

General Purpose Standing Committee No. 3

Macedonian Orthodox Church Property Trust Bill 2010

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Terms of reference

That the General Purpose Standing Committee No. 3 inquire into and report on the Macedonian Orthodox Church Property Trust Bill 2010.¹

These terms of reference were referred to the Committee by the Legislative Council on 24 June 2010.

¹ LC *Minutes* No. 160, Thursday 24 June 2010, Item 26, 1974.

Committee membership

The Hon John Ajaka MLC	Liberal Party	<i>Chair</i>
The Hon Lynda Voltz MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon Greg Donnelly MLC	Australian Labor Party	
The Hon Trevor Khan MLC	The Nationals	
The Revd the Hon Fred Nile MLC*	Christian Democratic Party	
The Hon Shaoquett Moselmane MLC	Australian Labor Party	
Mr John Kaye MLC*	The Greens	

* Substituting for The Hon Roy Smith MLC (from 24 June 2010 to 31 July 2010), The Hon Robert Brown MLC from (1 August 2010 – 14 September 2010) The Hon Robert Borsak MLC as at 14 September 2010.

* Replaced Ms Lee Rhiannon as a member of the Committee as at 19 July 2010, substituting for Ms Cate Faehrmann as at 9 September 2010.

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Chair's foreword

The Macedonian Orthodox Church Property Trust Bill 2010 was introduced by Revd the Hon Fred Nile MLC into the New South Wales Legislative Council on 10 June 2010. The Committee recognises the good faith and intentions with which the Bill was introduced by Revd Nile. I subsequently moved that the Bill be referred to General Purpose Standing Committee No 3 for inquiry and report.

The main objective of the Bill is to establish a statutory corporation to hold property on behalf of the Macedonian Orthodox Church of Australia and New Zealand. The Bill presented to the House is the third attempt by the Church to establish such a trust. The first attempt was in New South Wales in 1998, the second in Victoria in 2009. The third is the subject of this Inquiry.

Most other religious denominations in New South Wales have sought to organise their property holdings via the introduction of similar legislation.

The Committee looked carefully at the Bill, and identified several clauses that could possibly give rise to jurisdictional and other legal issues, including the effect of the Bill on properties interstate and the applicability of the *Trustee Act 1925*. Several submissions made reference to these legal issues, and the Committee sought the professional advice of a Senior Counsel, the Parliamentary Counsel and the Crown Solicitor. The Committee is grateful for their advice.

While the Church presented a significant number of submissions and letters from parishioners and clergy in support of the Bill, it became readily apparent to the Committee that there was a lack of consensus within the Macedonian Orthodox Church community as to its contents and intent. Indeed, there were a significant number of submissions and letters opposing the Bill.

The Report canvasses the above mentioned technical issues, as well as arguments supporting and opposing the Bill. The Church subsequently proposed substantial amendments to the Bill. However, it is the view of the Committee that given its brief was to consider the Bill presented in June 2010 by Revd Nile, it could not make recommendations on what is essentially a new Bill.

It is also the view of the Committee that the current relationship between Macedonian Orthodox communities and the Church hierarchy is not conducive to any legislative solution at this time. Therefore, after considering all the evidence presented to it, the Committee recommended that the Bill should not proceed. It is the hope of the Committee that the Church and communities can work together in a consultative environment to resolve these issues in the future.

On behalf of the Committee, I would like to thank those who made submissions to the Inquiry and provided evidence at the public hearing. I am grateful of my fellow Committee members for their contribution to the Inquiry, and to the Committee secretariat: Beverly Duffy; Stewart Smith; and Christine Nguyen for their professional assistance. I would also like to thank the Clerk of the Parliaments, Ms Lynn Lovelock, for her procedural guidance during the Inquiry.



Hon John Ajaka MLC
Committee Chair

Summary of recommendations

Recommendation 1

That the Macedonian Orthodox Church Property Trust Bill 2010 not proceed.

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Chapter 1 Introduction

This Chapter provides an overview of the Inquiry process and the structure of the report. It concludes with a brief explanation of the history of the Macedonian Orthodox Church in Australia.

Terms of reference

- 1.1 The terms of reference require the Committee to inquire into and report on the Macedonian Orthodox Church Property Trust Bill 2010.

Submissions

- 1.2 The Committee invited submissions by advertising in: The Sydney Morning Herald; The Daily Telegraph; Illawarra Mercury; Parramatta Advertiser; and the St George and Sutherland Shire Leader. The Committee also wrote to key stakeholders inviting them to make a submission to the Inquiry. The closing date for submissions was Friday 30 July 2010.
- 1.3 The Committee received a total of 438 submissions. Two hundred and eight of these included similarly worded one page letters expressing opposition to the Bill. Annex J of the Macedonian Orthodox Church submission included 989 form letters of support for the Bill. A Supplementary Submission by the Church contained a further 90 letters of support. A list of submissions is contained in Appendix 1. The published submissions to the Inquiry are available on the Committee's website: www.parliament.nsw.gov.au/gpsc3.

Public hearing

- 1.4 The Committee held one public hearing at Parliament House on 23 August 2010 and heard from a number of witnesses. A list of witnesses is reproduced in Appendix 2. The transcripts of the hearings are available on the Committee's website.
- 1.5 The Committee would like to thank all individuals and organisations that made a submission or gave evidence to the Inquiry.

The Macedonian Orthodox Church

- 1.6 The Macedonian Orthodox Church (the Church) has a long history. The Church informed the Committee that the first Archbishopric² was established in 535 AD, and that numerous events over the centuries of history of what is now the Former Yugoslav Republic of Macedonia have caused the Archbishopric to be abolished, merged and then re-established over time. More recently, a general assembly in Ohrid, Macedonia, in 1958 marked the beginning of an independent autocephalous³ Macedonian Orthodox Church.⁴ The Church is

² This term means an area governed by an archbishop, in this case an archbishop of the Macedonian Orthodox Church.

³ Autocephaly, in hierarchical Christian churches and especially Eastern Orthodox churches, is the status of a hierarchical church whose head bishop does not report to any higher-ranking bishop.

hierarchical, that is, believers are organised into parishes, each under the leadership of a priest, and parishes are organised into Dioceses, each governed by a Bishop.

- 1.7 Worldwide, currently the Church has ten dioceses, of which three are located outside the territory of the Former Yugoslav Republic of Macedonia. The Diocese of Australia was established as a separate Diocese in 1974, and expanded to include New Zealand in 1996. The Australia and New Zealand Diocese is currently administered by His Eminence, Metropolitan Petar Karevski, who is responsible for 21 clerics, 18 Church communities and three Monasteries within the Diocese.⁵

The Macedonian Orthodox Church in Australia

- 1.8 At the last census (2006) 20,695 people in New South Wales identified themselves as followers of the Macedonian Orthodox Church.⁶ As recounted by the academic Dr Peter Hill in his book, *The Macedonians in Australia*, the establishment of the Macedonian Orthodox Church in Australia dates back to 1956, when the Macedonian Orthodox Community of Melbourne and Victoria elected its first church committee. This was two years before the formal establishment of the Church in the Former Yugoslav Republic of Macedonia. After considerable community fundraising, the Victorian committee purchased the property on which it built the Macedonian Orthodox Church of St. George.
- 1.9 Dr Hill notes that Article 75 of the Victorian Community's constitution provided that "The Community shall from time to time employ a priest who shall (...) perform all such religious rites, ceremonies and duties as are ordinarily performed by priests of the Eastern Orthodox Church." When the administratively autonomous Macedonian Orthodox Church was subsequently established in the Former Yugoslav Republic of Macedonia in 1958, its bishops accepted the St. George church as the first Macedonian Orthodox parish outside of Macedonia. The Macedonian Orthodox Community of Melbourne and Victoria, with its parish, retained its self-governing status, and on 27 February 1959 the Memorandum and Articles of Association of the community were officially registered.⁷
- 1.10 In his book Dr Hill outlines the similar community origins of other Macedonian Orthodox Churches around Australia. This includes churches in: Perth (1968); Adelaide (1969); Queanbeyan (1969); Sydney (1969); Newcastle (1970) and Wollongong (1972). However, the following paragraphs from his book succinctly summarises the issues that, ultimately, have given rise to this Inquiry. Dr Hill stated:

The constitution of the Macedonian Orthodox Community of Melbourne and Victoria is essentially democratic, in that power is vested in an elected church committee, which can employ and dismiss the priest of the community at will and without recourse to the Bishop, who is thus only a spiritual head. This constitution was a source of dissension between the community and the Macedonian Orthodox Bishop of Australia and Canada (later Metropolitan of Australia), who resides in Skopje. When the Macedonian Orthodox Community tried to set up other churches

⁴ Submission 429, Macedonian Orthodox Church, Diocese of Australia and New Zealand, p 5.

⁵ Submission 429, p 8.

⁶ Australian Bureau of Statistics, *Census Data 2006*, accessed 3 August 2010.

⁷ Hill P, *The Macedonians in Australia*, Western Australia, Hesperian Press, 1989.

in Melbourne, the Bishop refused to consecrate them unless they accepted the diocesan constitution, which makes the Bishop not only the spiritual head of the church community, but gives him also the title to the real estate of the church and influence over the membership of the church committee. ...

In the mid 1970s, the dispute between St George and the diocese reached the point where the latter threatened to withdraw the priest and thus effectively close down the church if the community did not accept the diocesan constitution. At this time, in most centres throughout Australia, a second church was set up with a diocesan constitution in opposition to the original Macedonian Orthodox Church. The constitutional crisis was most traumatic, however, in Perth.⁸

Church property trust legislation

- 1.11** There is a suite of legislation in New South Wales that establishes and governs church property trusts, across many denominations. These Acts generally establish a statutory trust in the name of the church, with the power to perform all things necessary to carry out the proper management of the trust.
- 1.12** Church property trust legislation has a long history in New South Wales. The earliest such Act still in effect appears to be the *Anglican Church Trust Property Act 1917*. There are now approximately 29 different church property trust Acts in New South Wales for approximately 23 different churches.⁹
- 1.13** In 1988 the Premier of New South Wales wrote to representatives of various orthodox churches and offered the Government's assistance to pass property trust legislation. According to the former Attorney-General the Hon Jeff Shaw:

The main goal of the property trust legislation was to assist churches of all denominations to better arrange their financial affairs. ...

Certain criteria were developed, and are still applied today, that are to be considered by the Government prior to sponsoring church property trust legislation. These criteria are:

1. Whether the Church is a religion within the meaning of that term in the judgment of Mason ACJ and Brennan J in the *Scientology* case;
2. Whether the Church has sufficient membership to warrant legislation being passed;
3. The extent and nature of its religions, charitable and educational activities;
4. Whether the extent and form of the property holdings of the Church are such as to make legislation a benefit to the Church.¹⁰

⁸ Hill P, *The Macedonians in Australia*, Western Australia, Hesperian Press, 1989, p 94.

⁹ Submission No 92, NSW Government, p 1.

¹⁰ Submission No 92 attachment, correspondence dated 4 January 2000 from the then NSW Attorney General Hon JW Shaw MLC to Mr Keith McConnell, McConnell Jaffray Lawyers.

The Macedonian Orthodox Church Property Trust Bill 1998

- 1.14** Subsequent to the 1988 offer by the Premier, the NSW Government introduced the Macedonian Orthodox Church Property Trust Bill 1998. The Bill purported to divest any property held in trust for the Church by a corporation or person and vested it in the property trust created by the Bill.
- 1.15** However, the 1998 Bill was not progressed when the Government became aware of a lack of consensus within the Church community as to the content of the legislation.¹¹ Referring to litigation between the Macedonian Orthodox Church and a parish in Rockdale, in 2000 the Government expressed its position as follows:

... it's the Government's preferred position that there should be general consensus within the Macedonian Church community on the basic terms of the proposed property trust legislation and that this should form the basis of a submission to the Government. ...

If internal agreement and a proposal for legislation is not forthcoming from the Church, the Government would prefer to delay taking steps to deal further with the Bill until the current litigation before the Supreme Court is resolved.¹²

- 1.16** With the prorogation of Parliament, the Bill lapsed on 3 February 1999.

The Macedonian Orthodox Church (Victoria) Property Trust Bill 2009

- 1.17** The Victorian Attorney-General, the Hon Rob Hulls, introduced the Macedonian Orthodox Church (Victoria) Property Trust Bill into the Victorian Legislative Assembly on 7 May 2009. The Bill purported to establish a statutory corporation to hold church property that was located only in Victoria. Upon enactment of the Bill, two Victorian properties were identified to be included in the Trust, with provisions for other Victorian church properties to voluntarily transfer their property to the Trust.¹³
- 1.18** The Committee is aware that the above Bill was withdrawn from the Victorian Legislative Assembly on 22 June 2010. The Minister for Government Business, the Hon Peter Batchelor, told the Victorian Parliament:

By way of the very briefest of explanations, this is a bill that has been prepared following initial representations by the Macedonian Orthodox Church. Members would be aware that it has been on the notice paper for some time and has not progressed. During that interregnum there has been some further discussion with the Macedonian Orthodox Church and the church has been provided with legal advice. I can advise the house that at the end of May the Attorney-General received a letter from Bishop Peter Karevski, the administrator of the Macedonian Orthodox Church for the Diocese of Australia and New Zealand, specifically asking for this bill to be withdrawn.

¹¹ Submission No 92, p 1.

¹² Submission No 92 attachment, correspondence dated 4 January 2000 from the then NSW Attorney General Hon JW Shaw MLC to Mr Keith McConnell, McConnell Jaffray Lawyers.

¹³ *VICPD (Legislative Assembly)*, 7 May 2009, p 1318.

In his letter Bishop Peter commences by blessing the Attorney-General. He sets out the background to the issues behind the church's initial request and its change of heart along the way, going on to ask for the bill's withdrawal. In his letter he says:

I therefore respectfully request on behalf of the diocese that the bill be withdrawn, and as I do so I extend the gratitude to you of the church and our Macedonian community for the many assistances and support provided during this endeavour. Any inconvenience that may have been experienced because of this request is most sincerely and deeply regretted, and the support that you and your government have provided to the diocese and the Macedonian community is truly appreciated.¹⁴

1.19 In its submission the Church referred to the Victorian Bill:

An attempt was also made for enactment of similar legislation in Victoria, however, it is proposed to no longer continue with this endeavour because of the willingness of the New South Wales Parliament to proceed to introduce the Bill the subject of this Inquiry.¹⁵

1.20 Mr Keith McConnell, a lawyer who represents the Macedonian Orthodox Community Church St Petka Inc, advised the Committee that he had been in contact with the Victorian Attorney-General's office, which:

... advised that the Victorian Bill was not proceeded with last year when the Victorian Attorney-General discovered that the land to be transferred to the Victorian corporate trustee was subject to a mortgage and to claims in court proceedings, a situation that was unacceptable to the Victorian Attorney.¹⁶

The Macedonian Orthodox Church Property Trust Bill 2010

1.21 The Macedonian Orthodox Church Property Trust Bill 2010 was introduced by Revd the Hon Fred Nile MLC into the New South Wales Legislative Council on 10 June 2010.

1.22 On the motion of the Hon John Ajaka MLC, it was moved that the Bill be referred to General Purpose Standing Committee No 3 for inquiry and report.

1.23 The 2010 Bill is significantly different to that introduced in New South Wales in 1998. The former purported to include all Macedonian Orthodox Church properties into a statutory property trust. In contrast, the 2010 Bill identifies four church properties to be included into a property trust, and provides for future voluntary property transfers. The content of the 2010 Bill is further explained in Chapter 6.

1.24 After the public hearing of 23 August 2010, and in response to questions on notice put by Committee members, the Macedonian Orthodox Church submitted a proposal for amendments to the Bill. This amended Bill is significantly different to that put to the Parliament in June 2010. In essence, it establishes a 'shell' statutory property trust, to which church property owners can transfer land to. The amended Bill does not automatically vest

¹⁴ *VICPD (Legislative Assembly)*, 22 June 2010, p 2372.

¹⁵ Submission No 429, p 15.

¹⁶ Submission No 431, Macedonian Orthodox Community Church St Petka Inc, p 5.

any property into the proposed trust. The content and effect of the amended Bill is further explained in Chapter 2.

A history of church litigation

1.25 Since 1997 there has been continuing litigation between the Macedonian Orthodox Church and the Macedonian Orthodox Community Church "St Petka" Inc, located in Rockdale Sydney. The dispute is complex, and is briefly discussed in Chapter 5, but in essence involves what entity should own and manage "St Petka". During the course of the Inquiry, the parties were again in the Supreme Court.

Name of Macedonia

1.26 Clause 3 of the Bill contains definitions, and states that the Macedonian Orthodox Church has its seat in Skopje, Macedonia. After the breakup of Yugoslavia in 1991, the name of 'Macedonia' became the subject of a dispute between Greece and the newly independent Republic of Macedonia.¹⁷

1.27 It is not the wish of the Committee to delve further into the history of the name Macedonia. It is sufficient to note that the Australian Department of Foreign Affairs and Trade officially lists the country as the Former Yugoslav Republic of Macedonia.¹⁸ The Australian Hellenic Council and the New South Wales Government have suggested that the Bill should reflect the name used by the Australian Government, that is, Former Yugoslav Republic of Macedonia.¹⁹ However, the Committee is also aware that not all Macedonians agree with this view. For instance, whilst presenting evidence the President of the Association of Macedonian Communities Australia referred to the country as the 'Republic of Macedonia'.²⁰

1.28 The Committee notes these different views, but for the purposes of this Report is guided by the Australian Government and uses the name Former Yugoslav Republic of Macedonia. In a supplementary submission the Church removed any reference to Skopje, Macedonia, and amended the definition of Church to read as follows:

Church means the Macedonian Orthodox Church, Diocese of Australia and New Zealand with its seat in Melbourne, being an integral part of the Macedonian Orthodox Church – Ohrid Archbishopric, a hierarchical religious body whose leader, overseer and shepherd is the Archbishop of Ohrid and Macedonia.²¹

¹⁷ *Sinisa Jakov Marusic*, 'Greece's Papandreou: No Secret Name Talks', 23 June 2010, *Balkan Insight.com*, accessed 5 October 2010, <<http://www.balkaninsight.com/en/main/news/28970/>> and *Bill Hayton*, *Bid to settle Macedonia name row*, 1 January 2002, BBC Online, accessed 5 October 2010, <<http://news.bbc.co.uk/2/hi/europe/1737425.stm>>

¹⁸ Australian Government, Department of Foreign Affairs and Trade, *The former Yugoslav of Macedonia*, accessed 5 October 2010, <<http://protocol.dfat.gov.au/Mission/view.rails?id=70>>

¹⁹ Submission 1, Australian Hellenic Council of NSW, p 1; Submission 92, p 3.

²⁰ Mr Aleksandrov, President, Association for Macedonian Communities in Australia, Evidence, 23 August 2010, p 37.

²¹ Submission No 429a, Macedonian Orthodox Church, Diocese of Australia and New Zealand, p 4 and Annexure A

Report structure

- 1.29** **Chapter 2** outlines the main provisions of the Macedonian Orthodox Church Property Trust Bill 2010, as presented to the New South Wales Legislative Council. The Bill is comprised of four parts, each of which are briefly discussed.
- 1.30** **Chapter 3** addresses some efficacy issues of the Bill, including its purported operation in other Australian States and its relationship with trust law.
- 1.31** Arguments to support the Bill are presented in **Chapter 4**. Some key stakeholders that are in favour of passage of the Bill are identified.
- 1.32** Conversely, **Chapter 5** canvasses the arguments that the Bill should not proceed, and outlines the perspective of several Macedonian community organisations who oppose the Bill.
- 1.33** During the course of the Inquiry the Church proposed significant amendments to the Bill. These are briefly discussed in **Chapter 6**.
- 1.34** **Chapter 7** presents the Committee's conclusions.

Chapter 2 **The Macedonian Orthodox Church Property Trust Bill 2010**

This Chapter outlines the main provisions of the *Macedonian Orthodox Church Property Trust Bill 2010*. The complete Bill may be found in Appendix Four. The Bill purports to constitute a statutory corporation to hold property on behalf of the Macedonian Orthodox Church. The Bill is comprised of four parts, each of which are briefly explained in this chapter.

Part 1 of the Bill: Preliminary

- 2.1** All legislation contains a Preliminary section, and includes information such as the commencement day of the Act and definitions. For this Inquiry there are two important clauses in the Preliminary section that are referred to in this report.
- 2.2** The first of these is Clause 3 – Definitions - Church. This is reproduced below.
- Church means the Macedonian Orthodox Church, Diocese of Australia and New Zealand with its seat in Melbourne, being an integral part of the Macedonian Orthodox Church with its seat in Skopje, Macedonia, a hierarchical religious body whose leader, overseer and shepherd is the Archbishop of Ohrid and Macedonia.
- 2.3** The second important clause in the Preliminary is Clause 4 - Extraterritorial operation of the Act. There are three subclauses to this. Clause 4(1) is reproduced below.
- (1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following:
 - (a) land situated in or outside the territorial limits of the State,
 - (b) things situated in or outside the territorial limits of the State,
 - (c) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,
 - (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State or Territory.

Part 2 of the Bill: Constitution and functions of Trust

- 2.4** This part of the Bill purports to constitute a corporation under the corporate name of the Macedonian Orthodox Church Property Trust. It is important to note that the Bill does not establish a Trust, per se, but a corporation, to be known as a Trust. Clause 5(2) of the Bill provides for the membership of the Trust as follows:
- The Trust is to consist of the following members:
 - (a) the Metropolitan,
 - (b) the Deputy Bishop,
 - (c) a representative from the monasteries of the Church, who is appointed by the Metropolitan,
 - (d) the Diocesan Secretary,

- (e) 2 clerics of the Church, being current members of the Diocesan Ruling Committee, who are appointed by the Metropolitan,
- (f) the deputy president of the Diocesan Assembly,
- (g) 3 lay persons, being current members of the Diocesan Ruling Committee, who are appointed by the Metropolitan.

