evidence which confirms his lack of knowledge. This rules out the accuracy of the words and thrust of what Mrs. Ingham now seeks, more than two decades after the event, to attribute to Father Mulcahy.

3.11 The kindest (to Mrs. Ingham) credible finding is that the words so attributed to Fr. Mulcahy constitute a confabulation by Mrs Ingham.

Mrs Ingham’s recollection of the 1990 meeting (SSCAA [180-185])

3.12 This discussion culminates in the last line of [185], which appears to suggest that we have advanced an argument that, because Mrs Ingham did not recall exact details of the 1990 meeting, it should be an indication that it did not occur. That reasoning has not been advanced in such a way or at all. Our first submissions were directed at clear inconsistencies in Mrs Ingham’s evidence on important matters that she claims were within her knowledge. It was (as will be further discussed) also directed to reasons why Mrs. Ingham does have a particular knowledge and memory of Fr Mulcahy. The matters discussed in the two preceding sections of these submissions represent powerful examples of matters which indicate that Mrs. Ingham’s evidence is not reliable.

3.13 SSSCA seeks to minimise the significance of Mrs. Ingham’s inconsistent evidence about the presence (or otherwise) of the Bishop at the 1990 meeting. The presence of the Bishop was asserted without qualification in her email that is quoted at SSSCA [181]. Whether the Bishop was present or not is a fact of considerable importance, perhaps, of more importance in terms of the church’s response to disclosures of abuse by priests than the presence of Fr Mulcahy. SSSCA at [183] refers to clear evidence that the Bishop was not at the meeting. In terms of assessing Mrs. Ingham’s reliability as a witness the presence of the Bishop acquires significance from the unequivocal and unqualified manner in which his presence was asserted and the circumstance that this was Mrs. Ingham’s first written disclosure of these matters.

3.14 Again, it is not the lack of recollection of detail that tells against Mrs. Ingham’s evidence but the patent unreliability of her accounts when she does advance facts. Over a short course of communications in 2012, she changes position on who was at the meeting when, at all times, it was open to her to say “I can’t remember who was at the meeting, but I remember Fr Mulcahy”. She does not. Instead, she provides and then varies in matters of specifics. The matter is examined at [4.11]-[4.17] and at [5.3] of our first submissions.
Relationship between Mrs Ingham & Fr Mulcahy (SSCAA [186]-[200])

3.15 A great deal of analysis is spent on this matter by SSCAA. Most of this is of very little assistance to the Commission in determining the matters currently in issue.

3.16 At [188], SSCAA advances the proposition that

“...is it (sic) submitted that if Father Mulcahy did have a connection or relationship with Mrs Ingham, this affects the reliability of his evidence. Set out below is the evidence that supports such a connection ...”

3.17 The SSCAA goes on to repeat what has already been set out at length in our first submissions and is analysed there at [4.18]-[4.25] and at [5.3]. A number of remarks are apposite.

3.18 Firstly, Fr. Mulcahy did not know Mrs Ingham by her married name. It was only from a later suggestion (per Bishop Jarrett in a discussion that was not precisely recounted) that he came to realise who Mrs. Ingham was.

3.19 Secondly, none of the many circumstances identified were of such a nature as to bring Mrs Ingham to Fr Mulcahy’s immediate recollection.

3.20 Thirdly, it has no bearing on Fr Mulcahy’s specific denial that he was not at the 1990 meeting.

3.21 Fourthly, nowhere has Fr Mulcahy been inconsistent in his evidence. He came to realise who Mrs Ingham was.

3.22 Fifthly, as identified in our first submissions, the relationship was not an ongoing and continuous one. The lives of Mrs. Ingham and Fr. Mulcahy intersected, sporadically, at best. Mrs. Ingham could not identify whether they, actually, mixed socially at the Williams’ house (in the context of evidence about her aunt) or at all. Fr Mulcahy said they did not and that, in fact, he did not attend such events; and that Mrs Ingham was never present at the Williams house when he delivered communion.

3.23 Had Mrs Ingham and Fr Mulcahy been lifelong friends who remained in contact, Fr Mulcahy’s lack of recollection may have been a cause for concern. But, in this instance, it was perfectly normal. Fr. Mulcahy encountered many thousands of people in his long career. For SSCAA to seek to imbue this matter with significance to traduce Fr. Mulcahy’s credit is both unfair and a distraction from the real issue. Fr. Mulcahy was not extensively examined on this matter by either counsel assisting or Mrs Ingham’s own counsel. The present submission by SSCAA is an attempt to elevate Mrs Ingham’s evidence in a way that has no basis in the record.

