

Supplementary  
Submission  
No 22a

**INQUIRY INTO THE MACEDONIAN ORTHODOX  
CHURCH PROPERTY TRUST BILL 2010**

**Name:** Mr Mark Leeming

**Date Received:** 31 August 2010

---

# **Inquiry into the Macedonian Orthodox Church Property Trust Bill 2010**

## **Supplementary Submission to General Purpose Standing Committee No 3**

**Mark Leeming SC**

1. **Overview.** This submission responds to the question I was asked informally before giving evidence on 23 August 2010, and which was raised during the course of my evidence, namely, whether the Corporations Act 2001 would apply to the body corporate established by the Bill if enacted. I indicated at the time that the question was not one I had fully considered, and was complex.
2. In my opinion, if the Bill is enacted as presently drafted *parts but not all* of the Corporations Act will apply to the corporation to be known as the Macedonian Orthodox Church Property Trust.

*Liability limited by a scheme approved under Professional Standards legislation*

3. **Trust is not a "company"**. The Corporations Act distinguishes between "companies" and "corporations". A "company" means "a company registered under the Corporations Act": s9. It follows that the Trust is not a company. That has a variety of consequences, including that the powers conferred by s124 are not conferred upon the Trust, and the Trust is not liable to be wound up pursuant to s461.
  
4. **Trust is a "corporation"**. Under the Corporations Act, every company is a corporation, but "corporation" is more broadly defined to include "any body corporate (whether incorporated in this jurisdiction or elsewhere)": s57A. It follows that the Trust is "corporation". That means that the obligations imposed on officers of corporations (such as ss181, 182, 183) will apply. So too will the statutory claim for oppression (s233) to which I referred in my evidence.
  
5. (In giving those examples, I am not purporting to state exhaustively the extent to which the "corporation" (as opposed to "company") provisions of the Corporations Act would apply to the Trust.)
  
6. **Excluding the Corporations Act by "roll-back"**. It is a question of policy whether the provisions of the Corporations Act regulating "corporations" (as opposed to the smaller class of "companies") apply to the Trust. If it were desired to exclude them (either in whole or in part) it would be necessary to include an express provision which engages s5F of the Corporations Act. Section 5F is the provision (popularly referred to as "roll-back") which permits a State Parliament to exclude the operation of the Corporations Act in respect of a

specified matter.

7. Two examples where this has occurred are s20G of the State Owned Corporations Act 1989 (so that the Corporations Act has essentially no application to State owned corporations such as electricity generators and retailers) and s95 of the Associations Incorporated Act 2009 (so that the Corporations Act has a highly qualified application to associations.)
  
8. I hope this assists the Committee's review of the Bill.

Mark Leeming SC

Selborne Chambers,

31 August 2010