2.5 The remainder of Part 2 of the Bill provides for: Trust procedures; functions; by-laws; investment of trust funds; advances; arrangements for other churches to use Trust property; variation of the Trust and so forth. The functions of the Trust are found in clause 7(1):

- The functions of the Trust are as follows:
 - (a) to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, the Church,
 - (b) to acquire property by gift, devise or bequest and to agree to and carry out the conditions of the gift, devise or bequest,
 - (c) to borrow or lend money for the purposes of the Church,
 - (d) to mortgage, charge or otherwise encumber trust property,
 - (e) to make gifts and donations of property held by it for religious and charitable purposes,
 - (f) to enter into any guarantee or indemnity that may assist the Trust or the Church in the exercise of its functions,
 - (g) to do and suffer all other things (whether or not of the kind referred to in this section) that the Metropolitan considers to be necessary, appropriate or desirable,
 - (h) to do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for or incidental to the exercise of its functions under this Act.

Part 3 of the Bill: Vesting of property in Trust

2.6 The Bill provides for four properties to be vested in the Trust upon enactment. These are:

- The Macedonian Orthodox Church "Holy Mother of God", Liverpool NSW;
- The Macedonian Orthodox Church "Nativity of Holy Mother of God" Cathedral Chapel, Sydenham Victoria;
- The Macedonian Orthodox Church "Saint Prohor Pchinski" Monastery, Donnybrook Victoria;
- The Macedonian Orthodox Church "Holy Mother of God", Woodville South, South Australia.

2.7 Clause 18 of the Bill provides for the gifting of property to the Trust. Similarly, clause 19 provides for the vesting of property held on trust for the Church, if the consent of the trustees is provided in writing to a transfer of the relevant property to the Trust, and the Metropolitan agrees. Clause 20 extends this, so that the Metropolitan may consent to transfer of other property held on trust, on behalf of absent or disabled trustees. Clause 20 reads as follows:

- The Metropolitan may consent to transfer of other property held on trust, on behalf of absent or disabled trustees. (1) This section applies if:

- (a) property (*the relevant property*) is held on trust for the Church on or after the date of commencement by any person or persons (the current trustees), and
 - (b) the Metropolitan has sought the consent of each current trustee to the transfer of the relevant property, and
 - (c) the consent of any current trustee cannot be obtained because that person has died, is absent or is under any other disability, but the consent of the remaining trustees has been obtained, and
 - (d) the Metropolitan has given notice of his intention to consent to the transfer of the relevant property in a newspaper circulating generally in the place where the relevant property is located, and
 - (e) no proceedings have been taken by any current trustee within 30 days after the publication of that notice or, if such proceedings have commenced, those proceedings have been finally determined in favour of the Metropolitan.
- (2) The Metropolitan may, by writing under his hand, consent to the transfer of the relevant property to the Trust.
- (3) If the Metropolitan consents to the transfer, the relevant property is, on the date of consent of the Metropolitan, divested from current trustees and is, to the extent that it was held on trust for the Church, vested (without the need for any further conveyance) in the Trust.
- (4) If such a transfer is registered in accordance with section 21, the registration operates as a discharge of all current trustees from the duties of the trust.

2.8 Division 2 of Part 3 of the Bill includes provisions relating to the vesting of a property. For instance, clause 21 states that the appropriate registration authority must issue all necessary certificates of registration or title and make any recordings on the relevant Register because of the operation of clauses 17, 19 or 20 – i.e., vesting of property into the Trust. The Bill outlines the registration authority for each of the Australian States and Territories. For instance, in New South Wales it is the Registrar-General, and the relevant Register means the Register required to be kept under the *Real Property Act 1900*.

Part 4 of the Bill: Miscellaneous

2.9 Part 4 of the Bill contains a variety of miscellaneous provisions relating to such things as custody and use of the Trust seal, execution of documents, and indemnification of trustees when carrying out their functions. As noted in Chapter 5, indemnity of Trustees is an issue. Clause 32 of the Bill relates to this, and states:

- A trustee, and any other person, exercising in good faith a function in relation to trust property in accordance with this Act or any by-law of the Trust, and the executor or administrator of any such trustee or person, are entitled to be indemnified out of trust property against all expenses and liabilities that they have incurred in connection with the exercise of the function.

2.10 As stated, the main intent of the Bill is to establish a statutory corporation to hold property in trust for the Church. Some of the technical issues associated with the Bill are discussed in the next Chapter.

Chapter 3 Efficacy issues of the Bill

The Committee looked carefully at the Bill, and identified several clauses that, *prima facie*, raised concerns as to their efficacy. The Committee was particularly concerned that technical issues with the Bill may lead to future legal challenges or litigation.²² To assist in its Inquiry, the Committee sought the advice of a leading Senior Counsel, the NSW Crown Solicitor, and NSW Parliamentary Counsel. This Chapter highlights some of the main issues arising from their advice. It concludes with a commentary on the possible impact of the advice on the Bill.

The effect of the Bill on interstate property

- 3.1** Clause 17 of the Bill proposes to divest four properties from the persons named in that clause and vest them in the Trust established by the Bill. Three of the four properties referred to in cl. 17 are situated interstate, two in Victoria and one in South Australia.
- 3.2** Many people have questioned whether Church land located outside New South Wales can be effectively vested in the proposed Trust. Parliamentary Counsel stated: "There is doubt about whether Church land outside New South Wales can be effectively vested in the proposed New South Wales statutory trust body."²³ Similarly, the provisions raise what the Crown Solicitor refers to as, "... potentially difficult and partly unresolved issues in relation to inconsistency between State laws...".²⁴ The Registrar-General queried the ability of the New South Wales Parliament to pass a law purporting to vest property not situated in New South Wales.²⁵

Sufficient connection

- 3.3** According to Mr Leeming SC, while the New South Wales Parliament has legislative competence to enact 'extra-territorial' legislation, that is, legislation enacted in one State that seeks to regulate land in another State or Territory, this should only occur where there is sufficient connection between the State and the circumstances on which the legislation operates. Mr Leeming used the example, for instance, that New South Wales cannot make it an offence to smoke cigarettes in Paris. Mr Leeming concluded that he did not know enough of the background to express a view as to whether there was likely to be a sufficient connection in respect of vesting Victorian and South Australian land in the proposed Trust, but suggested that the provision seemed to be capable of giving rise to controversy.²⁶
- 3.4** The Crown Solicitor also raised doubts about whether a 'sufficient connection' test would be satisfied in relation to the Bill:

²² For instance, in his submission Mr Leeming SC suggested that it may be preferable for certain provisions in the Bill to be made clearer, 'rather than the subject of litigation in and decision by the courts.' Submission No 22, Mr Mark Leeming SC, p 3.

²³ Correspondence from Parliamentary Counsel's Office to Clerk of the Parliaments, 23 August 2010, p 1.

²⁴ Correspondence from Crown Solicitor's Office to Clerk of the Parliaments, 3 September 2010, p 6.

²⁵ Submission No 432, Hon Tony Kelly MLC, Minister for Lands, p 1.

²⁶ Submission No 22, p 3.

I have some doubt that the mere fact that the various owners of the relevant property belonged to the same church in terms of an institution of the church, without there being some tangible interrelationship and connection with New South Wales would be enough to establish the relevant connection for legislative power. In order to determine whether or not there would be a sufficient connection it would be necessary to examine on the facts whether there were tangible connections between the relevant persons and property outside of the State and the relevant persons and property inside the State.²⁷

Inconsistency with other State laws

- 3.5** Clause 21 of the Bill requires that the appropriate registration authority, on being requested to do so and on delivery of any relevant instrument, must issue all necessary certificates of registration or title and make any recordings on the relevant Register that are necessary because of the operation of section 17, 19 or 20.
- 3.6** Clause 21, accordingly, purports to require registration authorities, (being statutory authorities outside this State and which are the statutory creation of those States,) to give effect to the legislative divesting and vesting which results from the operation of cl. 17. The Crown Solicitor noted that, irrespective of whether a sufficient connection to ground legislative power in this State could be said to exist, State legislative power might nevertheless be limited because of inconsistency with other State laws.
- 3.7** Mr Leeming explained the conflict with the statutes of Victoria and South Australia as follows:
- ... the law of those States provides that the Victorian Registrar of Titles and the South Australian Register-General has a *discretion* to issue a new certificate of title to the person entitled to be registered. ...; the Bill purports to create an unqualified *obligation*. Secondly, the bill if enacted purports to alter the rules applicable in Victoria and South Australia to determine the ownership of land in those States. In other words, whereas normally the Victorian Registrar of Titles would look to any applicable Commonwealth and Victorian law, and the common law, to determine whether someone is entitled to be a registered proprietor of Victorian land, the Bill if enacted purports to require the Registrar of Titles to have regard to the New South Wales Act in order to answer that question.²⁸
- 3.8** Section 109 of the Australian Constitution says that if there is a conflict between a State law and a law of the Commonwealth, the latter will prevail to the extent of any inconsistency. However, the Constitution is silent in regard to how competing laws between different States should be resolved.
- 3.9** The Crown Solicitor agreed that there is likely to be a conflict between the Bill if enacted and the Victorian and South Australian legislation. He concluded:

Although not free from doubt, I think the most likely result would be that the relevant provisions of the Bill if enacted (cls. 17 and 21 of the Bill) would be inconsistent with the South Australian and Victorian provisions and would be inoperative. It is unclear whether in constitutional terms, this would be because the attempt to enact a conflicting law would be beyond legislative power. In my view it may. Alternatively, a

²⁷ Correspondence from Crown Solicitor's Office to Clerk of the Parliaments, 3 September 2010, p 7.

²⁸ Submission No 22, p 4.

test of "repugnancy" could apply precluding the operation of the NSW provisions in South Australia and Victoria. Alternatively, as s. 4 states that the provisions apply "as far as possible", as a matter of construction, the relevant clauses might be read down so as not to apply where such inconsistency arises. This, however, would be difficult in terms of s. 17.2(b)-(d) and s. 21, given their express extra-territorial operation.²⁹

- 3.10** In their respective advice the Crown Solicitor, Parliamentary Counsel and Mr Leeming all stated that the situation would be different if there were complementary amendments made to legislation in Victoria and South Australia permitting the matters dealt with in clauses 17 and 21 to take place. Similarly, the Crown Solicitor also advised that if the owners of the interstate property were resident in New South Wales, it would at least be within power to compel them to do what is necessary to achieve the required transfers pursuant to the laws of Victoria and South Australia.

Applicability of trust law

- 3.11** As explained in Chapter 2, the Bill if enacted would create a corporation called the Macedonian Orthodox Church Property Trust. This is the same as all other church property trust legislation. Mr Leeming notes:

An obvious question created by the use of that name is whether the general law obligations of trustees apply to the Macedonian Orthodox Church Property Trust. Is it, for example, under an obligation to diversify the investments of property owned by it (cf Trustee Act s14C). May it seek judicial advice under s63 of the Trustee Act? ...

These are questions of policy. It might be thought desirable for those decisions to be made expressly on the face of the legislation, rather than the subject of litigation in and decision by the courts.³⁰

- 3.12** Parliamentary Counsel advised the Committee that the fact that the word 'Trust' appears in the title of the body is 'not determinative of the issue (but that word is used to reflect the general nature of the body that is proposed to be established).³¹ He concluded:

... the legislative policy question for the Committee and State Parliament in considering this aspect of the Bill is whether the terms of that clause provide appropriate constraints on the operations of the proposed statutory body.³²

- 3.13** The Crown Solicitor provided a useful summary of the obligations of a trustee under the *Trustee Act*.

In the context of what I might call a "true trust", trustees are under significant obligations at law and under statute (in particular the Trustee Act). In general terms the primary duty of a Trustee is to carry out the terms of a trust. In this regard trustees need to familiarise themselves with the terms of the Trust and deal with trust funds /

²⁹ Correspondence from Crown Solicitor's Office to Clerk of the Parliaments, 3 September 2010, p 11.

³⁰ Submission No 22, p 3.

³¹ Correspondence from Parliamentary Counsel's Office to Clerk of the Parliaments, 23 August 2010.

³² Correspondence from Parliamentary Counsel's Office to Clerk of the Parliaments, 23 August 2010.

property consistently with these terms. Trustees generally will commit a breach of trust if they depart from the terms of the Trust (*Breen v Williams* (1996) 138 ALR 259 at 308). In addition to this fundamental obligation, trustees have a number of general duties of a fiduciary nature which include a duty to preserve trust property; a duty to exercise reasonable care in carrying out their duties as a trustee; a duty to act in person unless otherwise expressly authorised to do so; and a duty not to make a profit out of their position which includes a duty to avoid a conflict of interest.³³

- 3.14** The Crown Solicitor also explained that the liability of a trustee is normally personal and in the absence of a clause excluding or limiting a trustee's liability, the liability of a trustee is otherwise unlimited. In this regard, trustees are normally answerable and accountable for their own conduct (both acts or omissions) and would be liable to make good any loss suffered by the Trust as a result of such breach. Consequently, Trustees are usually not liable for the deliberate or negligent conduct of co-Trustees where they are not also involved or complicit.³⁴
- 3.15** In the Crown Solicitor's view, the Bill seeks to create a statutory Trust, and hence the general laws of the *Trustee Act* apply. However, he noted that the general obligations of the law of trusts must be measured against the express terms of the statute.
- 3.16** In this regard, the Crown Solicitor noted that cl. 13 would appear unusual in that subcls. (5) and (6) contemplate trust property being used in a manner other than as is directed in the Trust itself, that is, that the property be held on trust "for worship within or for the purposes of, the Church". Clause 13 permits the Trustees to nevertheless use trust property in a "scheme of cooperation" with a church of another denomination. Clause 14 expressly provides for a resolution by the Trust itself that in its opinion it is no longer possible or is expedient to carry out or observe the terms of the Trust of property vested in it. It then permits the Trust by resolution to declare that such property is subject to another trust. The Crown Solicitor noted that the trustees' discretion, under cls. 14(4) and (5), is particularly broad in this respect.³⁵

Indemnity of Trustees

- 3.17** The Crown Solicitor also noted that the Bill provides Trustees with an express protection for breaches of trust which differs to that provided for in s. 85 of the *Trustee Act*. For instance, s. 85 provides that the Court may relieve a trustee from personal liability of a breach of the trust where the trustee acted honestly and reasonably and ought "fairly to be excused for the breach of trust and for omitting to obtain the direction of the court in the matter in which the Trustee committed the breach".
- 3.18** In comparison, Clause 32 of the Bill goes further than s. 85. It provides that trustees or other persons acting in good faith can be indemnified out of trust property against all expenses and liabilities incurred in connection with the exercise of the function. The Crown Solicitor concluded: 'Provision of such indemnity is a matter for Parliament; however, it displaces what the general position would be in relation to trusts.'³⁶

³³ Correspondence from Crown Solicitor's Office to Clerk of the Parliaments, 3 September 2010, p12.

³⁴ Correspondence from Crown Solicitor's Office to Clerk of the Parliaments, 3 September 2010, p12.

³⁵ Correspondence from Crown Solicitor's Office to Clerk of the Parliaments, 3 September 2010, p16.

³⁶ Correspondence from Crown Solicitor's Office to Clerk of the Parliaments, 3 September 2010, p 16.

3.19 The Crown Solicitor concluded his advice as follows:

Other than the reference in cl. 10(b) in relation to the investment or lending of funds in accordance with the *Trustee Act*, the Bill is silent as to the application of that Act to the Trust. An argument would be available that Parliament, having expressly provided for application of the *Trustee Act* in cl. 10(b), otherwise intended that it not apply to the Trust. The Supreme Court has considerable powers of supervision in relation to trusts in some circumstances. Other than in circumstances where the provisions of the *Trustee Act* are inconsistent with express provisions of the Bill, and having concluded that the Trust is a statutory trust which the general laws of trust would apply subject to any express statutory provision, I prefer the view that the general provisions of the *Trustee Act* would apply to the Trust. If Parliament intended that the *Trustee Act* not apply it could have made express provision to that effect. I do not disagree, however, with Mr Leeming SC's view that, without express provision, the matter is not entirely free from doubt.³⁷

3.20 In a supplementary submission, the Church agreed that the *Trustee Act 1925* would apply to the proposed Trust. The Church further explained:

The operation and application of the provisions of the *Trustee Act 1925* vary, some provisions apply regardless of anything to the contrary in the instrument of trust, others apply only if there is nothing to the contrary in the trust instrument. For example, the provision referred to by Senior Counsel [Mr Leeming] regarding the power to diversify investments in s14C, will apply unless there is contrary intention in the trust instrument.³⁸

3.21 In regard to cl. 32 of the Bill which gives a different level of indemnity protection than that ordinarily available to trustees under the *Trustee Act*, the Church submitted that this provision is in a standard form that appears in at least eight other church Acts.³⁹

3.22 The Church submitted further information about the relationship between the proposed Trust and the Church's Diocesan Ruling Committee. The Church explained that the Diocesan Ruling Committee is the executive, governing and controlling body of the operations of the Church in administrative and material-financial aspects. It is the executive body of the Diocesan Assembly, which in turn is comprised of clergy and faithful. The Assembly is the highest legislative and church-ruling body in jurisdictions given to it by the Constitution of the Macedonian Orthodox Church, and is the church-administrative body for all administrative and material tasks in the Diocese.⁴⁰

3.23 The Church then explained that the Diocesan Ruling Committee will effectively become the members of the proposed Trust (which is referred to as a Corporation in its supplementary submission). The Church stated:

What is important is that the composition of the Corporation mirrors the composition of the Diocesan Ruling Committee, the membership is exactly the same. As such, the

³⁷ Correspondence from Crown Solicitor's Office to Clerk of the Parliaments, 3 September 2010, p 16.

³⁸ Submission No 429a, Macedonian Orthodox Church Diocese of Australia and New Zealand p 28.

³⁹ Submission No 429a, p 29.

⁴⁰ Submission No 429a, p 15.

Diocesan Ruling Committee essentially will take on and perform the role of the Corporation, which is appropriate given the role of the Diocesan Ruling Committee under the Statute in relation to administration and management of property. The governance under the Bill does not create a new or parallel process, rather it reflects the structure under Church laws of the governance and operations of the executive arm of the Church.⁴¹

- 3.24** However, it became apparent to the Committee that the indemnity coverage for the Diocesan Ruling Committee is different to that of the proposed Trust. The Church explained that under its Church laws, each member of the Diocesan Ruling Committee may be held personally responsible and liable for damages. The Church explained to the Committee:

Each member of the Diocesan Ruling Committee is answerable for their work to the Diocesan Assembly and in the event of any financial losses or material damage to the Church, caused by negligence or unconscionable conduct, the member shall be held responsible and shall be liable for damages (article 35 of the Diocesan Statute).⁴²

- 3.25** In contrast, and as discussed above, cl. 32 of the Bill limits liability of the members of the Trust. Yet the Church has proposed that the Diocesan Ruling Committee and the Trust be essentially one and the same.

Committee comment: implications for the Bill

- 3.26** The Committee is concerned that the Bill creates uncertainty as to the application of the *Trustee Act* and its relationship with the proposed Trust and the canonical laws of the Macedonian Orthodox Church. In particular, the Committee is concerned that this lack of clarity in the Bill could potentially provide an area of future litigation.
- 3.27** The Committee is grateful for the advice from Mr Leeming SC, as well as from Parliamentary Counsel and the Crown Solicitor. The Committee acknowledges that with the receipt of this advice, and setting aside all other considerations of the Bill as identified in Chapters 4 and 5, it cannot recommend that the Bill proceed as it currently stands.
- 3.28** Representatives of the Church also acknowledged these jurisdictional and constitutional issues, and hence suggested some amendments.⁴³ These and other amendments are outlined in Chapter 6. Nevertheless, the Church presented evidence of significant support of the Bill, as discussed in the following chapter.

⁴¹ Submission No 429a, p 18.

⁴² Submission No 429a, p 15.

⁴³ Ms Biljana Apostolova-Antunovic, Partner, Gadens Lawyers, Evidence, 23 August 2010, p 17.

Chapter 4 Arguments to support the Bill

This Chapter examines the arguments offered by proponents of the Bill in support of the establishment of a trust or corporation to manage the Church's property holdings.

The benefits of a single ownership body

4.1 The proponents of the Bill argue that the establishment of a property trust will facilitate the effective management of the Church's assets. The Church argued that the Bill will be of historic importance as 'it will be able to better organise the holding, management and protection of the Church's asset base by confining its ownership to a single body, thereby overcoming the current difficulties in having several trustee bodies (individuals or otherwise) acting for the Church.⁴⁴

4.2 Similarly, in his Second Reading Speech about the Bill, Revd the Hon Fred Nile MLC stated:

The bill will assist the church in its organisational and administrative affairs, providing a stable and solid foundation for development and activities of the Macedonian Orthodox Church in Australia.

A statutory body, the constitution of which cannot be changed except by an Act of Parliament, provides protection to the church and ensures that property vested in the statutory body is held in trust by the church in perpetuity until disposed of in accordance with the decision of the church.⁴⁵

The Bill will improve the current structure of Church property holdings

4.3 The Church expressed concerns about the current structure of the Church's property holdings, and the difficulties that this creates:

The lack of a dedicated legal Church trustee hinders the day to day financial arrangements of the Church. Banking and mortgage dealings are defeated or impeded by the difficulties associated with management through individual and sometimes missing or deceased trustees. Borrowings can be frustrated as individual trustees are reluctant to give their personal guarantees to secure Diocesan or Church Community borrowings. Business dealings with financiers, investors and third parties are hindered and made more difficult, than if property holdings of the Church have aggregated in a single trustee vehicle of the Church which will enhance security for lenders to the Church.⁴⁶

The Bill will clarify ownership of Church properties

4.4 The Church argued that the Bill would help to clarify understanding in the community about the ownership and use of church properties. The Church stated:

⁴⁴ Submission No 429, Macedonian Orthodox Church Diocese of Australia and New Zealand, p 15.

⁴⁵ *NSWPD (Legislative Council)*, 10 June 2010, p 24217.

⁴⁶ Submission No 429, p 12.