3.24 However, what is significant from this issue is that it explains Mrs. Ingham’s apparent ability to name Fr. Mulcahy as a person allegedly present at the 1990 meeting. Significantly, her recollection of Fr Mulcahy’s presence at the meeting is predicated on the fact that she could “visualise” Fr. Mulcahy. Clearly, Mrs. Ingham could put an image to the name because she had
seen him as a customer in the restaurant and had known that that customer was Father Mulcahy. And Fr. Mulcahy’s provision of communion to Mr. and Mrs. Williams at their home in latter years makes it very likely that she had had that name mentioned to her in the years before she put pen to paper by way of email to Mr. Mullins.

3.25 Therefore, especially, when considered together with lack of other detail; lack of support by the Dooley records; and patent inconsistency concerning the Bishop and other participants, the detail and history concerning Fr. Mackay raises the legitimate concern that Mrs. Ingham’s unreliable recollection has led her to visualise and name him because of her knowledge of his name and his appearance.

3.26 SCAA’s analysis simply adds a further reason why Mrs Ingham’s evidence has to be treated with utmost caution.

3.27 None of the facts set out at [198] establish any reason that Fr. Mulcahy should have had direct and clear recollection of Mrs Ingham.

3.28 The submission at [199] of SCAA is based upon a false premise. The truth is that Fr. Mulcahy has not sought to deny his historic connection with the Williams family. Further, Fr Mulcahy’s denial of the 1990 meeting was and is given in circumstances where he came to realise and recall who she was. The nature of that contact was at best indirect and casts no doubt on his credibility.

3.29 Accordingly, the submission at [200] of SCAA is without basis.

Bishop Jarrett’s telephone call with Fr Mulcahy prior to the facilitation (SCAA [201]-[215])

3.30 A great deal of analysis is addressed to the telephone call that occurred between the Bishop and Fr. Mulcahy after the first facilitation.

3.31 This event is dealt with in our first submissions at [5.3(i)-(m)].

3.32 Again, SCAA point to variations between the recollections of both clerics, and the speculated outcome of that discussion, to support a submission that Fr. Mulcahy’s evidence is unreliable.

3.33 It is true that neither the Bishop nor Fr. Mulcahy could exactly recollect the detail of this conversation. Accepting that the recollection of the Bishop (SCAA at [202]) is correct, it is apparent that what emerged was that the Bishop had made reference to Mrs. Ingham’s family. Notable is the Bishop’s “puzzlement” at the fact Fr. Mulcahy remembered her parents (the Williams) but not Mrs. Ingham. This is easily explained when one critically reviews the history of their association. Not one shred of evidence places Fr. Mulcahy in the presence of the Williams family at a time when Mrs. Ingham was present. His association with Mr. Williams was first at school before Mrs. Ingham was born. Recollections of social events at the home did not place Fr. Mulcahy there. Mrs. Ingham was never there when Fr Mulcahy visited
to deliver communion. This is not at all remarkable given that such visits were periodic and long after Mrs. Ingham had left home. The only place they actually intersected was at the restaurant where Mrs. Ingham worked. There is no evidence that, during these visits, Mrs. Ingham identified herself by reference to her parents. Clearly, the school connection was a tenuous one and there is no evidence that this was even known to Mrs. Ingham at that time.

3.34 It is consistent with the evidence of both men that the Bishop had both identified the Williams family and the connection of Mrs. Ingham to that family but that Fr. Mulcahy had difficulty accepting and processing that information having had no knowledge of a Williams daughter called Jennifer. This led him to make his subsequent enquiry through Ms. Pagotto. Having, thereby, obtained the knowledge that there was a Williams daughter called Jennifer, he could then fully comprehend and accept what the Bishop had previously communicated. This is fully consistent with the extracts of his evidence at SSCAA: [202] and [203]. For SSCAA to seek to make something sinister from this is to stretch common sense.

3.35 The analysis and scrutiny given to an otherwise innocuous exchange between the two aged clerics contrasts sharply with the latitude and indulgence the SSCAA seeks to extend to the self-contradicting elements of Mrs. Ingham’s evidence. Without being at all unkind to Mrs. Ingham, her evidence is such as to make it impossible to gain any form of comfortable satisfaction that would be required to draw adverse inferences against others.

3.36 The scenarios analysed at [210] & [212] are meaningless. The sensible and simple conclusion to draw from the discussion between Fr Mulcahy and the Bishop is found at 3.34 above.

3.37 There is no basis to draw the conclusion expressed at [215].

Deacon Wallace’s inquiries and meeting with Fr Mulcahy (SSCAA [216]-[226])

3.38 This matter is dealt with in our first submissions at [4.34]-[4.35], [4.46]-[4.52], [5.5] & [5.12].

3.39 SSCAA concludes that Deacon Wallace’s evidence does not assist in the determination of issues relating to the 1990 meeting. This is incorrect.