In absence of a dedicated Church trustee, unregulated accumulation of church property over the past three decades has led to misunderstandings as to the beneficial ownership of the properties. Further, confusion exists amongst some in understanding the legal nature of property held on trust for religious and charitable purposes.⁴⁷

- 4.5 The Church argued that some people in the community consider that properties registered in the name of individual trustees for the Church (and in particular the four identified Diocesan Properties) have been acquired for those persons' benefit. The Church continued, 'Much confusion abounds with this attitude and the Diocesan Ruling Committee is forced to repeatedly inform the communities of the Church ... that these properties are held for the purposes of the Church.'⁴⁸

Alternative Administrative Structures

- 4.6 The Church argued that the regime proposed by the Bill was the only effective way it could incorporate its assets. Other methods, such as incorporating under various state Acts for Incorporated Associations or under the *Corporations Act 2001* (Cth), were not deemed possible. One of the identified barriers to the Incorporated Associations approach was the hierarchical structure of the Church. For instance, an attempt to align governance provisions of the Church and the appointment and election of decision making bodies under the *Corporations Act* or incorporated associations legislation was, in the Church's opinion, just not possible.⁴⁹ The second barrier was the Church's geographical extension across several States. As the Church further explained:

... an incorporated association is formed by a club, society or association of persons to set out the manner by which they agree to manage and administer their activities and assets. Therefore, an incorporated association is established for purposes which are agreed to from time to time by its membership. This differs from the constitutional requirements of the Church, which requires that its activities and assets be held in perpetuity for the purposes of the Church and not for the designated group that comprise the membership in the association.⁵⁰

- 4.7 Similarly, the Church explained the difficulty posed by incorporation under the *Corporations Act 2001* (Cth) as follows:

... a company formed under the Corporations Act also is possessed of a defined membership that constitutionally is bound by its objectives and which requires that it pursue its activities independently of the requirements of, for argument sake, a church statute. Therefore, the purposes of a company will be the fulfilment of the objectives of its members (and not those of the Church), which even if adequately defined at the outset, over time may be varied in a way that no longer reflects the purposes of the Church ...⁵¹

⁴⁷ Submission No 429, p 12.

⁴⁸ Submission No 429, p 12.

⁴⁹ Submission No 429, p 13.

⁵⁰ Submission No 429, p 13.

⁵¹ Submission No 429, p 13.

Parallels with other church property trust legislation

4.8 The Church noted that other churches have similar legislation to that proposed in the Bill. In this regard, the Church argued:

The suitability of a statutory incorporation for the purposes of supporting the business activities of various denominational bodies is a long standing, established principle in this country, and many other Christian churches operating in Australia enjoy the advantages of such incorporation.⁵²

4.9 As noted in Chapter 2, church property trust legislation has a long history in New South Wales. The Church provided the Committee with a list of 16 NSW Acts that provide for a statutory property trust for other religious denominations. Across the nation, 39 relevant pieces of legislation were identified.⁵³

4.10 The most recent church property trust legislation passed by the New South Wales Parliament was the *Christian Israelite Church Property Trust Act 2007*. In the Second Reading Speech, Parliamentary Secretary, the Hon Penny Sharpe MLC noted:

It has been longstanding Government policy to assist churches to organise their financial and property affairs, by sponsoring legislation to establish property trusts for their holdings.

The bill will have a positive impact on the operations of the Church and its capacity to manage its financial and property affairs. This will have a specific benefit to the Christian Israelite community and their families.⁵⁴

Supporters of the legislation

4.11 In its submission the Church provided letters of support for the Bill from the Diocesan Ruling Committee, as well as from representatives of the four church properties identified in the Bill.⁵⁵ The Church also included letters of support from the Committees of Church Communities and Monastic Communities of five churches, who wish to transfer their properties to the Trust in the future upon enactment of the Bill. These churches, all from Victoria, were:

- Committee of the Macedonian Orthodox Church "St Nikola" in Preston, Victoria;
- Committee of the Macedonian Orthodox Church "S Petka" in Mill Park, Victoria;
- Committee of the Macedonian Orthodox Church "St Prophet Ilija" in Footscray, Victoria;
- Committee of the Macedonian Orthodox Church "St Zlata of Meglen" in Hoppers Crossing, Victoria;

⁵² Submission No 429, p 14.

⁵³ Submission No 429, Annexure D.

⁵⁴ *NSWPD* (Legislative Council), 17 October 2007, p 2725.

⁵⁵ Submission No 429, Annexure E.

- The Elder of the Macedonian Orthodox Monastery "St Naum of Ohrid" in Rocklyn, Victoria.⁵⁶
- 4.12** Annexure H of the Church submission included 15 letters of support of the Bill from the Holy Bishops Synod, the Diocesan Provinces, the Committees of Church Communities and Parish Priests.
- 4.13** Annexure I of the Church submission included 10 letters of support of the Bill from various community organisations.
- 4.14** Annexure J of the Church submission included 989 form letters of support from parishioners of the following churches:
- Resurrection of Jesus Christ, Rockdale, New South Wales
 - Holy Mother of God, Liverpool, New South Wales
 - St Basil the Great, Newcastle, New South Wales
 - St Ilija, Queanbeyan, New South Wales
 - St Dimitrij of Solun, Wollongong, New South Wales
 - St Prophet Ilija, Footscray, Victoria
 - St Clement of Ohrid, Canberra.
- 4.15** Annexure E of the Church's supplementary submission contained another 90 letters of support from parishioners of St Dimitrij of Solun, Wollongong, and St Clement of Ohrid, Canberra.
- 4.16** The Bill was also supported by other orthodox churches as follows:
- Antiochian Orthodox Archdiocese of Australia and New Zealand and the Philippines⁵⁷
 - Coptic Orthodox Church, Diocese of Sydney and affiliated regions.⁵⁸
- 4.17** The Committee also received a letter of support for the Bill from Revd the Hon Fred Nile MLC.⁵⁹
- 4.18** In its supplementary submission, the Church identified 21 Church Communities that are in communion with the Church. In essence, the Church argued that those church communities not on this list are not part of the Church. The 21 Church Communities were:
1. Resurrection of Jesus Christ, Rockdale, New South Wales;
 2. Holy Mother of God, Liverpool, New South Wales;

⁵⁶ Submission No 429, Annexure F.

⁵⁷ Submission No 4, Antiochian Orthodox Archdiocese of Australia and New Zealand and the Philippines.

⁵⁸ Submission No 93, Coptic Orthodox Church, Diocese of Sydney and affiliated regions.

⁵⁹ Submission No 28, Christian Democratic Party.

3. St Basil the Great, Newcastle, New South Wales;
4. St Clement of Ohrid, Port Kembla, New South Wales;
5. Monastery "St Petka", Kembla Grange, New South Wales;
6. St Dimitrij of Solun, Wollongong, New South Wales;
7. St Ilija, Queanbeyan, New South Wales;
8. St Clement of Ohrid, Canberra;
9. Holy Mother of God, Brisbane, Queensland;
10. Nativity of the Holy Mother of God Cathedral Temple, Sydenham, Victoria (in construction);
11. Monastery St Prohor Pcinski, Donnybrook, Victoria;
12. St Prophet Ilija, Footscray, Victoria;
13. Monastery St Naum of Ohrid, Rocklyn, Victoria (in construction);
14. St Nikola, Preston, Victoria;
15. St Petka, Mill Park, Victoria;
16. St Zlata of Meglen, Hoppers Crossing, Victoria;
17. St Dimitrij of Solun, Springvale, Victoria;
18. St John the Baptist, Geelong, Victoria;
19. Holy Mother of God, Woodville South, South Australia;
20. St Nikola, North Perth, Western Australia (69 Angove St, North Perth);
21. St Nikola, North Perth, Western Australia (8 Macedonia Place, North Perth).⁶⁰

4.19 It should be noted that the Committee also received correspondence from the Vice President of the Macedonian Community of WA Inc. indicating that the community, Church and parishioners of Macedonian Orthodox Church St Nikola, (8 Macedonia Place, North Perth) Western Australia do not support the Bill.⁶¹

Committee comment

4.20 The Committee understands the argument that, under the right circumstances, a statutory property trust is the most efficient administrative method for religious organisations to hold

⁶⁰ Submission No 429a, Macedonian Orthodox Church Diocese of Australia and New Zealand, p 21.

⁶¹ Email from Mr Chris Angelkov, Vice President, Macedonian Community of WA Inc to Director, 6 October 2010.

and manage property, and the Committee acknowledges the considerable amount of legislation supporting property trusts for other denominations.

Chapter 5 Arguments against the Bill

This Chapter examines the arguments offered by opponents of the Bill to establish a trust or corporation to manage the Church's property holdings.

The impact of church litigation

5.1 The Macedonian Community of WA Inc. notes that over the last 15 years, there has been an unfortunate and wasteful procession of legal action taken by the Church against a number of Macedonian Orthodox Communities around Australia.⁶² As an example, since 1997 there has been continuing litigation between the Church and the Macedonian Orthodox Community Church "St Petka" Inc, located in Rockdale Sydney. During the course of the Inquiry, the parties were again in the Supreme Court. Justice Ipp noted in 2007 that the litigation has been bitterly fought, and succinctly summed up the issue at litigation as follows:

... the essence of the dispute is whether the Association or Bishop Petar and his supporters are to have control over the Macedonian Orthodox Church of St Petka at Rockdale, its affairs, including the appointment of priests, its land, its religious objects and other assets, and its doctrinal approach.⁶³

5.2 The Committee does not wish to dwell on this litigation. However, it is indicative of deep divisions within the Church, the repercussions of which affect the community support or lack thereof of the Bill. For instance, Mr Novachkov, President of the Macedonian Community of WA Inc., noted "This proposed Bill is inflaming and exacerbating the deep divisions that these legal actions have caused."⁶⁴

5.3 The litigation has contributed to an atmosphere of distrust, fear and disappointment within sections of the Macedonian community towards the Church, who as a result are less receptive to the idea of a church Trust. For instance, representatives of the Mitreska and Mitreski families wrote to the Committee:

As the Bishop has been involved in lengthy litigation for the past fourteen years with various Churches in New South Wales, we question whether the Bishop or any of his representatives are the appropriate people to be appointed to such a Church Board.⁶⁵

Historical decentralised origins of the Church

5.4 The main area of dispute with the Bill is the ownership and control of church property. According to Mr Aleksandrov, President of the Association of Macedonian Communities Australia, under the foundational constitution of the Macedonian Orthodox Church, based in Skopje, Former Yugoslav Republic of Macedonia, the church is comprised of a decentralised

⁶² Submission No 430, Mr Sotir Novachkov, Macedonian Community of WA Inc, p 2.

⁶³ His Eminence Metropolitan Petar, Diocesan Bishop of the Macedonian Orthodox Church of Australia and New Zealand & Anor v The Macedonian Orthodox Community Church St Petka Inc [2007] NSWCA 150, at 14.

⁶⁴ Submission No 430, p 2.

⁶⁵ Submission No 2, Ms Natalia Mitreska, Ms Milica Mitreska, Mr Lambe Mitreski, p 1.

affiliation of independent legal entities which are able to own and control their own property. Mr Aleksandrov quoted Article 4 from the foundational constitution as follows:

The Macedonian Orthodox Church consists of the following legal persons:

1. Macedonian Orthodox Church;
2. The Metropolitan residency;
3. The Dioceses;
4. The bishops' regencies;
5. The church communities;
6. The monasteries;
7. Charitable foundations;
8. The independent institutions and funds, legacies and individual parishes, according to their properties;

These legal persons are entitled, in accordance with the existing state laws, to accumulate and hold real property and any other property, to use and manage it, and to exercise all rights and obligations arising from its ownership.⁶⁶

5.5 Mr Aleksandrov argued that the definition of local church communities as separate legal persons remains a part of the Constitution to this day, and hence it was appropriate that local community churches own and manage their properties.

5.6 The Church did not dispute that local church communities were once classed as separate legal persons under the Constitution of the Macedonian Orthodox Church, but this provision had been removed by recent revisions to the Constitution. The Church stated:

The Bishop advises that under latest decisions of the Holy Bishops' Synod that are yet to be incorporated in a consolidated version of the Constitution, it has been determined that the only legal person is the MOA, and all others listed in the foundation Constitution have been revoked.⁶⁷

5.7 This preceding argument goes to the heart of the dispute. As the Macedonian Orthodox Church has grown and evolved its structure, some local church communities have found themselves in conflict with the hierarchy of the Church.

A lack of consultation

5.8 A recurring theme from many of those opposed to the Bill was the lack of any consultation from the Church with their local church community prior to its introduction to Parliament in

⁶⁶ Submission No 435, Association of Macedonian Communities in Australia, p 6.

⁶⁷ Submission No 429a, Macedonian Orthodox Church Diocese of Australia and New Zealand, p 32.

June 2010.⁶⁸ For instance, Mr Fote Lozenkovski, President, Macedonian Orthodox Community of the City of Greater Wollongong, submitted to the Committee:

There has been no community consultation about the Bill, ... Our organisation which currently owns property valued in the order of \$3,000,000 to \$4,000,000 has never been directly informed by the Bishop, nor have we been invited to a community consultation in this regard. We became aware of the Bill on 12 June 2010 by a general Notice faxed from the Bishop's residence in Bitola, Macedonia, clearly after the second reading speech.⁶⁹

5.9 The original intent of the Bill was to have national effect, and the Committee received submissions from inter-state Macedonian community associations. For instance, the Macedonian Community of WA Inc. submitted to the Committee:

There has been no consultation with Macedonian Churches and Community groups in relation to this Bill. Our first correspondence in relation to this Bill was in a Circular accompanied by a prepared letter of support for the Bill from the Bishop's Deputy requesting our parish priest to sign without amendment.

The circular letters were received by us after the Second Reading Speech in Parliament by the Hon Fred Nile. Our organization which currently owns property valued at almost \$20 million has never been directly consulted by the Bishop, nor have we been invited to a community consultation in this regard.⁷⁰

5.10 The legal counsel of St Petka's, Mr Keith McConnell, outlined to the Committee a desired consultation process that would commence with consultation within the Church, so that a unified position could then be presented to the Government for any proposed legislation. He continued:

Consistent with what the late Jeff Shaw said in his correspondence and discussions that I had was that the Parliament would not proceed with legislation until there had been full consultation between the parties. It was not separate parties dealing with the Government but it is was between the parties to come to an agreement as to what should happen and then go to Parliament and say, "This is a bill that we would like you to consider". That is a way to do it but then that means the parties, both sides, have an opportunity to promote their ideas as to how the bill should operate then go to Parliament with an agreed position and say, "Consider this bill". That is what I would have had in mind.⁷¹

5.11 The Church advised the Committee that Bishop Petar wrote a letter dated 13 June 2010 to all Church communities, Churches, Parishes and Monasteries advising of the introduction of the Bill.⁷² The Committee notes that the Bill was introduced into Parliament on 10 June 2010. In a supplementary submission the Church disputed claims that there had been no consultation, citing, for instance, correspondence between Bishop Petar and the President of the Macedonian Orthodox Community of WA Inc. The Church explained that a letter from the

⁶⁸ See for example, submission Nos: 21, 23, 24, 430, 431, 435.

⁶⁹ Submission No 23, Macedonian Orthodox Community of the City of Greater Wollongong, p 2.

⁷⁰ Submission No 430, p 1.

⁷¹ Mr Keith McConnell, McConnell Jaffray Lawyers, Evidence, 23 August 2010, p 34.

⁷² Submission No 429a, p 24.

President of the Association dated 19 June 2010 was promptly responded to two days later from the Bishop, who provided a detailed explanation of the effect of the Bill. The Church argued:

It is therefore doubtful the claim by the Macedonian Orthodox Community of WA Inc. in their submission that there has been no consultation in relation to the Bill, when the Bishop engaged in personal correspondence with the writer of that submission in good faith and to clarify any misconceptions.⁷³

Committee comment

- 5.12** While there has been considerable debate about the Bill following its introduction into the New South Wales Parliament, evidence to this Committee supports the view that there was clearly insufficient consultation conducted by the Church prior to it being introduced.
- 5.13** The fact the Church has proposed such extensive amendments to the Bill after it was introduced into Parliament, and hence subject to public and Parliamentary scrutiny for the first time, is an indication that the Church should have consulted more widely with the Macedonian Orthodox Church community before seeking the Bill's passage through Parliament.

Transfer of community property to the Church

- 5.14** The role of the Macedonian community in establishing the Macedonian Orthodox Church in Australia was outlined in Chapter 1. Some of these community groups oppose the Bill on the grounds that community property, which has been locally funded and managed, will be transferred to the Church. The Macedonian Community of Newcastle and District submitted to the Committee:

The Macedonian Community of Newcastle and District currently has over 160 members and was formed more than 50 years ago as a community organization with volunteers within the local community who contributed to the construction of our community hall and Church. Our Church was built in approximately 1969 where over 12 of our members risked their own homes by taking out mortgages to cover some of the construction costs. All monies and labour for the construction and continued maintenance of our Church are donated by our community members.

The property owned by the Macedonian Community of Newcastle and District is not only used for religious purposes, but we also use it for pensioner groups, day care, dancing groups, women groups, sporting groups, fund raising and a Macedonian school to teach the language and culture.

We believe that the Bill in its present form will take the Community's rights away in relation to the management of the Community property and will ultimately avoid accountability and scrutiny which currently exists under Australian laws.⁷⁴

⁷³ Submission No 429a, p 24.

⁷⁴ Submission No 21, Macedonian Orthodox Community of Newcastle and District, p 2.

5.15 Similarly, the Macedonian Orthodox Community of the City of Greater Wollongong noted:

... All assets including the real property currently held in the name of various Macedonian community organizations has been acquired with moneys and labour provided or ordinary working Australian-Macedonians often at the sacrifice of their own financial prosperity.⁷⁵

5.16 The Committee also received evidence from Macedonian families expressing their concern about the transfer of community property into the Trust.

Our family is part of the Illawarra Macedonian community. We are blessed with two Macedonian Orthodox churches in the area. The two churches, through the many years, were built by the Macedonian community for the Macedonian community. The churches are a symbol of a small immigrant group who through hard work and respect built a place of worship and a home in a new homeland.

The [Bill] which seeks to transfer all property to a statutory corporation is simply a legal means of transferring what belongs to the community to a 'corporation' not representative of the community.⁷⁶

5.17 Mr Angelkov of the Macedonian Community of Western Australia explained to the Committee the community roots of the Church in Australia:

... our community was first formed in 1941. In 1965 we began building a community centre and church. In 1969 we opened that community centre and church. As an 11-year old at the time I was one of the first four altar boys.

...Our community around Australia has historically been blue collar workers, very humble people who have put their resources together and worked on weekends and held dances, picnics and raffles to get the finances to build these clubs, associations and churches.⁷⁷

Concern about foreign control of community assets

5.18 One of the major concerns regarding the proposed transfer of property to the Macedonian Orthodox Church of Australia was that this church was, in fact, under the control of the Macedonian Orthodox Church in Skopje. Thus community assets would be under foreign control. For instance, the Macedonian Orthodox Church St Petka Inc. submitted:

The bill, if enacted into legislation, seeks to have the effect of transferring ownership of properties acquired by local Macedonian Orthodox communities to a corporation controlled by the Macedonian Orthodox Church of Skopje, Macedonia.

The Macedonian Orthodox Church is a foreign institution organised and controlled wholly within the Republic of Macedonia.

⁷⁵ Submission No 23, p 1.

⁷⁶ Submission No 26, Mr Steve and Mrs Jenny Anastovski, p 1.

⁷⁷ Mr Angelkov, Vice President, Macedonian Community of Western Australia, Evidence, 23 August 2010, pp 39-40.

The local Macedonian Orthodox communities do not want their lands taken away from them, and placed under the control of a foreign institution.

The rules of the Macedonian Orthodox Church may permit or require the Bishop to sell properties in Australia and remit the proceeds to Macedonia or anywhere else for that matter.⁷⁸

- 5.19** The Macedonian Orthodox Community of the City of Greater Wollongong stated its concerns about possible control of community assets by a foreign institution:

Our local Macedonian community does not consent to legislation of the subject Bill as it strongly believes that such a Bill will enable establishment of a foreign institution and empower the same to take control of the community's property and deny the community their right to ownership and management of the property.⁷⁹

- 5.20** From the perspective of the Association of Macedonian Communities in Australia, this concern was especially poignant given the political uncertainty in Macedonia itself. The Association outlined the contemporary political conflict between the Serbian Orthodox Church and the Macedonian Orthodox Church, noting that the Serbian Orthodox Church disputes the autocephalous status of the Macedonian Orthodox Church, and that sections within the Macedonian Orthodox Church support the Serbian view.⁸⁰

- 5.21** In a supplementary submission the Church disputed the claim that assets of the Macedonian Orthodox Church of Australia could be sent overseas:

The Church laws provide that the assets of a Diocese must always be utilised, maintained and retained within that Diocese. It will be a serious breach of the laws of the Church if assets are sold up and proceeds applied outside of the Diocese. Further, it will also be a breach of trust if the statutory corporation (when formed) receives property for the purposes of the Diocese, and permits proceeds from a sale of those assets to be remitted out of the Diocese. Such a breach of trust is actionable at law and the individuals who are responsible will be personally liable. This means that all of the persons comprising the Diocesan Ruling Committee who as mentioned above are responsible for Diocesan property dealings, will be personally legally exposed and can be held responsible for losses sustained by the Diocese.

Furthermore, and in addition, statutory corporations are ordinarily entitled for endorsement by the Australian Taxation Office as charitable institutions. This endorsement carries a requirement that the objects and the expenditure be applied principally in Australia. Therefore, sending proceeds outside Australia could prejudice such charitable endorsement.⁸¹

⁷⁸ Submission No 431, McConnell Jaffray Lawyers on behalf of the Macedonian Orthodox Community Church St Petka Incorporated, p 2, 5.

⁷⁹ Submission No 23, p 1.

⁸⁰ Submission No 435, p 10.

⁸¹ Submission No 429a, p 27.

Spiritual versus financial control

- 5.22** The Church has a hierarchal structure, and this is reflected in the Bill. For instance, of the ten members of the proposed Trust, six are appointed by the Metropolitan, effectively giving that position complete control of the Trust. St Petka Church submitted:

The trust proposed by the Bill is totally controlled by the Metropolitan (the Bishop) with no community representation. This Bishop is in the hierarchy of the Macedonian Orthodox Church and subject to its rules without reference to Australian laws.⁸²

- 5.23** Mr McConnell told the Committee '...the control of the trust corporation is in the hands of the hierarchy. That is a fundamental flaw in this legislation'.⁸³

- 5.24** In its supplementary submission, the Church argued that it was wrong to state that the Metropolitan totally controls the Trust, because the composition of the Trust mirrors that of the Diocesan Ruling Committee.⁸⁴

- 5.25** Mr Aleksandrov recounted the community based origins of the church in Australia. His comments go to the heart of the dispute regarding the Bill, which is that a significant section of the Macedonian Orthodox Church community will accept spiritual but not organisational direction from the seat of the church in Skopje.

The most fundamental problem with this bill is that there is an assumption that the Macedonian Orthodox Church has been historically a hierarchical organisation in relation to property management. That is simply not true. The establishment of the Macedonian Orthodox Church in its modern form started in World War II in the Republic of Macedonia, which is only one part of Macedonia, which at that time was establishing its liberation from Serbia. It was established by a grassroots movement of Macedonian Orthodox believers and Macedonian priests who were rebelling against the Serbian Orthodox Church, which at that time had jurisdiction over the Republic of Macedonia according to other Orthodox churches. Until 1958 this movement had no Bishop whatsoever.

In 1958, after negotiating with the Serbian Orthodox Church, they established an autonomous Macedonian Orthodox Church in the Republic of Macedonia under conditions that the Bishops would be authorised by the Serbian patriarch but they will be chosen by the Macedonian people and priests. The first Macedonian Orthodox Church in Australia predates that autonomous Macedonian Orthodox Church in Macedonia. It goes back to 1956. It was established in Victoria and it was established by a community that expressly wanted to be independent in relation to all property matters and in relation to who its priest is going to be.⁸⁵

⁸² Submission No 431, p 5.

⁸³ Mr McConnell, Evidence, 23 August 2010, p 29.

⁸⁴ Submission No 429a, p 31.

⁸⁵ Mr Aleksandrov, Evidence, 23 August 2010, p 37.

Adequacy of Incorporated Associations Act

- 5.26** In contrast to the Church's argument that an Incorporated Associations structure was not suitable, Macedonian community groups put forward the view that to date, such a structure had served the church community well. Reflecting on the situation in Western Australia, Mr Angelkov told the Committee:

... Our community has at all times in the last 30 or 40 years operated as an incorporated association. We have always held general meetings and we have always followed the procedures required by the Corporations and associations laws. I find it very difficult now when we are facing a situation where the diocese and Bishop Petar are seeking an Act of Parliament to formalise the Macedonian Orthodox Church in Australia. I can see no good reason why this requires an Act of Parliament. Why it cannot be registered and incorporated within the Associations Incorporation Act is beyond me. ...⁸⁶

- 5.27** On behalf of the Macedonian Orthodox Community Church St Petka Inc. Mr McConnell told the Committee:

... the Macedonian community at Rockdale or the broader St George area, when they established their community organisation, did so with the intention of controlling the ownership and being the owners of the property. They, as I said, accepted the spiritual jurisdiction of the Macedonian Orthodox Church but the very reason for setting up first the unincorporated association and then in 1992 incorporating that association under the legislation of this State, was that it recorded their wish to be the owners of their property.⁸⁷

The ambiguity of future church property transfers

- 5.28** In Chapter 2 it was noted that clause 19 of the Bill provides for the voluntary vesting of community church property into the proposed Trust. The Committee received evidence that some community groups were concerned about this provision. For instance, Mr Angelkov told the Committee:

I was to refer to clause 19, which is the one I am most worried about. Clause 19 allows the Bishop and diocese to exert a type of pressure on individual organizations to put their Church property into this Trust. The clause says 'voluntary' but there is more than one way to skin a cat.⁸⁸

- 5.29** Similarly, Mr McConnell told the Committee that the church could exert pressure on individual communities to transfer their assets by threatening to 'defrock' priests:

The concern involves being under the spiritual jurisdiction of the Macedonian Orthodox Church, and operating a church you need to have a priest. The priest must be appointed by the authority of the Bishop. The pressure comes onto these communities through that authority being misused. It is open to the Bishop to discipline a priest as a means of enforcing some other position. Unfortunately, in this

⁸⁶ Mr Chris Angelkov, Evidence, 23 August 2010, p 40.

⁸⁷ Mr Keith McConnell, Evidence, 23 August 2010, p 27.

⁸⁸ Mr Angelkov, Evidence, 23 August 2010, p 40.

church there are too many defrockings, and most of those defrockings are for disciplinary reasons, not breaches of liturgical practices.

...

If it were the Bishop's wish that the property should be transferred to the trust he could easily say—he has the power to say—to the priest, "I will withdraw your services from that church and will not reappoint you to that church unless that organisation transfers its property to the trust."⁸⁹

- 5.30** In a supplementary submission the Church vehemently denied that the Bishop would abuse his power in an attempt to force a church to transfer its property to the proposed Trust. The Church stated:

An attempt to exert undue influence is actionable in civil legal proceedings. Also, if ever applied in the manner suggested by the opponents (eg. threatening to withdraw a priest if no property transfer is forthcoming) is potentially a criminal offence under section 192C of the *Crimes Act 1900 (NSW)*, which specifies that the attainment of property by one from another by fraud is an offence punishable by imprisonment.⁹⁰

- 5.31** However, Mr McConnell provided to the Committee correspondence he had sent to Revd the Hon Fred Nile MLC in June 2009, in which he documented the alleged defrocking of priests associated with St Petka:

Those who have traditionally worshipped at St. Petka have been denied pastoral care by the bishop for 6 years by his refusal to authorise a priest (except the priest who is suing our client) in his attempt to gain a forensic advantage.

Furthermore, you should be aware that Bishop Petar has instigated the defrocking of 4 priests who have supported the St. Petka worshippers.

In particular, you should be aware that one of the defrocked priests, Father Aleksovski, was brought to Australia pursuant to an agreement between the bishop and our client, an agreement noted in court orders. Father Aleksovski was sponsored by our client for the purposes of immigration, but was, immediately on arrival in Australia, denied by the bishop the authority to conduct services at St. Petka.

Fr Aleksovski has advised us that he has appealed the defrocking to the Holy Synod in Macedonia and been informed by other bishops that he was successful, yet Bishop Petar refuses to deliver the decision to Fr Aleksovski in accordance with church protocol. Fr Aleksovski continues to be denied his livelihood and the opportunity to serve the St. Petka congregation.⁹¹

- 5.32** The Committee also notes the evidence of Mr Hoy, Senior Counsel representing the Church, about the power of the Bishop:

⁸⁹ Mr McConnell, Evidence, 23 August 2010, p 35.

⁹⁰ Submission No 429a, p 19.

⁹¹ Answers to questions on notice taken during evidence, 23 August 2010, Mr Keith McConnell, Question 1, p 29.

Bishop Petar has informed me he has a fearful duty if a person is not a part of the church community, he is in apostate; he is opposed. He has forsaken the church. I just wanted to raise that because I cannot understand so much of the opposition.⁹²

Co-operation with other religions

5.33 The Bill provides for the Trust to make arrangements for other religions to use Trust property. The Bill refers to these as 'schemes of co-operation' (clause 13). Mr Aleksandrov acknowledged that the Association of Macedonian Communities was not against co-operation with other religions per se. However, one of the problems with this provision identified by the Association was that the Bishop would have the authority to make that decision without the consent of the community that contributed to the establishment of the churches.⁹³ During evidence Mr Aleksandrov stated:

This has been a key concern for Macedonian Orthodox parishioners for the past 50 years: To have their independent church where the church is not going to be used for political assimilation and political oppression. Basically this bill would allow whoever holds control of this corporation, and it appears that it will be one person and basically—the Bishop—exercising absolute control in effect to take these properties under another church, either in terms of ownership or in terms of use, without the consent of the local community.⁹⁴

A lack of consensus in the church community

5.34 The Government advised the Committee that church property trust legislation would generally only be supported by the Government if it had the general support of the church community. It continued that its general position now remains the same as that expressed by former Attorney-General Jeff Shaw in 2000.⁹⁵ This position, noted in Chapter 1, was:

... it's the Government's preferred position that there should be general consensus within the Macedonian Church community on the basic terms of the proposed property trust legislation and that this should form the basis of a submission to the Government. ...

If internal agreement and a proposal for legislation is not forthcoming from the Church, the Government would prefer to delay taking steps to deal further with the Bill until the current litigation before the Supreme Court is resolved.⁹⁶

5.35 The range and number of submissions in opposition to the Bill received by the Committee suggests that there is a clear lack of consensus in the community about the Bill. The Committee received submissions from the following organisations or individuals opposing the Bill:

⁹² Mr Hoy, Evidence, 23 August 2010, p 15

⁹³ Mr Angelkov, Evidence, 23 August 2010, p 38.

⁹⁴ Mr Angelkov, Evidence, 23 August 2010, p 38.

⁹⁵ Submission No 92, NSW Government, p 2.

⁹⁶ Submission No 92 attachment, Correspondence dated 4 January 2000 from the then New South Wales Attorney General Hon JW Shaw MLC to Mr Keith McConnell, McConnell Jaffray Lawyers.

- Macedonian Orthodox Community of Newcastle and District;
- Macedonian Orthodox Community of the City of Greater Wollongong;
- Australian Workers Union;
- Macedonian Community of Western Australia;
- Macedonian Orthodox Community Church St Petka;
- Association of Macedonian Communities Australia;
- 238 similarly worded letters from individuals;
- Mr Peter Breen, former member of the New South Wales Legislative Council.

5.36 The Association of Macedonian Communities in Australia submitted to the Committee that it is an affiliation of independent Macedonian ethnic community organisations from across Australia, including eight incorporated Macedonian communities. The Association further submitted to the Committee that these incorporated communities, in addition to secular activities, are responsible for the establishment and operation of the following Macedonian Orthodox churches:

1. The church of “Saints Kiril & Metodi” in Rosebery NSW, established since 1969 by the Macedonian Orthodox Community of Sydney Ltd (which was an unincorporated association until 1971);
2. The church of “Saint Nikola” in Cabramatta NSW, established since 1977 by the Macedonian Orthodox Community of Sydney Ltd;
3. The church of “Saint Petka” in Rockdale NSW, established since 1977 by the Macedonian Orthodox Church Community St. Petka Inc (which was an unincorporated association until 1992);
4. The church of “Saint Dimitrija Solunski” in Wollongong NSW, established since 1967 by the Macedonian Orthodox Community of the City of Greater Wollongong ‘Saint Dimitrija Solunski’ Ltd;
5. The church of “Saint Mary – Mother of God” in Newcastle NSW, established since 1965 by the Macedonian Orthodox Community of Newcastle and District Ltd;
6. The church of “Saint George & St. Mary” in Victoria, established since 1956 by the Macedonian Orthodox Community of Melbourne and Victoria Ltd;
7. The church of ‘Saint Kliment of Ohrid’ in King Lake, established since 1970 by the Macedonian Orthodox Community of Melbourne and Victoria Ltd;
8. The Macedonian-Australian Orthodox Church “Saint Mary” Inc in St Albans Victoria, established since 1994, at the initiative of and on property owned by the Macedonian Cultural and Artistic Association ‘Jane Sandanski’ Inc;
9. The church of “Saint Naum of Ohrid” in Adelaide SA, established since 1967 by the Macedonian Community of Adelaide and South Australia Inc;
10. The church of “Saint Nedela” at the Gold Coast, established since 1992 by the Macedonian Orthodox Church & Cultural Community “Sveta Nedela” Gold Coast Incorporated.

- 5.37** The Association argued that all of the above churches, which it claimed are attended by tens of thousands of parishioners, oppose the Bill.⁹⁷ The Association also explained that all of the listed churches were once loosely affiliated to an unincorporated Macedonian Orthodox Diocese of Australia until the appointment of Bishop Karevski in 1996.
- 5.38** In its supplementary submission, the Church argued that the 21 Churches in communion with the Church represented the church community. It further argued that there is a consensus within those 21 churches to enact the legislation. The Churches that don't belong to this community, such as Macedonian Orthodox Community Church St Petka Inc, Rockdale, are considered by the Church not to belong to the Church Community. The Church stated:

Finally, and importantly, there are members of the Macedonian community that oppose the Bill and who have filed submissions to this Inquiry, albeit they are not part of the Church community which the Bill is to support when enacted. They comprise various incorporated associations and companies which are claimed to be represented by Mr Igor Aleksandrov on behalf of the Association of Macedonian Communities in Australia Inc.

Therefore, it is submitted to this Committee that, in the main, the parties that are opposed to the Bill are not and constitutionally cannot be part of the Church community.⁹⁸

⁹⁷ Submission No 435a, Association of Macedonian Communities in Australia, p 1.

⁹⁸ Submission No 429a, p 25.

Chapter 6 Amendments to the Bill

The earlier Chapters of this Report identified significant issues in relation to the operation and community acceptance of the Bill. In an effort to find solutions to these problems the Committee sought information from the major stakeholders as to any suggested amendments. In essence, two types of amendments were identified as needed: those that remove the jurisdictional/constitutional issues; and those that satisfy the concerns of the Macedonian community groups who own church property and who opposed the Bill. These and other amendments are outlined in this Chapter.

Possible jurisdictional and constitutional amendments

6.1 Representatives of the Church acknowledged the jurisdictional and constitutional issues associated with the Bill, and outlined some possible amendments.⁹⁹ In relation to solving the jurisdictional issues, during the public hearing the Church suggested two options:

- In regard to the four properties identified in the Bill to be vested in the Trust, leave the New South Wales property in the Bill and remove the inter-state properties; alternatively
- Completely remove any references to the vesting of properties in the Bill, and just establish the Trust. Let the parties transfer the properties in the normal manner at some point in the future.¹⁰⁰

6.2 In a supplementary submission, the Church outlined its proposal for significant amendments to the Bill. The proposed amended Bill is included in Appendix 5. Significant elements of the amended Bill are as follows:

- Trust and trustee – the references to 'Trust' and 'trustee' in the Bill have been replaced with 'Corporation' and 'member';
- No properties are automatically vested in the amended Bill, either in New South Wales or interstate. All other references to procedures by which properties may voluntarily become subject to the Bill in the future are deleted. Properties to be included in the future will be as a result of agreements between relevant parties;
- All references to registration authorities both in New South Wales and interstate and the procedures they must follow in the relation to the vesting of property in the Trust have been deleted;
- Arrangements for other churches to use Trust property - this clause has been deleted;
- Trusts may be varied - this clause has been deleted;

6.3 With these proposed amendments the Church hoped to remove any technical issues with the Bill, as identified in Chapter 3. In its supplementary submission the Church noted:

It is emphasised that the suggested amendments to the Bill represent the Church's efforts and good will in arriving at a version that will satisfy and address all concerns of the Committee, and consequently the NSW Parliament when considering the

⁹⁹ Ms Biljana Apostolova-Antunovic, Partner, Gadens Lawyers, Evidence, 23 August 2010, p 17.

¹⁰⁰ Ms Apostolova-Antunovic, Evidence, 23 August 2010, p 17.

enactment of the Bill, but also matters that have been raised in various submissions to the Committee in relation to the Bill.¹⁰¹

Possible amendments to satisfy the wider church community

- 6.4** In regards to possible amendments to the Bill to satisfy the concerns of Macedonian community groups, it became apparent to the Committee that this would not be possible without rewriting the intent of the Bill completely. Mr Aleksandrov summed up the fundamental opposition to the Bill as follows:

At the end of the day, even if these clauses were removed, the synod would still be able to put the churches under another church. If the political situation in Macedonia changes, which would not be any surprise because the country has changed control I don't know how many times in this century; if the political situation there changes; say, for example, there is another civil war and a part of Macedonia and the part in which this church is based allies itself to Bulgaria not to Serbia, we could have the churches here, whichever churches they maybe that are under the bill, placed under a Bulgarian or a Serbian church without the consent of the local community because there is no protection in the bill for the intentions of the communities that contributed their funds and efforts to these churches...¹⁰²

- 6.5** However, in his answers to questions on notice, Mr Aleksandrov outlined a consultation process in which passage of a Bill could be successful:

Parliament should not consider passing it in any form without first conducting a rigorous consultation process to ensure informed consensus among all incorporated Macedonian Orthodox community organisations in Australia. Such a process should include providing the affected community organisations with Macedonian translations of any amended form of the Bill and any Government submission and independent Counsel's advice regarding its operation. Once the members of those organisations have been given adequate opportunity to consider and comprehend those documents, adequate community support for any amended form of the Bill should not be assumed unless each of the interested Macedonian Orthodox community organisations has passed a resolution in support of it, at a special general meeting of its members, in the presence of an impartial scrutineer appointed by the Committee.

¹⁰¹ Submission No 429a, Macedonian Orthodox Church Diocese of Australia and New Zealand, p 4.

¹⁰² Mr Igor Aleksandrov, President, Association of Macedonian Communities in Australia, Evidence, 23 August 2010, p 44.

Chapter 7 Conclusions of the Committee

This Chapter presents the conclusions of the Committee.

- 7.1 The Committee supports the desire of churches to organise their financial affairs by introducing appropriate legislation. It also accepts the current Government view, as evidenced by its submission, that there should be broad consensus within a particular church community as to any proposed legislation before it is introduced. The Committee is also of the view that it is not the role of the Government, nor the Parliament, to carry out or be involved in a church's consultation or consensus building process. This is the role of the churches themselves and their respective communities, and is in keeping with the principle of the separation of church and state.
- 7.2 The Committee acknowledges the work of the Church in submitting an amended Bill for its consideration. The amended Bill is significantly different to that originally presented. As such, without the opportunity for other stakeholders to comment on the amendments, the Committee cannot make any concluding comment or recommendation that the House should proceed with the amended Bill.
- 7.3 The Committee believes that the current divisive climate between Macedonian Orthodox communities and the Church hierarchy is not conducive to any legislative solution at this time. It is the hope of the Committee that the Church and communities can work together in a consultative environment to resolve these issues in the future.
- 7.4 The Committee acknowledges the good faith in which the Macedonian Orthodox Property Trust Bill 2010 was introduced into the New South Wales Parliament by Revd Nile. It also acknowledges that a Bill of similar intent was introduced by the Government in 1998, but not progressed when the Government became aware of a lack of consensus within the Church as to the content of the legislation.
- 7.5 Some 12 years later, the Committee is again aware of a lack of consensus within the wider church community as to the content of this Bill. It is also aware that there is continuing litigation between the Church and the Macedonian Orthodox Community Church "St Petka" Inc. The Committee agrees with the Government position of 1998, and cannot recommend that this Bill proceed.

Recommendation 1

That the Macedonian Orthodox Church Property Trust Bill 2010 not proceed.

Appendix 1 Submissions

No	Author
1	Australian Hellenic Council NSW Inc
2	Natalia Mitreska
3	Liljana Stanoevski
4	Antiochian Orthodox Archdiocese of Australia and New Zealand and the Philippines
5	Oliver Vrtkovski
6	Belinda Vrtkovski
7	Samuel Vrtkovski
8	Boris Vrtkovski
9	Zora Vrtkovski
10	Goran Talevski
11	Kristina Stevanovska
12	Steve Vrtkovski
13	Ruza Korunovska
14	Goce Korunovski
15	Dijana Korunovska
16	Nikola Korunovska
17	Milica Voidanoska
18	Steve Petrovski
19	Atlanas Petrovski
20	Saint Kliment Ohridski Macedonian Orthodox Church
21	Macedonian Orthodox Community of Newcastle and District
22	Mr Mark Leeming SC
23	Macedonian Orthodox Community of the City of Greater Wollongong
24	Australian Workers Union
25	Dragija Bogoevski
26	Steve and Jenny Anastovski
27	Confidential
28	Christian Democratic Party
29	Slavica Galevski
30	Luba Micovska

No	Author
31	Trasau Micovski
32	Letica Likoska
33	Zivko Likoski
34	Oliver Galevski
35	Elvis Galevski
36	Olivera Bosevski
37	Robert Bosevski
38	Orde Galevski
39	Toni Galevski
40	Ruza Sekuloska
41	Vasil Sekuloski
42	Nunavka Kuzmaoska
43	Vlado Kuzmaoski
44	M Dejkovska
45	Mendo Mitrevski
46	Dimce Mitrevski
47	Filomena Tasevska
48	Zdravko Dordevski
49	Blaca Dordevska
50	Zoran Naumovski
51	N Gagovski
52	Cana Krstevska
53	V Naumovska
54	Sergije Sekuloski
55	Zoran Cardarovski
56	D Naumovski
57	Daniela Sekuloska
58	Sam Sekuloski
59	Luba Ilcevska
60	Krste Ristevski
61	Z Ujuvovski
62	M Kaleska

No	Author
63	G Nowmovska
64	G Eftimovski
65	Liljana Bujanovski
66	Diana Bujaroski
67	Peter Bujaroski
68	Vasko Ilcevski
69	Magda Ilcevski
70	Andrea Kanatlarovska
71	Michael Georgopoulos
72	Simon Georgopoulos
73	E Cardarovski
74	G Cardarovski
75	J Cardarovska
76	D Cardarovski
77	C Grbevka
78	S Grbevski
79	Lila Gagovski
80	Toni Sekuloski
81	Mence Maneva
82	Snezana Nikolovska
83	Gordana Brutovska
84	Tome Bosilkovski
85	Theo Plakias
86	S Skurtevski
87	L Kokulovska
88	K Kokulovski
89	Steve Iljevski
90	Elizabeth Kolevski
91	Chris Tuonukovski
92	NSW Government
93	Coptic Orthodox Church, Diocese of Sydney and affiliated regions
94	Tome Petrovski

No	Author
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436	Peter Breen
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438	Confidential

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Monday 23 August 2010 Jubilee Room Parliament House, Sydney	Mr Mark Leeming SC	Barrister
	Ms Biljana Apostolova-Antunovic	Partner, Gadens Lawyers
	Mr Paul Hoy	Senior Counsel, Gadens Lawyers
	Mr Keith McConnell	Partner, McConnell Jaffray Lawyers
	Mr Igor Alexandrov	President, Association of Macedonian Communities in Australia
	Mr Michael Radin	Deputy President, Association of Macedonian Communities in Australia
	Mr Chris Angelkov	Vice President, Association of Macedonian Communities in Australia
	Mr Peter Breen	Solicitor
	Mr Dimitar Vangelov	Secretary, Macedonian Orthodox Community of Newcastle
	Mr Krste Topevski	President, Macedonian Orthodox Community of Newcastle
	Mr John Foteff	Committee member, Macedonian Orthodox Community of Newcastle
	Mr Ljupco Stefanovski	President overseeing Committee, Macedonian Orthodox Community of the City of Greater Wollongong
	Mr Ilo Karamacoski	Secretary, Macedonian Orthodox Community of the City of Greater Wollongong

Appendix 3 Tabled documents

Public hearing, Jubilee Room, Parliament House
Monday 23 August 2010

- 1 Certificate of Title, *tendered by Mr Ljupco Stefanovski, Macedonian Orthodox Community of the Greater City of Wollongong.*
- 2 Letter dated 13 June 2010 addressed to the Macedonian Orthodox Church Communities, Parishes, Churches and Monasteries in the MOC DANZ, *tendered by Mr Ljupco Stefanovski, Macedonian Orthodox Community of the Greater City of Wollongong.*

Appendix 4 Macedonian Orthodox Church Property Trust Bill 2010 (Original Bill)

Introduced by Revd the Hon F J Nile, MLC

First print



New South Wales

Macedonian Orthodox Church Property Trust Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to constitute a statutory corporation to hold property on behalf of the Macedonian Orthodox Church,
- (b) to specify the functions of the statutory corporation,
- (c) to provide for certain property held in trust for the Church to vest in the statutory corporation on the date it is established,
- (d) to provide for the vesting in the statutory corporation of property given to, or receivable or recoverable by, the Church in the future,
- (e) to provide for other property held in trust for the Church to be transferred and vest in the statutory corporation, if the current trustees and the Metropolitan consent or if the current trustees are deceased, absent or under a legal disability and the Metropolitan consents on their behalf.