3.40 It is true that certain aspects of Deacon Wallace’s evidence should be accorded limited weight. For example, the fact that he found Mrs. Ingham’s evidence no less believable and accepted her statement as to the 1990 meeting is perfectly understandable. He was involved in a facilitation process, one of the very core values of which was to avoid creating additional stress to a victim. This necessitated accepting what the complainant had to say: challenge was not an element of Towards Healing. The fact that Deacon Wallace took this compassionate approach neither adds to the believability of Mrs. Ingham’s evidence nor detracts from that of Fr. Mulcahy.
3.41 Deacon Wallace recounted hearsay evidence relating to Fr. Mulcahy’s health. That was answered by Fr. Mulcahy. CCSAA does not challenge Fr. Mulcahy’s evidence on this point.

3.42 Deacon Wallace speculated that a person of Fr. Mulcahy’s status would “normally” attend a meeting of the import of the 1990 meeting. However, myriad reasons unknown to Deacon Wallace (for example, not even being in Lismore at the time) could have stood in the way of Fr. Mulcahy’s presence.

3.43 The above matters are of limited, if any, assistance.

3.44 However, SSCAA’s submission ignores two very important matters.

3.45 Firstly, Deacon Wallace’s independent enquiries confirmed matters that supported Fr. Mulcahy’s evidence. There was no evidence of anyone having attended a meeting in 1990. The Deacon (despite his declaration that he believed Mrs. Ingham) still saw fit to cross check the facts and found nothing objective to support her evidence.

3.46 Secondly, Deacon Wallace took the trouble to sit down with Fr. Mulcahy and ask him about the matter. Fr. Mulcahy was clear in his denial that he was present at the 1990 meeting.

3.47 The above two matters do assist the Commission and should not be disregarded as being unimportant, as suggested by SSCAA.

Evidence of Colin Riches (SSCAA [227]-[228])

3.48 The invitation by SSCAA to disregard Mr Riches’ evidence, because of the influence exerted over his evidence by Mrs Ingham, contrasts strangely with the submission by Counsel Assisting that Mrs. Ingham’s evidence, despite its many difficulties, should be relied upon to make serious adverse findings against Fr. Mulcahy.

3.49 Mrs. Ingham, for reasons known only to her, not only approached Mr Riches to give evidence (a matter that could have been a simple request) but saw fit to provide, or suggest, the detail of that evidence.

3.50 This aspect of Mrs. Ingham’s conduct must weigh heavily against the credibility of her evidence as would be case for any witness who sought, in such a manner, to have another corroborate their story.

3.51 The Commission is respectfully referred to [4.47]-[4.40] and [5.3(b)] of our first submissions.

4.0 Conclusion

4.1 While allowing appropriate latitude for the effluxion of time and its impact upon memory, this Commission can only act upon evidence. It cannot resolve gaps in the evidence by engaging in speculation and making favourable presumptions for the benefit of any party.
4.2 SSSCA fall well short of establishing the presence of Fr. Mulcahy at the 1990 meeting.

4.3 The evidence of Mrs. Ingham, treated with compassion and in the context of her tragic experience, is far too unreliable to place Fr Mulcahy at any meeting she claims occurred. SSSCA’s attempts to demonstrate that Fr Mulcahy’s evidence should not be preferred are based upon a strained analysis of the evidence. This analysis applies unfairly different standards to the evidence of Fr. Mulcahy to those applied to the evidence of Mrs. Ingham.

4.4 On any fair analysis, Mrs. Ingham’s evidence fails the test of reliability.

4.5 There is no basis to make the findings sought on this issue.

5.0 Ultimate Submission on Findings Sought

5.1 It is submitted that:

(a) Any evidence which suggests that Father Mulcahy attended the 1990 meeting and was informed of Mrs. Ingham’s abuse at the hands of Father Brown is unreliable.

(b) The evidence of Father Mulcahy, which is uncontradicted by other independent investigations, including enquiries conducted by Deacon Wallace, in any event, refutes the evidence referred to in (a). Deacon Wallace’s evidence lends support to Father Mulcahy’s evidence.

(c) In light of the matters referred to in (a) and (b), the Commission is unable to make any finding adverse to Father Mulcahy concerning the alleged meeting in 1990.

5.2 The Commission cannot make any finding Father Mulcahy was present at any meeting attended by Mrs. Ingham in 1990. Further, the Commission cannot make any finding that Father Mulcahy was ever present at a meeting with Mrs. Ingham in which she disclosed having been sexually abused, either by Father Brown or anyone else.

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