Macedonian Orthodox Church Property Trust Bill 2010

Explanatory note

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 defines terms used in the proposed Act. Among the terms defined are *Church*, *Trust* and *trust property*. *Church* is defined as the Macedonian Orthodox Church, Diocese of Australia and New Zealand with its seat in Melbourne, being an integral part of the Macedonian Orthodox Church with its seat in Skopje, Macedonia, a hierarchical religious body whose leader, overseer and shepherd is the Archbishop of Ohrid and Macedonia.

Clause 4 makes it clear that it is the intention of the Parliament that the operation of the Act should, as far as possible, include operation in relation to property and things situated outside the territorial limits of the State.

Part 2 Constitution and functions of Trust

Clause 5 provides for the Macedonian Orthodox Church Property Trust (referred to in the proposed Act as the *Trust*) to be established as a corporation. The Trust is to consist of trustees comprising the Metropolitan (who presides over meetings of the Trust), the Deputy Bishop, a representative from the monasteries of the Church who is appointed by the Metropolitan, the Diocesan Secretary, the deputy president of the Diocesan Assembly and 3 lay persons and 2 clerics of the Church, each being current members of the Diocesan Ruling Committee, who are appointed by the Metropolitan.

Clause 6 specifies the procedure of the Trust.

Clause 7 specifies the functions of the Trust. These include:

- (a) buying, holding and selling Church property, and
- (b) acquiring property by gift or by devise or bequest, and
- (c) borrowing money for Church purposes.

Clause 8 empowers the Trust to make by-laws.

Clause 9 enables the Trust to hold or acquire property alone or jointly.

Clause 10 provides for the investment of funds by the Trust.

Clause 11 enables the Trust to invest, as one fund, money held for different purposes.

Clause 12 empowers the Trust to make advances from its trust funds, and specifies how such advances may be made.

Clause 13 enables the Trust to make arrangements with a church of another denomination concerning the use of trust property.

Macedonian Orthodox Church Property Trust Bill 2010

Explanatory note

Clause 14 enables the Trust to vary the terms of a trust if it has become impossible or inexpedient to carry out those terms.

Clause 15 enables the Trust to be the executor or administrator of an estate in which the Church has a beneficial interest. The clause will also enable the Trust to accept appointment as trustee of property held for the Church's benefit.

Clause 16 authorises the Trust to act on behalf of the Church in settling the compensation payable in the event that any trust property is compulsorily acquired.

Part 3 Vesting of property in Trust

Division 1 Vesting of property in Trust

Clause 17 provides for the vesting in the Trust, on the date of commencement, of all property and rights held on trust for the Church by Bishop Petar Karevski, Father Jovica Simonovski and Father Tone Gulev, including the property listed in the clause.

Clause 18 provides for the vesting in the Trust of property acquired after the date of commencement.

Clause 19 provides for the later vesting of other property, if the current trustees and the Metropolitan consent.

Clause 20 provides for the later vesting of other property that is held on trust, if the Metropolitan is unable to obtain the consent of all current trustees and consents on their behalf.

Division 2 Provisions relating to vesting of property

Clause 21 requires registration authorities to record the transfer of interests in land that are necessary as a result of the operation of the proposed Part.

Clause 22 provides that the vesting of property in the Trust by the proposed Part does not affect any reservation, mortgage, charge, encumbrance, lien or lease that affected the property or any trust on which the property was held, immediately before the vesting of the property.

Clause 23 provides that, when property vests in the Trust in accordance with proposed section 17, 19 or 20 the rights, liabilities and obligations of the former trustees in relation to the property will become the rights, liabilities and obligations of the Trust.

Clause 24 provides that certain gifts, dispositions and trusts of property do not fail but take effect on or after the date of commencement, as gifts, dispositions and trusts in favour of the Trust.

Explanatory note page 3

Macedonian Orthodox Church Property Trust Bill 2010

Explanatory note

Division 3 Payment of duty not required

Clause 25 provides that duty under the *Duties Act 1997* is not chargeable in respect of, or in connection with, a conveyance to the Trust of property from a person or body that holds that property for or on behalf of any parish or community of the Church.

Part 4 Miscellaneous

Clause 26 provides for the custody and use of the seal of the Trust.

Clause 27 provides for the execution on behalf of the Trust of deeds and instruments required by law to be in writing and for the entering into of oral contracts on its behalf.

Clause 28 enables the Trust to appoint agents to execute documents on its behalf.

Clause 29 enables the Trust to certify that it holds property on trust for the Church.

Clause 30 provides that, if a person obtains a receipt for money paid to the Trust, the person will not be liable if the money is lost or misapplied or is not applied.

Clause 31 is intended to remove the need for a person involved in a property dealing with the Trust to inquire whether the Trust has power to deal with property and will protect the person even if the person had notice that the Trust had no such power.

Clause 32 entitles members of the Trust and others to be indemnified out of trust property against liability for certain things done by them in good faith concerning the property.

Clause 33 provides for the service of documents on the Trust.

Explanatory note page 4

Introduced by Revd the Hon F J Nile, MLC

First print



New South Wales

Macedonian Orthodox Church Property Trust Bill 2010

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New South Wales

Macedonian Orthodox Church Property Trust Bill 2010

No. 2010

A Bill for

An Act to constitute as a corporation the Macedonian Orthodox Church Property Trust, to specify the Trust's functions, to provide for the vesting of certain property in the Trust, and for other purposes.

Clause 1	Macedonian Orthodox Church Property Trust Bill 2010
Part 1	Preliminary

The Legislature of New South Wales enacts:	1
Part 1 Preliminary	2
1 Name of Act	3
This Act is the <i>Macedonian Orthodox Church Property Trust Act 2010</i> .	4
2 Commencement	5
This Act commences on a day to be appointed by proclamation.	6
3 Definitions	7
In this Act:	8
<i>by-laws</i> means the by-laws of the Trust.	9
<i>Church</i> means the Macedonian Orthodox Church, Diocese of Australia and New Zealand with its seat in Melbourne, being an integral part of the Macedonian Orthodox Church with its seat in Skopje, Macedonia, a hierarchical religious body whose leader, overseer and shepherd is the Archbishop of Ohrid and Macedonia.	10 11 12 13 14
<i>conveyance</i> includes transfer, assignment and assurance.	15
<i>date of commencement</i> means the date on which this Act commences.	16
<i>Deputy Bishop</i> means the Deputy Bishop of the Church, who is appointed by the Metropolitan.	17 18
<i>Diocesan Assembly</i> means the Diocesan Assembly of the Church, constituted under the Diocesan Statute.	19 20
<i>Diocesan Ruling Committee</i> means the Diocesan Ruling Committee, constituted under the Diocesan Statute.	21 22
<i>Diocesan Secretary</i> means the person from time to time occupying the office of Secretary of the Church, who is appointed by the Metropolitan.	23 24
<i>Diocesan Statute</i> means the statute of the Church passed by the Diocesan Assembly, and authorised and certified by the Archbishopric Church and Lay Assembly of the Macedonian Orthodox Church on 24 February 1996, as in force from time to time.	25 26 27 28
<i>exercise a function</i> includes perform a duty.	29
<i>function</i> includes a power, authority or duty.	30
<i>Metropolitan</i> means the Bishop of the Macedonian Orthodox Church, Diocese of Australia and New Zealand, appointed by the Holy Bishops' Synod of the Macedonian Orthodox Church or, if there is a vacancy in the See, the person for the time being exercising the authority of the Bishop who has been appointed by the Holy Bishops' Synod of the Macedonian Orthodox Church.	31 32 33 34 35 36

Macedonian Orthodox Church Property Trust Bill 2010

Clause 4

Preliminary

Part 1

<i>relevant transfer date</i> means:	1
(a) in relation to land transferred by the operation of section 17—the date of commencement, and	2 3
(b) in relation to land transferred by the operation of section 19 or 20—the date of consent of the Metropolitan under either of those sections.	4 5 6
<i>Trust</i> means the Macedonian Orthodox Church Property Trust constituted by this Act.	7 8
<i>trust property</i> means property held by the Trust.	9
<i>trustee</i> means a member of the Trust.	10
4 Extraterritorial operation of Act	11
(1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following:	12 13 14
(a) land situated in or outside the territorial limits of the State,	15
(b) things situated in or outside the territorial limits of the State,	16
(c) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,	17 18
(d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State or Territory.	19 20 21 22
(2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.	23 24 25 26 27 28
(3) To the extent that the vesting of any property by this Act is beyond the legislative competence of the Parliament of New South Wales, and this Act does not vest any of the property in the Trust without the need for conveyance, then each person who holds that property on trust for the Church is, to the extent that the person is amenable to the law of New South Wales, required to do all that is necessary to actually transfer it.	29 30 31 32 33 34

Clause 5 Macedonian Orthodox Church Property Trust Bill 2010

Part 2 Constitution and functions of Trust

Part 2	Constitution and functions of Trust	1
5	Constitution of Trust	2
(1)	There is constituted by this Act a corporation under the corporate name of the Macedonian Orthodox Church Property Trust.	3 4
(2)	The Trust is to consist of the following members:	5
(a)	the Metropolitan,	6
(b)	the Deputy Bishop,	7
(c)	a representative from the monasteries of the Church, who is appointed by the Metropolitan,	8 9
(d)	the Diocesan Secretary,	10
(e)	2 clerics of the Church, being current members of the Diocesan Ruling Committee, who are appointed by the Metropolitan,	11 12
(f)	the deputy president of the Diocesan Assembly,	13
(g)	3 lay persons, being current members of the Diocesan Ruling Committee, who are appointed by the Metropolitan.	14 15
6	Procedure of Trust	16
(1)	Subject to this section, the trustees are to conduct the business of the Trust in accordance with the by-laws.	17 18
(2)	The Metropolitan is to preside at a meeting of the Trust.	19
(3)	The quorum for a meeting of the Trust is a majority for the time being of the members (one of whom must be the Metropolitan).	20 21
(4)	Every meeting of the Trust at which a quorum is present is competent to transact any business of the Trust.	22 23
(5)	A question arising at a meeting is determined by a majority of votes and, in the case of equality of votes, the Metropolitan has a casting vote.	24 25
(6)	The Trust may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, video conference, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	26 27 28 29 30
7	Functions of Trust	31
(1)	The functions of the Trust are as follows:	32
(a)	to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, the Church,	33 34 35

Macedonian Orthodox Church Property Trust Bill 2010

Clause 8

Constitution and functions of Trust

Part 2

	(b) to acquire property by gift, devise or bequest and to agree to and carry out the conditions of the gift, devise or bequest,	1 2
	(c) to borrow or lend money for the purposes of the Church,	3
	(d) to mortgage, charge or otherwise encumber trust property,	4
	(e) to make gifts and donations of property held by it for religious and charitable purposes,	5 6
	(f) to enter into any guarantee or indemnity that may assist the Trust or the Church in the exercise of its functions,	7 8
	(g) to do and suffer all other things (whether or not of the kind referred to in this section) that the Metropolitan considers to be necessary, appropriate or desirable,	9 10 11
	(h) to do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for or incidental to the exercise of its functions under this Act.	12 13 14
(2)	The Trust has such other functions as are conferred or imposed on it by this Act.	15 16
(3)	This section does not limit section 50 of the <i>Interpretation Act 1987</i> .	17
8	Trust may make by-laws	18
(1)	The Trust may make by-laws, not inconsistent with this Act:	19
	(a) for the control and management of, and dealings with, trust property, and	20 21
	(b) with respect to the procedure for conducting the business of the Trust.	22 23
(2)	A certificate under the seal of the Trust to the effect that a by-law specified in the certificate, or in an annexure to the certificate, was in force on a day specified in the certificate is, until the contrary is proved, evidence that the by-law was in force on that day.	24 25 26 27
(3)	A by-law may be amended or repealed by a subsequent by-law made under this section.	28 29
9	Trust may hold property jointly	30
	The Trust may hold or acquire property either alone or jointly as a joint tenant or tenant-in-common.	31 32
10	Trust may invest trust funds	33
	The Trust:	34
	(a) may invest or lend any funds that it holds on trust in accordance with the terms of any trust to which the funds are subject, and	35 36

Clause 11 Macedonian Orthodox Church Property Trust Bill 2010

Part 2 Constitution and functions of Trust

	(b) may also invest or lend any such funds in accordance with the <i>Trustee Act 1925</i> , unless the investment or loan is expressly forbidden by the instrument (if any) creating the trust to which the funds are subject.	1 2 3 4
11	Blending of trust funds	5
	(1) The Trust may invest trust funds held by it on trust for different purposes or activities, or any part of those funds, as one fund (<i>the fund</i>).	6 7
	(2) Income arising from an investment of funds in accordance with subsection (1) is to be apportioned ratably among the several purposes or activities for which the funds are held on trust.	8 9 10
	(3) Any loss arising from an investment of funds in accordance with subsection (1) is to be apportioned ratably among the several purposes or activities for which the funds are held on trust.	11 12 13
12	Trust may make advances	14
	(1) The Trust may make advances out of its trust funds for any activity, service, institution or interest of the Church.	15 16
	(2) Any sum so advanced is taken to be an investment of the money and bears interest at a rate fixed by the Trust.	17 18
	(3) If the terms of any such advance so provide, the sum advanced and any interest on that sum is taken to be a charge on those assets (if any) that the Trust holds for the activity, service, institution or interest of the Church for which the advance was made.	19 20 21 22
13	Arrangements for other churches to use trust property	23
	(1) In this section, <i>scheme of co-operation</i> means a scheme entered into by the Trust:	24 25
	(a) with or involving a church of another denomination or any congregation or activity of such a church, and	26 27
	(b) concerning the use of trust property.	28
	(2) The Trust may permit trust property to be used and managed for the purposes of a scheme of co-operation on such terms and conditions as the Trust determines.	29 30 31
	(3) Any proceeds derived by the Trust from a scheme of co-operation are to be applied in the manner decided by the Trust.	32 33
	(4) Conditions that the Trust may determine under this section include:	34
	(a) conditions with respect to the making of monetary contributions towards the acquisition, construction, alteration, maintenance or	35 36

Macedonian Orthodox Church Property Trust Bill 2010

Clause 14

Constitution and functions of Trust

Part 2

	repair of property vested in or held on behalf of a co-operating church or congregation, and	1 2
	(b) the giving or taking of a security or charge over any property.	3
(5)	Trust property may be used in accordance with a scheme of co-operation except to the extent that the property is subject to an express trust expressly forbidding its use in that manner.	4 5 6
(6)	Trust property is not to be regarded as property that is subject to an express trust expressly forbidding its use under a scheme of co-operation merely because it is directed to be held on trust for worship within, or for the purposes of, the Church.	7 8 9 10
14	Trusts may be varied	11
(1)	The Trust may by resolution declare that, in its opinion, it has become impossible or inexpedient to carry out or observe the terms of a trust of property vested in it, whether as to its purpose or any other of its terms.	12 13 14
(2)	The Trust may, by the same or a later resolution, declare that the property is subject to another trust and, on the making of such a declaration:	15 16 17
	(a) the trust that is to be replaced ceases, and	18
	(b) the property is to be held subject to the other trust.	19
(3)	In making such a declaration, the Trust must ensure that the property is dealt with as nearly as is possible for the purposes for which the property was held immediately before the resolution.	20 21 22
(4)	However, the Trust may by resolution declare that, in its opinion, it is impossible or inexpedient to deal with the property in accordance with subsection (3) because of circumstances arising after the creation of the trust that is to be replaced.	23 24 25 26
(5)	On making a resolution under subsection (4), the Trust may hold, dispose of or otherwise deal with and apply the property for such purposes for the use and benefit of the Church as the Trust declares by resolution.	27 28 29 30
15	Trust may act as executor, administrator or trustee	31
	If authorised by the Trust to do so, a trustee or a person employed by the Trust may, on behalf of the Trust:	32 33
	(a) swear an affidavit, or	34
	(b) make a declaration or statement, or	35
	(c) give security and do any other act or thing,	36

Clause 16 Macedonian Orthodox Church Property Trust Bill 2010

Part 2 Constitution and functions of Trust

that is, by any charter, enactment or rule of court, required to be done	1
by a person who is applying for or granted probate or letters of	2
administration, or who is administering a trust.	3
16 Trust may make claims for compensation on compulsory acquisition etc	4
In relation to the exchange, dedication or compulsory acquisition of any	5
trust property, the Trust may:	6
(a) act on behalf of the Church and make claims for compensation,	7
and	8
(b) agree to and settle any such claims for such amount, and on such	9
terms and conditions, as it thinks fit.	10

Macedonian Orthodox Church Property Trust Bill 2010

Clause 17

Vesting of property in Trust

Part 3

Part 3	Vesting of property in Trust	1
Division 1	Vesting of property in Trust	2
17	Vesting of certain property in Trust on the date of commencement	3
(1)	On the date of commencement, all property and rights vested in or held by Bishop Petar Karevski, Father Jovica Simonovski and Father Tone Gulev on trust for the Church are divested from those persons and are, to the extent that they were so held, vested in the Trust (without the need for any further conveyance).	4 5 6 7 8
(2)	Without limiting subsection (1), on the date of commencement, the following land vests in the Trust (without the need for any further conveyance):	9 10 11
(a)	The Macedonian Orthodox Church "Holy Mother of God", situated at and known as 37-39 Atkinson Street, Liverpool, New South Wales and being the land more particularly described in Certificate of Title Volume 10673 Folio 236 of the Register kept under the <i>Real Property Act 1900</i> of New South Wales,	12 13 14 15 16
(b)	The Macedonian Orthodox Church "Nativity of Holy Mother of God" Cathedral Chapel, situated at and known as 1-3 Pecks Road, Sydenham, Victoria and being the land more particularly described in Certificate of Title Volume 9361 Folio 679 of the Register kept under the <i>Transfer of Land Act 1958</i> of Victoria,	17 18 19 20 21
(c)	The Macedonian Orthodox Church "Saint Prohor Pchinski" Monastery, situated at and known as 130 Spring Road, Donnybrook, Victoria and being the land more particularly described in Certificate of Title Volume 10689 Folios 945, 946, 947 and 948 of the Register kept under the <i>Transfer of Land Act 1958</i> of Victoria,	22 23 24 25 26 27
(d)	The Macedonian Orthodox Church "Holy Mother of God", situated at and known as Lots 4 and 5 Curtis Street, Woodville South, South Australia, and being the land more particularly described in Certificate of Title Volume 5477 Folio 51 of the Register Book kept under the <i>Real Property Act 1886</i> of South Australia.	28 29 30 31 32 33
(3)	On and from the date of commencement, the Trust is taken to be the successor in law of Bishop Petar Karevski, Father Jovica Simonovski and Father Tone Gulev for all purposes, including private international law.	34 35 36 37

Clause 18	Macedonian Orthodox Church Property Trust Bill 2010
Part 3	Vesting of property in Trust

18	Operation of a gift, disposition or trust after date of commencement	1
(1)	This section applies to a gift, disposition or trust of property that, on or after the date of commencement, is made or declared (whether by deed, will or otherwise) to, in favour of, or for the purpose of:	2
		3
		4
	(a) the Bishop (on behalf of the Church), or	5
	(b) any other person (on behalf of the Church), or	6
	(c) the Church.	7
(2)	Such a gift, disposition or trust of property takes effect when it is made or declared:	8
		9
	(a) to or in favour of the Trust, and	10
	(b) for a purpose of the Trust corresponding with, or similar to, the purpose for which it was, or was taken to be, made or declared.	11
		12
(3)	Such a gift, disposition or trust:	13
	(a) does not fail only because of the provisions of this Act, and	14
	(b) if it is capable of taking effect to any extent, takes effect to that extent as if it were made or declared:	15
		16
	(i) to or in favour of the Trust, and	17
	(ii) for a purpose of the Trust corresponding with, or similar to, the purpose for which it was, or was taken to be, made or declared.	18
		19
		20
19	Vesting of other property held on trust if current trustees consent	21
(1)	This section applies if:	22
	(a) property (<i>the relevant property</i>) is held on trust for the Church on or after the date of commencement by any person or persons (<i>the current trustees</i>), and	23
		24
		25
	(b) each of the current trustees consents in writing to a transfer of the relevant property to the Trust.	26
		27
(2)	The Metropolitan may, by writing under his hand, consent to the transfer of the relevant property to the Trust.	28
		29
(3)	If the Metropolitan consents to the transfer, the relevant property is, on the date of consent of the Metropolitan, divested from the current trustees and is, to the extent that it was held on trust for the Church, vested (without the need for any further conveyance) in the Trust.	30
		31
		32
		33
(4)	If such a transfer is registered in accordance with section 21, the registration operates as a discharge of all such current trustees from the duties of the trust.	34
		35
		36

Macedonian Orthodox Church Property Trust Bill 2010

Clause 20

Vesting of property in Trust

Part 3

20	The Metropolitan may consent to transfer of other property held on trust, on behalf of absent or disabled trustees	1 2
(1)	This section applies if:	3
(a)	property (<i>the relevant property</i>) is held on trust for the Church on or after the date of commencement by any person or persons (<i>the current trustees</i>), and	4 5 6
(b)	the Metropolitan has sought the consent of each current trustee to the transfer of the relevant property, and	7 8
(c)	the consent of any current trustee cannot be obtained because that person has died, is absent or is under any other disability, but the consent of the remaining trustees has been obtained, and	9 10 11
(d)	the Metropolitan has given notice of his intention to consent to the transfer of the relevant property in a newspaper circulating generally in the place where the relevant property is located, and	12 13 14
(e)	no proceedings have been taken by any current trustee within 30 days after the publication of that notice or, if such proceedings have commenced, those proceedings have been finally determined in favour of the Metropolitan.	15 16 17 18
(2)	The Metropolitan may, by writing under his hand, consent to the transfer of the relevant property to the Trust.	19 20
(3)	If the Metropolitan consents to the transfer, the relevant property is, on the date of consent of the Metropolitan, divested from current trustees and is, to the extent that it was held on trust for the Church, vested (without the need for any further conveyance) in the Trust.	21 22 23 24
(4)	If such a transfer is registered in accordance with section 21, the registration operates as a discharge of all current trustees from the duties of the trust.	25 26 27
Division 2	Provisions relating to vesting of property	28
21	Registration authorities required to record conveyances of land	29
(1)	The appropriate registration authority, on being requested to do so and on delivery of any relevant instrument, must issue all necessary certificates of registration or title and make any recordings on the relevant Register that are necessary because of the operation of section 17, 19 or 20.	30 31 32 33 34
(2)	In this section:	35
	<i>appropriate registration authority:</i>	36
(a)	in relation to land in New South Wales—means the Registrar-General of this State, and	37 38

Clause 21 Macedonian Orthodox Church Property Trust Bill 2010

Part 3 Vesting of property in Trust

(b)	in relation to land in the Australian Capital Territory means the registrar-general referred to in the <i>Land Titles Act 1925</i> of the Australian Capital Territory, and	1 2 3
(c)	in relation to land in the Northern Territory—means the Registrar-General referred to in the <i>Land Title Act</i> of the Northern Territory, and	4 5 6
(d)	in relation to land in Queensland—means the chief executive referred to in the <i>Land Act 1994</i> of Queensland, and	7 8
(e)	in relation to land in South Australia—means the Registrar-General appointed under the <i>Real Property Act 1886</i> of South Australia, and	9 10 11
(f)	in relation to land in Tasmania—means the Recorder referred to in the <i>Land Titles Act 1980</i> of Tasmania, and	12 13
(g)	in relation to land in Victoria—means the Registrar of Titles appointed under the <i>Transfer of Land Act 1958</i> of Victoria, and	14 15
(h)	in relation to land in Western Australia—means the Registrar referred to in the <i>Transfer of Land Act 1893</i> of Western Australia.	16 17
	<i>relevant Register:</i>	18
(a)	in relation to land in New South Wales—means the Register required to be kept under the <i>Real Property Act 1900</i> of New South Wales, and	19 20 21
(b)	in relation to land in the Australian Capital Territory—means the register required to be kept under the <i>Land Titles Act 1925</i> of the Australian Capital Territory, and	22 23 24
(c)	in relation to land in the Northern Territory—means the land register required to be kept under the <i>Land Title Act</i> of the Northern Territory, and	25 26 27
(d)	in relation to land in Queensland—means the land registry required to be kept under the <i>Land Act 1994</i> of Queensland, and	28 29
(e)	in relation to land in South Australia—means the Register Book required to be kept under the <i>Real Property Act 1886</i> of South Australia, and	30 31 32
(f)	in relation to land in Tasmania—means the Register required to be kept under the <i>Land Titles Act 1980</i> of Tasmania, and	33 34
(g)	in relation to land in Victoria—means the Register of land required to be kept under the <i>Transfer of Land Act 1958</i> of Victoria, and	35 36 37
(h)	in relation to land in Western Australia—means the Register required to be kept under the <i>Transfer of Land Act 1893</i> of Western Australia.	38 39 40

Macedonian Orthodox Church Property Trust Bill 2010

Clause 22

Vesting of property in Trust

Part 3

22	Provisions relating to vesting of property	1
(1)	The vesting of the property in the Trust by this Part does not affect:	2
(a)	any reservation, mortgage, charge, encumbrance, lien or lease that affected the property, or	3
		4
(b)	any trust on which the property was held, immediately before the vesting of the property.	5
		6
(2)	No attornment to the Trust by a lessee of land vested in the Trust by this Part is necessary.	7
		8
(3)	The vesting of property by this Part is not a dutiable transaction for the purposes of the <i>Duties Act 1997</i> .	9
		10
(4)	A dutiable transaction within the meaning of the <i>Duties Act 1997</i> , or an instrument that effects or evidences a dutiable transaction and that occurs or is executed or registered only for:	11
		12
		13
(a)	a purpose ancillary to, or consequential on, the operation of this Part, or	14
		15
(b)	the purpose of giving effect to this Part, is not chargeable with duty under the <i>Duties Act 1997</i> .	16
		17
23	Claims and liabilities in relation to Trust	18
(1)	On and from the relevant transfer date, the following provisions have effect in relation to property vested in the Trust in accordance with section 17, 19 or 20:	19
		20
		21
(a)	the rights and liabilities of a former trustee become rights and liabilities of the Trust to be exercised and discharged in accordance with this Act,	22
		23
		24
(b)	the obligations of a former trustee become obligations of the Trust to be performed in accordance with this Act,	25
		26
(c)	proceedings before a court or tribunal by or against a former trustee that, immediately before the relevant transfer date, were pending or in the course of being heard become proceedings by or against the Trust,	27
		28
		29
		30
(d)	to the extent to which an act, matter or thing done or omitted to be done on behalf of a former trustee had any force or effect immediately before the relevant transfer date, it becomes an act, matter or thing done or omitted to be done by the Trust,	31
		32
		33
		34
(e)	a reference in any document to a former trustee is to be read as a reference to the Trust,	35
		36

Clause 24 Macedonian Orthodox Church Property Trust Bill 2010

Part 3 Vesting of property in Trust

(f)	time that had commenced to run in relation to a former trustee is taken to be time that had commenced to run in relation to the Trust.	1 2 3
(2)	In this section: <i>former trustee</i> means a person in whom, immediately before the relevant transfer date, property was held on trust for the Church.	4 5 6
24	Operation of gifts, dispositions or trusts of property	7
(1)	A gift, disposition or trust of property transferred by section 17 that, before the relevant transfer date, has been or is taken to have been made or declared (whether by deed, will or otherwise) to, in favour of, or for the purpose of Bishop Petar Karevski, Father Jovica Simonovska or Father Tone Gulev (on behalf of the Church):	8 9 10 11 12
(a)	does not fail only because of the provisions of this Act, and	13
(b)	if it is capable of taking effect to any extent on or after the date of commencement, takes effect to that extent as if it were made or declared:	14 15 16
(i)	to or in favour of the Trust, and	17
(ii)	for a purpose of the Trust corresponding with or similar to, the purpose for which it was, or was taken to be, made or declared.	18 19 20
(2)	A gift, disposition or trust of property transferred by section 19 or 20 that, before the relevant transfer date, has been or is taken to have been made or declared (whether by deed, will or otherwise) to, in favour of, or for the purpose of the Bishop (on behalf of the Church) or any other person (on behalf of the Church) or the Church.	21 22 23 24 25
(a)	does not fail only because of the provisions of this Act, and	26
(b)	if it is capable of taking effect to any extent on or after the date of commencement, takes effect to that extent as if it were made or declared:	27 28 29
(i)	to or in favour of the Trust, and	30
(ii)	for a purpose of the Trust corresponding with or similar to, the purpose for which it was, or was taken to be, made or declared.	31 32 33

Macedonian Orthodox Church Property Trust Bill 2010

Clause 25

Vesting of property in Trust

Part 3

Division 3	Payment of duty not required	1
25	Payment of duty not required in certain cases	2
	Duty under the <i>Duties Act 1997</i> is not chargeable in respect of, or in connection with, a conveyance to the Trust of property from a person or body who holds that property for or on behalf of any parish or community of the Church.	3 4 5 6

Clause 26	Macedonian Orthodox Church Property Trust Bill 2010
Part 4	Miscellaneous

Part 4	Miscellaneous	1
26	Custody and use of seal of Trust	2
(1)	The seal of the Trust is kept by the Secretary of the Trust and may be affixed to a document only:	3
		4
(a)	in accordance with a resolution of the Trust, and	5
(b)	in the presence of the Metropolitan, or in the absence of the Metropolitan, a person appointed by the Metropolitan for the purpose of signing the document, and not fewer than 2 other trustees, and	6
		7
		8
		9
(c)	with an attestation by the signatures of those members of the fact of the affixing of the seal.	10
		11
(2)	An instrument purporting to have been sealed with the seal of the Trust and to have been signed by the Metropolitan, or in his absence, by the appointed person, and not fewer than 2 other trustees is taken to have been executed in accordance with this section.	12
		13
		14
		15
27	How Trust may execute certain documents	16
(1)	Any instrument relating to any property or matter that, if made or executed by an individual, would by law be required to be in writing under seal may be made on behalf of the Trust in writing under the seal of the Trust.	17
		18
		19
		20
(2)	Any instrument relating to any property or matter that, if made by or between individuals, would by law be required to be in writing signed by the parties to be bound by it may be made on behalf of the Trust in writing by any person acting under its authority, express or implied.	21
		22
		23
		24
(3)	Any contract relating to any property or matter that, if made between individuals, would by law be valid although made orally only (and not reduced to writing) may be made on behalf of the Trust by any person acting under its authority, express or implied.	25
		26
		27
		28
28	Trust may appoint agents	29
(1)	The Trust may, by writing under its seal, expressly empower any person, in respect of any specific matter, to execute any deed or other document on its behalf as its agent or attorney.	30
		31
		32
(2)	Any deed signed by such an agent or attorney on behalf of the Trust binds the Trust and has the same effect as if it were under the seal of the Trust.	33
		34
		35

Macedonian Orthodox Church Property Trust Bill 2010

Clause 29

Miscellaneous

Part 4

29	Evidence of certain matters relating to Trust	1
(1)	A certificate under the seal of the Trust to the effect that property specified in the certificate is held by it on trust for the Church is, in any legal proceedings, evidence that the property is so held.	2 3 4
(2)	A certificate under the seal of the Trust to the effect that the estate or interest of a person specified in the certificate in land so specified is an estate or interest vested in the Trust by this Act is, for the purposes of any application by the Trust to be registered under the <i>Real Property Act 1900</i> as the proprietor of that estate or interest, evidence of its contents.	5 6 7 8 9
30	Persons exonerated from liability on receiving receipt for money paid to Trust	10 11
	A receipt for money paid to the Trust that:	12
(a)	is executed under the seal of the Trust, or	13
(b)	is in writing signed by not fewer than 2 trustees, or	14
(c)	is in writing signed by a person or persons purporting to be duly authorised for the purpose by the Trust,	15 16
	exonerates the person by whom or on whose behalf the money is paid from any liability for the loss, misapplication or non-application of the money.	17 18 19
31	Inquiries relating to dealings with trust property unnecessary in certain cases	20 21
	Whenever the Trust acquires, disposes of or otherwise deals with property, it is not necessary for:	22 23
(a)	the other party or parties to the transaction, or	24
(b)	the Registrar-General or any other person registering or certifying title to the property,	25 26
	to inquire whether the Trust has power to acquire, dispose of or otherwise deal with the property and none of those persons is affected by notice that the Trust has no such power.	27 28 29
32	Certain persons to be indemnified out of trust property	30
	A trustee, and any other person, exercising in good faith a function in relation to trust property in accordance with this Act or any by-law of the Trust, and the executor or administrator of any such trustee or person, are entitled to be indemnified out of trust property against all expenses and liabilities that they have incurred in connection with the exercise of the function.	31 32 33 34 35 36

Clause 33 Macedonian Orthodox Church Property Trust Bill 2010

Part 4 Miscellaneous

33	How documents may be served on Trust	1
	Any document may be served on the Trust by delivering it to, or sending it by post to, the Diocesan Secretary or any person apparently authorised by the Trust to accept service.	2
		3
		4

Appendix 5 Macedonian Orthodox Church Property Trust Bill 2010 (Amended Bill)

Introduced by Revd the Hon F J Nile, MLC First print

New South Wales

Macedonian Orthodox Church Property Trust Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to constitute a statutory corporation to hold property on behalf of the Macedonian Orthodox Church,
- (b) to specify the functions of the statutory corporation,
- ~~(c) to provide for certain property held in trust for the Church to vest in the statutory corporation on the date it is established,~~
- ~~(d) to provide for the vesting in the statutory corporation of property given to, or receivable or recoverable by, the Church in the future,~~
- ~~(e) to provide for other property held in trust for the Church to be transferred and vest into the statutory corporation without stamp duty liability, if the current trustees and the Metropolitan consent or if the current trustees are deceased, absent or under a legal disability and the Metropolitan consents on their behalf.~~

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 defines terms used in the proposed Act. Among the terms defined are *Church*, ~~Trust Corporation~~ and *trust property*. *Church* is defined as the Macedonian Orthodox Church, Diocese of Australia and New Zealand with its seat in Melbourne, being an integral part of the Macedonian Orthodox Church – ~~Ohrid Archbishopric with its seat in Skopje, Macedonia~~, a hierarchical religious body whose leader, overseer and shepherd is the Archbishop of Ohrid and Macedonia.

~~Clause 4 makes it clear that it is the intention of the Parliament that the operation of the Act should, as far as possible, include operation in relation to property and things situated outside the territorial limits of the State.~~

Part 2 Constitution and functions of ~~Trust Corporation~~

Clause ~~46~~ provides for the Macedonian Orthodox Church Property Trust ~~Corporation~~ (referred to in the proposed Act as the ~~Trust Corporation~~) to be established as a corporation. The ~~Trust Corporation~~ is to consist of ~~trustees~~ members comprising the Metropolitan (who presides over meetings of the ~~Trust Corporation~~), the Deputy Bishop, a representative from the monasteries of the Church who is appointed by the Metropolitan, the Diocesan Secretary, the deputy president of the Diocesan Assembly and 3 lay persons and 2 clerics of the Church, each being current members of the Diocesan Ruling Committee, who are appointed by the Metropolitan.

2

Clause ~~56~~ specifies the procedure of the ~~Trust Corporation~~.

Clause ~~67~~ specifies the functions of the ~~Trust Corporation~~. These include:

- (a) buying, holding and selling Church property, and
- (b) acquiring property by gift or by devise or bequest, and
- (c) borrowing money for Church purposes.

Clause ~~78~~ empowers the ~~Trust Corporation~~ to make by-laws.

Clause ~~89~~ enables the ~~Trust Corporation~~ to hold or acquire property alone or jointly.

Clause ~~910~~ provides for the investment of funds by the ~~Trust Corporation~~.

Clause ~~1011~~ enables the ~~Trust Corporation~~ to invest, as one fund, money held for different purposes.

Clause ~~1112~~ empowers the ~~Trust Corporation~~ to make advances from its trust funds, and specifies how such advances may be made.

~~Clause 13 enables the Trust to make arrangements with a church of another denomination concerning the use of trust property.~~

~~Clause 14 enables the Trust to vary the terms of a trust if it has become impossible or inexpedient to carry out those terms.~~

Clause ~~1215~~ enables the ~~Trust Corporation~~ to be the executor or administrator of an estate in which the Church has a beneficial interest. The clause will also enable the ~~Trust Corporation~~ to accept appointment as trustee of property held for the Church's benefit.

Clause ~~1316~~ authorises the ~~Trust Corporation~~ to act on behalf of the Church in settling the compensation payable in the event that any trust property is compulsorily acquired.

Part 3 Vesting of property in Trust

Division 1 Vesting of property in Trust

~~Clause 17 provides for the vesting in the Trust, on the date of commencement, of all property and rights held on trust for the Church by Bishop Petar Karevski, Father Jovica Simonovski and Father Tone Gulev, including the property listed in the clause.~~

~~Clause 18 provides for the vesting in the Trust of property acquired after the date of commencement.~~

~~Clause 19 provides for the later vesting of other property, if the current trustees and the Metropolitan consent.~~

~~Clause 20 provides for the later vesting of other property that is held on trust, if the Metropolitan is unable to obtain the consent of all current trustees and consents on their behalf.~~

Division 2 Provisions relating to vesting of property

~~Clause 21 requires registration authorities to record the transfer of interests in land that are necessary as a result of the operation of the proposed Part.~~

~~Clause 22 provides that the vesting of property in the Trust by the proposed Part does not affect any reservation, mortgage, charge, encumbrance, lien or lease that affected the property or any trust on which the property was held, immediately before the vesting of the property.~~

~~Clause 23 provides that, when property vests in the Trust in accordance with proposed section 17, 19 or 20 the rights, liabilities and obligations of the former trustees in relation to the property will become the rights, liabilities and obligations of the Trust.~~

~~Clause 24 provides that certain gifts, dispositions and trusts of property do not fail but take effect on or after the date of commencement, as gifts, dispositions and trusts in favour of the Trust.~~

Division 3 Payment of duty not required

~~Clause 25 provides that duty under the Duties Act 1997 is not chargeable in respect of, or in connection with, a conveyance to the Trust of property from a person or body that holds that property for or on behalf of any parish or community of the Church.~~

Part 34 Miscellaneous

Clause 14 provides that duty under the *Duties Act 1997* is not chargeable in respect of, or in connection with, a conveyance to the Corporation of property from a person or body that holds that property for or on behalf of any parish or community of the Church.

Clause 1526 provides for the custody and use of the seal of the TrustCorporation.

Clause 1627 provides for the execution on behalf of the TrustCorporation of deeds and instruments required by law to be in writing and for the entering into of oral contracts on its behalf.

Clause 1728 enables the TrustCorporation to appoint agents to execute documents on its behalf.

Clause 1829 enables the TrustCorporation to certify that it holds property on trust for the Church.

Clause 1930 provides that, if a person obtains a receipt for money paid to the TrustCorporation, the person will not be liable if the money is lost or misapplied or is not applied.

Clause 2031 is intended to remove the need for a person involved in a property dealing with the TrustCorporation to inquire whether the TrustCorporation has power to deal with property and will protect the person even if the person had notice that the TrustCorporation had no such power.

Clause 2132 entitles members of the TrustCorporation and others to be indemnified out of trust property against liability for certain things done by them in good faith concerning the property.

Clause 2233 provides for the service of documents on the TrustCorporation.

New South Wales

Macedonian Orthodox Church Property Trust Bill 2010

Introduced by Revd the Hon F J Nile, MLC First print

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New South Wales

Macedonian Orthodox Church Property Trust Bill 2010

No , 2010

A Bill for

An Act to constitute as a corporation the Macedonian Orthodox Church Property Trust Corporation, to specify the TrustCorporation's functions, ~~to provide for the vesting of certain property in the Trust;~~ and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Macedonian Orthodox Church Property Trust Act 2010*.

2 Commencement

This Act commences on a day to be appointed by proclamation.

3 Definitions

In this Act:

by-laws means the by-laws of the Trust Corporation.

Church means the Macedonian Orthodox Church, Diocese of Australia and New Zealand with its seat in Melbourne, being an integral part of the Macedonian Orthodox Church – Ohrid Archbishopric with its seat in Skopje, Macedonia, a hierarchical religious body whose leader, overseer and shepherd is the Archbishop of Ohrid and Macedonia.

conveyance includes transfer, assignment and assurance.

~~*date of commencement* means the date on which this Act commences.~~

Corporation means the Macedonian Orthodox Church Property Trust Corporation constituted by this Act.

Deputy Bishop means the Deputy Bishop of the Church, who is appointed by the Metropolitan.

Diocesan Assembly means the Diocesan Assembly of the Church, constituted under the Diocesan Statute.

Diocesan Ruling Committee means the Diocesan Ruling Committee, constituted under the Diocesan Statute.

Diocesan Secretary means the person from time to time occupying the office of Secretary of the Church, who is appointed by the Metropolitan.

Diocesan Statute means the statute of the Church passed by the Diocesan Assembly, and authorised and certified by the Archbishopric Church and Lay Assembly of the Macedonian Orthodox Church on 24 February 1996, as in force from time to time.

exercise a function includes perform a duty.

function includes a power, authority or duty.

member means a member of the Corporation.

Metropolitan means the Bishop of the Macedonian Orthodox Church, Diocese of Australia and New Zealand, appointed by the Holy Bishops' Synod of the Macedonian Orthodox Church or, if there is a vacancy in the See, the person for the time being exercising the authority of the Bishop who has been appointed by the Holy Bishops' Synod of the Macedonian Orthodox Church.

property includes property located outside of New South Wales.

~~*relevant transfer date* means:~~

~~(a) — in relation to land transferred by the operation of section 17 — the date of commencement, and~~

~~(b) — in relation to land transferred by the operation of section 19 or 20 — the date of consent of the Metropolitan under either of those sections.~~

~~*Trust* means the Macedonian Orthodox Church Property Trust constituted by this Act.~~

~~*trust property* means property held by the Trust Corporation.~~

~~*trustee* means a member of the Trust.~~

4 Extraterritorial operation of Act

~~(1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following:~~

~~(a) land situated in or outside the territorial limits of the State,~~

~~(b) things situated in or outside the territorial limits of the State,~~

~~(c) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,~~

~~(d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State or Territory.~~

~~(2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.~~

~~(3) To the extent that the vesting of any property by this Act is beyond the legislative competence of the Parliament of New South Wales, and this Act does not vest any of the property in the Trust without the need for conveyance, then each person who holds that property on trust for the Church is, to the extent that the person is amenable to the law of New South Wales, required to do all that is necessary to actually transfer it.~~

Part 2 Constitution and functions of TrustCorporation

64 Constitution of TrustCorporation

(1) There is constituted by this Act a corporation under the corporate name of the Macedonian Orthodox Church Property Trust Corporation.

(2) The TrustCorporation is to consist of the following members:

- (a) the Metropolitan,
- (b) the Deputy Bishop,
- (c) a representative from the monasteries of the Church, who is appointed by the Metropolitan,
- (d) the Diocesan Secretary,
- (e) 2 clerics of the Church, being current members of the Diocesan Ruling Committee, who are appointed by the Metropolitan,
- (f) the deputy president of the Diocesan Assembly,
- (g) 3 lay persons, being current members of the Diocesan Ruling Committee, who are appointed by the Metropolitan

65 Procedure of TrustCorporation

(1) Subject to this section, the trusteesmembers are to conduct the business of the TrustCorporation in accordance with the by-laws.

(2) The Metropolitan is to preside at a meeting of the TrustCorporation.

(3) The quorum for a meeting of the TrustCorporation is a majority for the time being of the members (one of whom must be the Metropolitan).

(4) Every meeting of the TrustCorporation at which a quorum is present is competent to transact any business of the TrustCorporation.

(5) A question arising at a meeting is determined by a majority of votes and, in the case of equality of votes, the Metropolitan has a casting vote.

(5) The TrustCorporation may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, video conference, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

76 Functions of TrustCorporation

(1) The functions of the TrustCorporation are as follows:

- (a) to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, the Church,
- (b) to acquire property by gift, devise or bequest and to agree to and carry out the conditions of the gift, devise or bequest,
- (c) to borrow or lend money for the purposes of the Church,

- (d) to mortgage, charge or otherwise encumber trust property,
 - (e) to make gifts and donations of property held by it for religious and charitable purposes,
 - (f) to enter into any guarantee or indemnity that may assist the TrustCorporation or the Church in the exercise of its functions,
 - (g) to do and suffer all other things (whether or not of the kind referred to in this section) that the Metropolitan considers to be necessary, appropriate or desirable,
 - (h) to do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for or incidental to the exercise of its functions under this Act.
- (2) The TrustCorporation has such other functions as are conferred or imposed on it by this Act.
- (3) This section does not limit section 50 of the *Interpretation Act 1987*.

47 TrustCorporation may make by-laws

- (1) The TrustCorporation may make by-laws, not inconsistent with this Act:
- (a) for the control and management of, and dealings with, trust property, and
 - (b) with respect to the procedure for conducting the business of the TrustCorporation.
- (2) A certificate under the seal of the TrustCorporation to the effect that a by-law specified in the certificate, or in an annexure to the certificate, was in force on a day specified in the certificate is, until the contrary is proved, evidence that the by-law was in force on that day.
- (3) A by-law may be amended or repealed by a subsequent by-law made under this section.

48 TrustCorporation may hold property jointly

The TrustCorporation may hold or acquire property either alone or jointly as a joint tenant or tenant-in-common.

409 TrustCorporation may invest trust funds

The TrustCorporation:

- (a) may invest or lend any funds that it holds on trust in accordance with the terms of any trust to which the funds are subject, and
- (b) may also invest or lend any such funds in accordance with the *Trustee Act 1925*, unless the investment or loan is expressly forbidden by the instrument (if any) creating the trust to which the funds are subject.

4410 Blending of trust funds

- (1) The TrustCorporation may invest trust funds held by it on trust for different purposes or activities, or any part of those funds, as one fund (*the fund*).
- (2) Income arising from an investment of funds in accordance with subsection (1) is to be apportioned ratably among the several purposes or activities for which the funds are held on trust.
- (3) Any loss arising from an investment of funds in accordance with subsection (1) is to be apportioned ratably among the several purposes or activities for which the funds are held on trust.

4211 TrustCorporation may make advances

- (1) The TrustCorporation may make advances out of its trust funds for any activity, service, institution or interest of the Church.
- (2) Any sum so advanced is taken to be an investment of the money and bears interest at a rate fixed by the TrustCorporation.
- (3) If the terms of any such advance so provide, the sum advanced and any interest on that sum is taken to be a charge on those assets (if any) that the TrustCorporation holds for the activity, service, institution or interest of the Church for which the advance was made.

43 Arrangements for other churches to use trust property

- (1) In this section, *scheme of co-operation* means a scheme entered into by the Trust ~~(a) with or involving a church of another denomination or any congregation or activity of such a church, and~~

~~(b) concerning the use of trust property.~~

~~(2) The Trust may permit trust property to be used and managed for the purposes of a scheme of co-operation on such terms and conditions as the Trust determines.~~

~~(3) Any proceeds derived by the Trust from a scheme of co-operation are to be applied in the manner decided by the Trust.~~

~~(4) Conditions that the Trust may determine under this section include:~~

~~(a) conditions with respect to the making of monetary contributions towards the acquisition, construction, alteration, maintenance or repair of property vested in or held on behalf of a co-operating church or congregation, and~~

~~(b) the giving or taking of a security or charge over any property.~~

~~(5) Trust property may be used in accordance with a scheme of co-operation except to the extent that the property is subject to an express trust expressly forbidding its use in that manner.~~

~~(6) Trust property is not to be regarded as property that is subject to an express trust expressly forbidding its use under a scheme of co-operation merely because it is directed to be held on trust for worship within, or for the purposes of, the Church.~~

124 Trusts may be varied

~~(1) The Trust may by resolution declare that, in its opinion, it has become impossible or inexpedient to carry out or observe the terms of a trust of property vested in it, whether as to its purpose or any other of its terms.~~

~~(2) The Trust may, by the same or a later resolution, declare that the property is subject to another trust and, on the making of such a declaration:~~

~~(a) the trust that is to be replaced ceases, and~~

~~(b) the property is to be held subject to the other trust.~~

~~(3) In making such a declaration, the Trust must ensure that the property is dealt with as nearly as is possible for the purposes for which the property was held immediately before the resolution.~~

~~(4) However, the Trust may by resolution declare that, in its opinion, it is impossible or inexpedient to deal with the property in accordance with subsection (3) because of circumstances arising after the creation of the trust that is to be replaced.~~

~~(5) On making a resolution under subsection (4), the Trust may hold, dispose of or otherwise deal with and apply the property for such purposes for the use and benefit of the Church as the Trust declares by resolution.~~

1235 Trust Corporation may act as executor, administrator or trustee

If authorised by the ~~Trust Corporation~~ to do so, a ~~trustee member~~ or a person employed by the ~~Trust Corporation~~ may, on behalf of the ~~Trust Corporation~~:

(a) swear an affidavit, or

(b) make a declaration or statement, or

(c) give security and do any other act or thing, that is, by any charter, enactment or rule of court, required to be done by a person who is applying for or granted probate or letters of administration, or who is administering a trust.

1346 Trust Corporation may make claims for compensation on compulsory acquisition etc

In relation to the exchange, dedication or compulsory acquisition of any trust property, the ~~Trust Corporation~~ may:

(a) act on behalf of the Church and make claims for compensation, and

(b) agree to and settle any such claims for such amount, and on such terms and conditions, as it thinks fit.

Part 3 Vesting of property in Trust

Division 1 Vesting of property in Trust

47 Vesting of certain property in Trust on the date of commencement

~~(1) On the date of commencement, all property and rights vested in or held by Bishop Petar Karevski, Father Jovica Simonovski and Father Tone Gulev on trust for the Church are divested from those persons and are, to the extent that they were so held, vested in the Trust (without the need for any further conveyance).~~

~~(2) Without limiting subsection (1), on the date of commencement, the following land vests in the Trust (without the need for any further conveyance):~~

~~(a) The Macedonian Orthodox Church "Holy Mother of God", situated at and known as 37-39 Atkinson Street, Liverpool, New South Wales and being the land more particularly described in Certificate of Title Volume 10673 Folio 236 of the Register kept under the Real Property Act 1900 of New South Wales;~~

~~(b) The Macedonian Orthodox Church "Nativity of Holy Mother of God" Cathedral Chapel, situated at and known as 1-3 Pecks Road, Sydenham, Victoria and being the land more particularly described in Certificate of Title Volume 9361 Folio 679 of the Register kept under the Transfer of Land Act 1958 of Victoria;~~

~~(c) The Macedonian Orthodox Church "Saint Prohor Pehinski" Monastery, situated at and known as 130 Spring Road, Donnybrook, Victoria and being the land more particularly described in Certificate of Title Volume 10689 Folios 945, 946, 947 and 948 of the Register kept under the Transfer of Land Act 1958 of Victoria;~~

~~(d) The Macedonian Orthodox Church "Holy Mother of God", situated at and known as Lots 4 and 5 Curtis Street, Woodville South, South Australia, and being the land more particularly described in Certificate of Title Volume 5477 Folio 51 of the Register Book kept under the Real Property Act 1886 of South Australia.~~

~~(3) On and from the date of commencement, the Trust is taken to be the successor in law of Bishop Petar Karevski, Father Jovica Simonovski and Father Tone Gulev for all purposes, including private international law.~~

48 Operation of a gift, disposition or trust after date of commencement

~~(1) This section applies to a gift, disposition or trust of property that, on or after the date of commencement, is made or declared (whether by deed, will or otherwise) to, in favour of, or for the purpose of:~~

~~(a) the Bishop (on behalf of the Church); or~~

~~(b) any other person (on behalf of the Church); or~~

~~(c) the Church.~~

~~(2) Such a gift, disposition or trust of property takes effect when it is made or declared:~~

~~(a) to or in favour of the Trust, and~~

~~(b) for a purpose of the Trust corresponding with, or similar to, the purpose for which it was, or was taken to be, made or declared.~~

~~(2) Such a gift, disposition or trust:~~

~~(a) does not fail only because of the provisions of this Act, and~~

~~(b) if it is capable of taking effect to any extent, takes effect to that extent as if it were made or declared:~~

~~(i) to or in favour of the Trust, and~~

~~(ii) for a purpose of the Trust corresponding with, or similar to, the purpose for which it was, or was taken to be, made or declared.~~

49 Vesting of other property held on trust if current trustees consent

~~(1) This section applies if:~~

~~(a) property (the relevant property) is held on trust for the Church on or after the date of commencement by any person or persons (the current trustees); and~~

~~(b) each of the current trustees consents in writing to a transfer of the relevant property to the Trust.~~

~~(2) The Metropolitan may, by writing under his hand, consent to the transfer of the relevant property to the Trust.~~

~~(3) If the Metropolitan consents to the transfer, the relevant property is, on the date of consent of the Metropolitan, divested from the current trustees and is, to the extent that it was held on trust for the Church, vested (without the need for any further conveyance) in the Trust.~~

~~(4) If such a transfer is registered in accordance with section 21, the registration operates as a discharge of all such current trustees from the duties of the trust.~~

~~20 The Metropolitan may consent to transfer of other property held on trust, on behalf of absent or disabled trustees~~

~~(1) This section applies if:~~

~~(a) property (the relevant property) is held on trust for the Church on or after the date of commencement by any person or persons (the current trustees), and~~

~~(b) the Metropolitan has sought the consent of each current trustee to the transfer of the relevant property, and~~

~~(c) the consent of any current trustee cannot be obtained because that person has died, is absent or is under any other disability, but the consent of the remaining trustees has been obtained, and~~

~~(d) the Metropolitan has given notice of his intention to consent to the transfer of the relevant property in a newspaper circulating generally in the place where the relevant property is located, and~~

~~(e) no proceedings have been taken by any current trustee within 30 days after the publication of that notice or, if such proceedings have commenced, those proceedings have been finally determined in favour of the Metropolitan.~~

~~(2) The Metropolitan may, by writing under his hand, consent to the transfer of the relevant property to the Trust.~~

~~(3) If the Metropolitan consents to the transfer, the relevant property is, on the date of consent of the Metropolitan, divested from current trustees and is, to the extent that it was held on trust for the Church, vested (without the need for any further conveyance) in the Trust.~~

~~(4) If such a transfer is registered in accordance with section 21, the registration operates as a discharge of all current trustees from the duties of the trust.~~

~~Division 2 Provisions relating to vesting of property~~

~~21 Registration authorities required to record conveyances of land~~

~~(1) The appropriate registration authority, on being requested to do so and on delivery of any relevant instrument, must issue all necessary certificates of registration or title and make any recordings on the relevant Register that are necessary because of the operation of section 17, 19 or 20.~~

~~(2) In this section:~~

~~appropriate registration authority:~~

~~(a) in relation to land in New South Wales—means the Registrar-General of this State, and~~

~~(b) in relation to land in the Australian Capital Territory—means the registrar-general referred to in the *Land Titles Act 1925* of the Australian Capital Territory, and~~

~~(c) in relation to land in the Northern Territory—means the Registrar-General referred to in the *Land Title Act* of the Northern Territory, and~~

~~(d) in relation to land in Queensland—means the chief executive referred to in the *Land Act 1994* of Queensland, and~~

~~(e) in relation to land in South Australia—means the Registrar-General appointed under the *Real Property Act 1886* of South Australia, and~~

~~(f) in relation to land in Tasmania—means the Recorder referred to in the *Land Titles Act 1980* of Tasmania, and~~

~~(g) in relation to land in Victoria—means the Registrar of Titles appointed under the *Transfer of Land Act 1958* of Victoria, and~~

~~(b) in relation to land in Western Australia—means the Registrar referred to in the Transfer of Land Act 1893 of Western Australia;~~

~~relevant Register;~~

~~(c) in relation to land in New South Wales—means the Register required to be kept under the Real Property Act 1900 of New South Wales; and~~

~~(d) in relation to land in the Australian Capital Territory—means the register required to be kept under the Land Titles Act 1925 of the Australian Capital Territory; and~~

~~(e) in relation to land in the Northern Territory—means the land register required to be kept under the Land Title Act of the Northern Territory; and~~

~~(f) in relation to land in Queensland—means the land registry required to be kept under the Land Act 1994 of Queensland; and~~

~~(g) in relation to land in South Australia—means the Register Book required to be kept under the Real Property Act 1886 of South Australia; and~~

~~(h) in relation to land in Tasmania—means the Register required to be kept under the Land Titles Act 1980 of Tasmania; and~~

~~(i) in relation to land in Victoria—means the Register of land required to be kept under the Transfer of Land Act 1958 of Victoria; and~~

~~(j) in relation to land in Western Australia—means the Register required to be kept under the Transfer of Land Act 1893 of Western Australia.~~

22 Provisions relating to vesting of property

(1) The vesting of the property in the Trust by this Part does not affect:

(a) any reservation, mortgage, charge, encumbrance, lien or lease that affected the property, or
(b) any trust on which the property was held, immediately before the vesting of the property.

(2) No attornment to the Trust by a lessee of land vested in the Trust by this Part is necessary.

(3) The vesting of property by this Part is not a dutiable transaction for the purposes of the Duties Act 1997.

(4) A dutiable transaction within the meaning of the Duties Act 1997, or an instrument that effects or evidences a dutiable transaction and that occurs or is executed or registered only for
(a) a purpose ancillary to, or consequential on, the operation of this Part, or
(b) the purpose of giving effect to this Part, is not chargeable with duty under the Duties Act 1997.

23 Claims and liabilities in relation to Trust

(1) On and from the relevant transfer date, the following provisions have effect in relation to property vested in the Trust in accordance with section 17, 19 or 20:

(a) the rights and liabilities of a former trustee become rights and liabilities of the Trust to be exercised and discharged in accordance with this Act;

(b) the obligations of a former trustee become obligations of the Trust to be performed in accordance with this Act;

(c) proceedings before a court or tribunal by or against a former trustee that, immediately before the relevant transfer date, were pending or in the course of being heard become proceedings by or against the Trust;

(d) to the extent to which an act, matter or thing done or omitted to be done on behalf of a former trustee had any force or effect immediately before the relevant transfer date, it becomes an act, matter or thing done or omitted to be done by the Trust;

(e) a reference in any document to a former trustee is to be read as a reference to the Trust;

(f) time that had commenced to run in relation to a former trustee is taken to be time that had commenced to run in relation to the Trust.

(2) In this section:

former trustee means a person in whom, immediately before the relevant transfer date, property was held or trust for the Church.

24 Operation of gifts, dispositions or trusts of property

~~(1) A gift, disposition or trust of property transferred by section 17 that, before the relevant transfer date, has been or is taken to have been made or declared (whether by deed, will or otherwise) to, in favour of, or for the purpose of Bishop Petar Karevski, Father Jovica Simonovski or Father Tone Gulev (on behalf of the Church):~~

~~(a) does not fail only because of the provisions of this Act, and
(b) if it is capable of taking effect to any extent on or after the date of commencement, takes effect to that extent as if it were made or declared:~~

~~(i) to or in favour of the Trust, and~~

~~(ii) for a purpose of the Trust corresponding with, or similar to, the purpose for which it was, or was taken to be, made or declared.~~

~~(2) A gift, disposition or trust of property transferred by section 19 or 20 that, before the relevant transfer date, has been or is taken to have been made or declared (whether by deed, will or otherwise) to, in favour of, or for the purpose of the Bishop (on behalf of the Church) or any other person (on behalf of the Church) or the Church:~~

~~(a) does not fail only because of the provisions of this Act, and~~

~~(b) if it is capable of taking effect to any extent on or after the date of commencement, takes effect to that extent as if it were made or declared:~~

~~(i) to or in favour of the Trust, and~~

~~(ii) for a purpose of the Trust corresponding with, or similar to, the purpose for which it was, or was taken to be, made or declared.~~

Division 3 Payment of duty not required**25 Payment of duty not required in certain cases**

~~Duty under the *Duties Act 1997* is not chargeable in respect of, or in connection with, a conveyance to the Trust of property from a person or body who holds that property for or on behalf of any parish or community of the Church.~~

Part 34 Miscellaneous**145 Payment of duty not required in certain cases**

~~Duty under the *Duties Act 1997* is not chargeable in respect of, or in connection with, a conveyance dutiable transaction to the Corporation of property from a person or body who holds that property for or on behalf of any parish or community of the Church.~~

1526 Custody and use of seal of Trust Corporation

(1) The seal of the Trust Corporation is kept by the Secretary of the Trust Corporation and may be affixed to a document only:

(a) in accordance with a resolution of the Trust Corporation, and

(b) in the presence of the Metropolitan, or in the absence of the Metropolitan, a person appointed by the Metropolitan for the purpose of signing the document, and not fewer than 2 other trusteesmembers, and

(c) with an attestation by the signatures of those members of the fact of the affixing of the seal.

(2) An instrument purporting to have been sealed with the seal of the Trust Corporation and to have been signed by the Metropolitan, or in his absence, by the appointed person, and not fewer than 2 other trusteesmembers is taken to have been executed in accordance with this section.

1627 How Trust Corporation may execute certain documents

(1) Any instrument relating to any property or matter that, if made or executed by an individual, would by law be required to be in writing under seal may be made on behalf of the Trust Corporation in writing under the seal of the Trust Corporation.

(2) Any instrument relating to any property or matter that, if made by or between individuals, would by law be required to be in writing signed by the parties to be bound by it may be made

on behalf of the TrustCorporation in writing by any person acting under its authority, express or implied.

(3) Any contract relating to any property or matter that, if made between individuals, would by law be valid although made orally only (and not reduced to writing) may be made on behalf of the TrustCorporation by any person acting under its authority, express or implied.

2178 TrustCorporation may appoint agents

(1) The TrustCorporation may, by writing under its seal, expressly empower any person, in respect of any specific matter, to execute any deed or other document on its behalf as its agent or attorney.

(2) Any deed signed by such an agent or attorney on behalf of the TrustCorporation binds the TrustCorporation and has the same effect as if it were under the seal of the TrustCorporation.

2189 Evidence of certain matters relating to TrustCorporation

~~(1) A certificate under the seal of the TrustCorporation to the effect that property specified in the certificate is held by it on trust for the Church is, in any legal proceedings, evidence that the property is so held.~~

~~(2) A certificate under the seal of the Trust to the effect that the estate or interest of a person specified in the certificate in land so specified is an estate or interest vested in the Trust by this Act is, for the purposes of any application by the Trust to be registered under the Real Property Act 1999 as the proprietor of that estate or interest, evidence of its contents.~~

31920 Persons exonerated from liability on receiving receipt for money paid to TrustCorporation

A receipt for money paid to the TrustCorporation that:

- (a) is executed under the seal of the TrustCorporation, or
- (b) is in writing signed by not fewer than 2 trusteesmembers, or
- (c) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the TrustCorporation, exonerates the person by whom or on whose behalf the money is paid from any liability for the loss, misapplication or non-application of the money.

3204 Inquiries relating to dealings with trust property unnecessary in certain cases

Whenever the TrustCorporation acquires, disposes of or otherwise deals with property, it is not necessary for:

- (a) the other party or parties to the transaction, or
- (b) the Registrar-General or any other person registering or certifying title to the property, to inquire whether the TrustCorporation has power to acquire, dispose of or otherwise deal with the property and none of those persons is affected by notice that the TrustCorporation has no such power.

3221 Certain persons to be indemnified out of trust property

A trusteemember, and any other person, exercising in good faith a function in relation to trust property in accordance with this Act or any by-law of the TrustCorporation, and the executor or administrator of any such trusteemember or person, are entitled to be indemnified out of trust property against all expenses and liabilities that they have incurred in connection with the exercise of the function.

3223 How documents may be served on TrustCorporation

Any document may be served on the TrustCorporation by delivering it to, or sending it by post to, the Diocesan Secretary or any person apparently authorised by the TrustCorporation to accept service.

Appendix 6 Minutes

Minutes No. 44

Tuesday 29 June 2010

General Purpose Standing Committee No. 3

Room 1136, Parliament House, Sydney, at 9 am

1. Members present

Mr John Ajaka

Mr Greg Donnelly

Ms Lee Rhiannon

Ms Lynda Voltz

Revd Fred Nile (Smith)

Mr Shaoquett Moselmane

2. Apologies

Mr Trevor Khan

3. Draft minutes

Resolved, on the motion of Ms Rhiannon: That Draft Minutes No. 43 be confirmed

4. Committee membership

The Committee noted that as per the resolution of the House, Ms Voltz will replace Ms Sharpe and Mr Moselmane will replace Ms Westwood on the Committee.

5. Election of the Deputy Chair

The Chair called for nominations for Deputy Chair of the Committee.

Mr Donnelly moved: That Ms Voltz be elected Deputy Chair of the Committee.

There being no further nominations the Chair declared Ms Voltz Deputy Chair of the Committee.

6. Inquiry into Macedonian Orthodox Church Property Trust 2010

Conduct of the Inquiry

Resolved, on the motion of Ms Voltz: That the closing date for submissions be Friday 30 July 2010.

Resolved, on the motion of Mr Donnelly: That the Committee circulate the media release announcing the Inquiry as soon as practicable.

Resolved, on the motion of Ms Voltz: That the Committee advertise the inquiry TOR in the *Sydney Morning Herald* and *Daily Telegraph*, *St George Southerland Shire Leader*, *Wollongong Illawarra Mercury*, *Queanbeyan Age*, *Parramatta Advertiser* and *Macedonian Weekly*.

Resolved, on the motion of Ms Voltz: That the Committee:

- conduct a public hearing on 23 August 2010, and keep 25 August in reserve for a possible second hearing
- schedule a deliberative meeting to consider the draft report on 27 September (depending on whether or when the Social Issues committee holds its report deliberative) or alternatively, on Monday 11 October.

7. Adjournment

The Committee adjourned at 9:35am *sine die*.

Beverly Duffy

Clerk to the Committee

Minutes No. 45

Monday 16 August 2010

General Purpose Standing Committee No. 3

Room 1102, Parliament House, Sydney, 10.05 am

1. Members present

Mr John Ajaka (Chair)

Ms Lynda Voltz (Deputy Chair)

Mr Greg Donnelly

Mr Shaoquett Moselmane

Revd the Hon Fred Nile

Dr John Kaye

2. Apologies

Mr Trevor Khan

3. Draft minutes

Resolved on the motion of Revd Nile: That Draft Minutes No. 44 be confirmed.

4. Committee membership

The Chair invited members to observe a moment of silence to commemorate the late Mr Roy Smith.

The Committee noted that Dr John Kaye and Mr Robert Brown have been nominated as cross bench members of GPSC3 to replace Ms Lee Rhiannon and Mr Roy Smith.

5. Substitutions

Revd the Hon Fred Nile will substitute for Hon Robert Brown for the duration of the Inquiry into the Macedonian Orthodox Church Property Trust Bill 2010.

6. Inquiry into the Macedonian Orthodox Church Property Trust Bill 2010

6.1 Correspondence

Received:

- 26 July 2010 – Letter from Hon Amanda Fazio MLC, advising the Committee she will not be making a submission to the Inquiry.
- 28 July 2010 – Email from Ms Biljana Apostolova-Antunovic, Gaden Lawyers on behalf of Macedonian Orthodox Church Diocese of Australia and New Zealand requesting a submission extension until Wednesday 11 August 2010.
- 30 July 2010 – Email from Mr Keith McConnell, McConnell Jaffray Lawyers requesting an extension of 10 days to make a late submission to the Inquiry and for his client would like to appear before the Committee on 23 August.
- 3 August 2010 – Email from Mr Igor Avramovski Aleksandroz, Association of Macedonian Communities Australia Inc, requesting a submission extension until 12 August 2010.

- 10 August 2010 – Email from Mr Igor Avramovski Aleksandroz, Association of Macedonian Communities Australia Inc, advising that he will submit a submission before the Committee at the hearing on 23 August 2010.
- 12 August 2010 – Letter from Ms Biljana Apostolova-Antunovic, Gaden Lawyers advising that the Macedonian Orthodox Church Diocese of Australia and New Zealand Church has instructed Gaden Lawyers to provide information to the Committee on its behalf at the hearing.
- 12 August 2010 – Letter from Zivco Trajkovski, Secretary of the Macedonian Orthodox Church, St Kliment Ohridski Port Kembla
- 16 August 2010 – Email from Biljana Apostolova-Antunovic, Gaden Lawyers to request the committee to grant leave for Paul Hoy and herself to appear on behalf of the Macedonian Orthodox Church Diocese of Australia and New Zealand at the public hearing on Monday, 23 August 2010.

Sent:

- 30 July 2010 – Email from the Committee Director, to Ms Apostolova-Antunovic, advising that the Chair has agreed to her request for an extension to no later than 11 August.

6.2 Publication of submissions

Resolved on the motion of Dr Kaye: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 233(1), the Committee authorise the publication of submission nos. 1-19, 21-26, 28-431.

Resolved on the motion of Mr Moselmane: That submission no. 20 be kept confidential at the request of the author.

Resolved on the motion of Mr Donnelly: That submission no 27 be kept confidential at the request of the author.

6.3 Letter to NSW Crown Solicitor and Parliamentary Counsel

Resolved on the motion of Dr Kaye: That subject to any changes suggested by the Clerk of the Parliaments, the draft letter to the Crown Solicitor circulated by the secretariat at the meeting, be sent to the Crown Solicitor and Parliamentary Council.

6.4 Public Hearing 23 August 2010***Appearance by Gadens Lawyers***

Resolved on the motion of Revd Nile: That Ms Biljana Apostolova-Antunovic and Mr Paul Hoy (Gadens Lawyers) be permitted to represent the Macedonian Orthodox Church Diocese of Australia and New Zealand at the hearing on Monday 23 August 2010.

Appearance by McConnell Jaffray Lawyers

Resolved on the motion of Mr Donnelly: That Mr Keith McConnell (McConnell Jaffray Lawyers) be permitted to represent the Macedonian Orthodox Community Church St Petka Incorporated at the hearing on Monday 23 August 2010.

6.5 Reserve hearing date 25 August 2010

Resolved on the motion of Mr Donnelly: That the Committee not proceed with the hearing scheduled for 25 August 2010.

7. Adjournment

The Committee adjourned at 10.31am until Monday 23 August 2010, 9.15am in Jubilee Room for the first hearing into the Macedonian Orthodox Church Property Trust Bill 2010.

John Ajaka
Committee Chair

Minutes No. 46

Monday 23 August 2010

General Purpose Standing Committee No 3

Jubilee Room, Parliament House Sydney, at 9:20 am

1. Members present

Mr John Ajaka (Chair)

Ms Lynda Voltz (Deputy Chair)

Mr Greg Donnelly

Mr Shaoquett Moselmane

Revd the Hon Fred Nile

Dr John Kaye

Mr Trevor Khan

2. Draft Minutes

Resolved on the motion of Dr Kaye: That Draft Minutes of Meeting No 45 be confirmed.

3. Correspondence

The Committee noted the following item of correspondence received:

- 19 August 2010 – Email from Dimitar Vangelov, Krste Topovski and John Foteff regarding the hearing schedule on Monday 23 August;
- 19 August 2010 – Letter from Mr Fote Lozenkovski, President, Macedonian Orthodox Community of the City of Greater Wollongong, advising that Mr Lupco Stefanovski might not be able to attend the hearing and requesting that Mr Igor Avramovski appear in his place.

The Committee noted the following item of correspondence sent:

- 17 August 2010 – Letter from Clerk of the Parliaments to Mr I.V. Knight, Crown Solicitor requesting advice in relation to the Macedonian Orthodox Church Property Trust Bill 2010;
- 17 August 2010 – Letter from Clerk of the Parliaments to Mr Don Colaguirri SC, Parliamentary Counsel requesting advice in relation to the Macedonian Orthodox Church Property Trust Bill 2010;
- 19 August 2010 – Email from the Director to Dimitar Vangelov, Krste Topovski and John Foteff regarding the hearing schedule on Monday 23 August.

4. Inquiry into the Macedonian Orthodox Church Property Trust Bill 2010

4.1 Publication of Submissions

Resolved, on the motion of Dr Kaye: That according to section 4 of the Parliamentary Papers (Supplementary Papers) Act 1975 and Standing Order 233(1), the Committee authorises the publication of submissions nos.432, 433 and 434.

4.2 Answers to questions on notice taken during the hearing

Resolved, on the motion of Dr Kaye: That the Committee request that answers to questions on notice taken during the hearing be received within 21 days of the receipt of the request.

4.3 Public Hearing

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Mark Leeming SC

The evidence concluded and the witness withdrew.

The following witnesses from Gadens Lawyers on behalf of the Macedonian Orthodox Church Diocese of Australia and New Zealand were sworn and examined:

- Ms Biljana Apostolova-Antunovic, Partner;
- Mr Paul Hoy, Senior Counsel.

The evidence concluded and the witnesses withdrew.

The following witness from McConnell Jaffray Lawyers on behalf of the Macedonian Orthodox Community St Petka Incorporated was sworn and examined:

- Mr Keith McConnell

The evidence concluded and the witness withdrew.

4.4 Deliberative Meeting

Resolved on the motion of Revd Hon Fred Nile: That the decision regarding the publication of submission No 435 be deferred.

4.5 Resumption of Public Hearing

The following witnesses from the Association of Macedonian Communities Australia Inc were sworn and examined:

- Mr Igor Aleksandrov, President;
- Mr Michael Radin, Vice President;
- Mr Chris Angelkov, Vice President, Macedonian Community of Western Australia Inc;
- Mr Peter Breen.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Association of Macedonian Orthodox Community of Newcastle were sworn and examined:

- Mr Krste Topevski, President;
- Mr Dimitar Vangelo, Secretary;
- Mr John Foteff, Church member.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Macedonian Orthodox Community of the Greater City of Wollongong were sworn and examined:

- Mr Ljupco Stefanovski, President;
- Ilo Karamacoski, Secretary.

Mr Stefanovski tendered the following documents:

- Certificate of Title.
- Letter dated 13 June 2010 addressed to The Macedonian Orthodox Church Communities. Parishes, Churches and Monasteries in the MOCDANZ.

The evidence concluded and the witnesses withdrew.

The public withdrew.

4.6 Deliberative meeting: submission of questions on notice.

Resolved, on the motion of Ms Voltz: That in relation to this hearing :

- Members be required to submit additional written questions on notice to the Secretariat by 5.00 pm, Wednesday 25 August 2010.

4.7 Publication of submission No 435

Resolved, on the motion by Revd Nile: That submission No 435 be published, subject to the omission of adverse mentions identified by the Secretariat and agreed to by the Committee, via email.

4.8 Publication of tendered documents

Resolved, on the motion by Ms Voltz: That the Committee accept and publish, according to section 4 of the *Parliamentary Papers (Supplementary Papers) Act 1975* and Standing Order 233(1), the following documents tendered during the public hearing:

- Certificate of Title, tendered by Mr Ljupco Stefanovski
- Pro forma letter dated 18 June 2010

5. Adjournment

The Committee adjourned at 4.45pm until the 22 September at 1pm in the Members' Lounge.

Ms Beverly Duffy

Clerk to the Committee

Minutes No. 47

Tuesday 7 September 2010

General Purpose Standing Committee No 3

Members' Lounge, Parliament House Sydney, at 2.00pm

1. Members Present

Mr John Ajaka (Chair)

Ms Lynda Voltz (Deputy Chair)

Mr Greg Donnelly

Mr Shaoquett Moselmane

Revd the Hon Fred Nile

Dr John Kaye

Mr Trevor Khan

2. Draft Minutes

Resolved on the motion of Mr Donnelly: That Draft Minutes of Meeting No 46 be confirmed.

3. ***

4. Inquiry into the Macedonian Orthodox Church Property Trust Bill 2010

5. Correspondence

The Committee noted the following item of correspondence received:

- 23 August 2010 – Letter from Parliamentary Counsel responding to letter dated 17 August requesting advice on the Macedonian Orthodox Church Property Trust Bill 2010.

- 24 August 2010 - Email from Mr Igor Aleksandrov, President, Association of Macedonian Communities in Australia, regarding the public hearing.
- 30 August 2010 - Email from Mr Igor Aleksandrov regarding the publication of his submission
- 1 September - Email from Mr Igor Aleksandrov regarding the letter from the Chair dated 31 August.
- 3 September 2010 – Letter from Crown Solicitor responding to letter dated 17 August providing advice to the Macedonian Orthodox Church Property Trust Bill 2010.
- 3 September 2010 – Answers to questions on notice from Mr Fote Lozenkovski, President, Macedonian Orthodox Community of the City of Greater Wollongong.
- 3 September 2010 – Email from Mr Tony Kolimackovski supporting the submission of the Association of Macedonian Communities in Australia.
- 3 September 2010 – Email from Mr Don Nikou supporting the submission of the Association of Macedonian Communities in Australia.
- 4 September 2010 – Email from Mr Chris Angelkov, Vice President, Macedonian Communities of Western Australia Inc, regarding their opposition to the Bill.
- 6 September 2010 – Email from 'Stefo' supporting the submission of the Association of Macedonian Communities in Australia.
- 6 September 2010 - Email from Mr Igor Aleksandrov regarding the transcript of the public hearing.

The Committee noted the following item of correspondence sent:

- 24 August 2010 – From Principal Council Officer to Mr Igor Aleksandrov providing information requested about the powers of the Legislative Council committees.
- 31 August – From Chair to Mr Igor Aleksandrov responding to his email of 30 August, regarding the decision of the committee re publication of his submission.

5.1 Publication of Submissions

Resolved, on the motion of Mr Donnelly: That according to section 4 of the Parliamentary Papers (Supplementary Papers) Act 1975 and Standing Order 233(1), the Committee authorises the publication of submissions nos.22a and 436.

5.2 Publication of answers to questions on notice

Resolved, on the motion of Mr Donnelly: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 233(1), the Committee authorise the publication of the answers to questions on notice by the Macedonian Orthodox Community of the City of Greater Wollongong.

6. Future correspondence to and from Mr Igor Aleksandrov

Resolved, on the motion of Revd Nile: That the Clerk of the Parliament write to Mr Aleksandrov on behalf of the Committee clarifying aspects of Legislative Council Committee practice.

7. Adjournment

The Committee adjourned at 2.30pm until the Tuesday 14 September at 9.15am in room 814/815.

Ms Beverly Duffy
Clerk to the Committee

Minutes No. 52

Wednesday 23 September 2010

General Purpose Standing Committee No 3

Members' Lounge, Parliament House Sydney, at 2.00pm

1. Members Present

Mr John Ajaka (Chair)

Ms Lynda Voltz (Deputy Chair)

Mr Greg Donnelly

Mr Shaoquett Moselmane

Revd the Hon Fred Nile

Dr John Kaye

Mr Trevor Khan

2. Draft Minutes

Resolved on the motion of Dr Kaye: That Draft Minutes of Meeting No 47 be confirmed.

3. Inquiry into the Macedonian Orthodox Church Property Trust Bill 2010**3.1 Correspondence**

The Committee noted the following items of correspondence received:

- 8 September 2010, Letter from Hon Tony Kelly MLC, Minister for Lands, to Chair, regarding correspondence from a constituent of Ms McMahon MP.
- 10 September 2010, Email letter from Ms Olga Nikolovska, President, Macedonian Community Council of Illawarra Inc, to Director.
- 13 September 2010, Email letter from Lidija Vasilevski, on behalf of 'Believers of Macedonian Orthodox Church' Rockdale, to Chair, thanking the Committee for the public hearing on 23 August 2010.

Resolved, on the motion of Revd Nile: That the Chair respond to the letter of Minister Kelly and cc to appropriate parties.

The Committee noted the following items of correspondence sent:

- 10 September 2010, letter from the Clerk to Mr Igor Aleksandrov regarding Committee practice, as resolved by the Committee at meeting no 47.
- 16 September 2010, Email from the Principal Council Officer to Mr Igor Aleksandrov resending Uncorrected Transcript of Public Hearing of 23 August 2010, additional Questions on Notice and cover letter.

3.2 Publication of Crown Solicitor and Parliamentary Counsel AdviceResolved, on the motion of Rev Nile: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 233(1), the Committee authorise the publication of

- Letter from Parliamentary Counsel responding to letter dated 17 August requesting advice on the Macedonian Orthodox Church Property Trust Bill 2010.
- Letter from Crown Solicitor responding to letter dated 17 August providing advice to the Macedonian Orthodox Church Property Trust Bill 2010, subject to clearance with the Clerk that there is no impediment to publication.

3.3 Publication of answers to questions on notice

Resolved, on the motion of Mr Donnelly: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 233(1), the Committee authorise the publication of the answers to questions on notice by

- Mr Chris Angelkov, Vice President, Macedonian Communities Western Australia Inc, subject to omissions of adverse mention as agreed to by the Committee.
- Mr Igor Aleksandrov, President, Association of Macedonian Communities Australia.
- Mr Keith McConnell, representing Macedonian Orthodox Community Church St Petka

3.4 Publication of submissions

Resolved, on the motion of Ms Voltz: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 233(1), the Committee authorise the publication of the submission Submission no. 429a, including Annexures A, B, C and E, with Annex E not placed on the Parliament's website.

Resolved on the motion of Dr Kaye: That submission nos. 437 and 438 be kept confidential at the request of the authors.

3.5 Consideration of unauthorised publication of the submission of the Association of Macedonian Communities Australia and associated blog

Moved, on the motion of Mr Khan: That the Committee not write to the Association of Macedonian Communities Australia regarding the unauthorised publication of their submission and associated blog.

Revd Nile moved: That the motion of Mr Khan be amended by omitting all words after 'Committee' and inserting instead: write to the Association of Macedonian Communities Australia regarding the unauthorised publication of their submission and associated blog.

Amendment put.

The Committee divided.

Ayes: Mr Donnelly, Revd Nile

Noes: Mr Ajaka, Mr Khan, Dr Kaye, Mr Moselmane, Ms Voltz

Question resolved in the negative.

Original question put.

The Committee divided.

Ayes: Mr Ajaka, Mr Khan, Dr Kaye, Mr Moselmane, Ms Voltz

Noes: Mr Donnelly, Revd Nile

Question resolved in the affirmative.

3.6 Draft Chair's Report

Resolved, on the motion of Mr Moselmane: That the Chair's Draft Report be sent via email to Dr Kaye.

4. Adjournment

The Committee adjourned at 2.45pm until Monday 11 October at 10.00am in room 1102.

Stewart Smith
Clerk to the Committee

Draft Minutes No. 53

Monday 11 October 2010

General Purpose Standing Committee No 3

Room 1102, Parliament House Sydney, at 10.06am

1. Members Present

Mr John Ajaka (Chair)

Ms Lynda Voltz (Deputy Chair)

Mr Greg Donnelly

Mr Shaoquett Moselmane

Revd the Hon Fred Nile

Dr John Kaye

Mr Trevor Khan

2. Draft Minutes

Resolved on the motion of Mr Donnelly: That Draft Minutes of Meeting No 52 be confirmed.

3. Inquiry into the Macedonian Orthodox Church Property Trust Bill 2010**3.1 Correspondence****Received:**

- 29 September 2010, letter from Mr Fote Lozenkovski, President, Macedonian Orthodox Community Church of the City of Greater Wollongong, responding to supplementary submission 429a of the Macedonian Orthodox Church.
- 30 September 2010, email from Mr Igor Aleksandrov regarding a forthcoming submission from the Association of Macedonian Communities in Australia.
- 30 September 2010, further email from Mr Igor Aleksandrov regarding a forthcoming submission from the Association of Macedonian Communities in Australia.
- 6 October 2010, email from Mr Chris Angelkov, Vice President, Macedonian Community of WA Inc, responding to the supplementary submission of the Macedonian Orthodox Church.
- 7 October 2010, letter from Mr Fote Lozenkovski requesting an extension until 15 October, to make a supplementary submission to the inquiry.

Resolved on the motion of Ms Voltz: That the Committee advise Mr Igor Aleksandrov and any other enquirers that the Committee has finalised its report, which will be tabled during the next sitting week, ie week commencing 18th October; and that it will not consider any more submissions or correspondence to the inquiry.

Resolved on the motion of Ms Voltz: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 233(1), the Committee authorise the publication of the following correspondence:

- 29 September 2010, letter from Mr Fote Lozenkovski.
- 30 September 2010, email from Mr Igor Aleksandrov, subject to the omission of adverse comment as agreed by the Committee.
- 30 September 2010, further email from Mr Igor Aleksandrov.
- 6 October 2010, email from Mr Chris Angelkov.
- 7 October 2010, letter from Mr Fote Lozenkovski.

3.2 Publication of submissions

Resolved on the motion of Ms Voltz: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 233(1), the Committee authorise the publication of Submission no. 435a

3.3 Consideration of Chair's Draft report: Macedonian Orthodox Church Property Trust Bill 2010

The Chair tabled his draft report entitled *Macedonian Orthodox Church Property Trust Bill 2010*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Ms Voltz: That paragraph 1.28 be amended by omitting the word 'recognises' at the beginning of the first sentence and inserting instead 'notes'.

Mr Khan arrived at the meeting.

Resolved, on the motion of Mr Moselmane: That paragraph 2.3 be deleted.

Resolved on the motion of Revd Nile: That paragraph 3.26 be amended by deleting the words 'confusion and' in the second sentence.

Resolved on the motion of Ms Voltz: That a new paragraph be inserted after paragraph 4.18 to read: 'It should be noted that the Committee also received correspondence from the Vice President of the Macedonian Community of WA Inc indicating that the community, Church and parishioners of Macedonian Orthodox Church St Nikola, (8 Macedonia Place, North Perth) Western Australia do not support the Bill.'

Resolved on the motion of Dr Kaye: That paragraph 5.4 be amended by adding 'based in Skopje, Former Yugoslav Republic of Macedonia' after Macedonian Orthodox Church

Resolved on the motion of Dr Kaye: That paragraph 5.7 be amended by inserting 'some' after 'structure' and omitting 'essentially lost their status in the hierarchy of the Church' and inserting instead 'found themselves in conflict with the hierarchy of the Church'.

Resolved on the motion of Dr Kaye: That paragraph 5.12 be amended by omitting 'consultation between the Church and communities', and inserting instead 'debate'.

Resolved on the motion of Mr Khan: That the following quote from Mr Hoy, General Counsel, Macedonian Orthodox Church, be inserted after paragraph 5.31: 'Bishop Petar has informed me he has a fearful duty if a person is not a part of the church community, he is in apostate; he is opposed. He has forsaken the church. I just wanted to raise that because I cannot understand so much of the opposition.'

Dr Kaye moved: That paragraph 7.3 which reads as follows 'The Committee considers that the Church should disseminate the amended Bill through the wider Macedonian Orthodox Church community for feedback and comment. It is the hope of the Committee that the Church can gain a consensus in the wider church community as to the content of an amended Bill.' be deleted.

Question put.

The Committee divided.

Ayes: Mr Ajaka, Dr Kaye, Mr Moselamne, Ms Voltz

Noes: Mr Donnelly, Mr Khan, Revd Nile.

Question resolved in the affirmative.

Resolved, on the motion of Dr Kaye: That a new paragraph 7.3 be inserted to read, 'The Committee believes that the current divisive climate between Macedonian Orthodox communities and the Church hierarchy is not conducive to any legislative solution at this time. It is the hope of the Committee that the Church and communities can work together in a consultative environment to resolve these issues in the future.'

Resolved on the motion of Revd Nile: That paragraph 7.4 be amended by omitting 'similar' in the second sentence, and inserting instead 'of similar intent' after the word 'Bill'.

Resolved, on the motion of Ms Voltz: That Recommendation 1 be adopted.

Resolved, on the motion of Revd Nile: That the draft report, as amended, be the report of the Committee.

Resolved, on the motion of Revd Nile: That the Committee present the report to the House, together with transcripts of evidence, submissions, tabled documents, answers to questions on notice, minutes of proceedings and correspondence relating to the Inquiry, except for documents kept confidential by resolution of the Committee.

Resolved on the motion of Ms Voltz: That the report be tabled on Tuesday 19 October 2010.

4. Adjournment

The Committee adjourned at 11.00am *sine die*

Mr Stewart Smith

Clerk to the Committee