

Submission
No 23

INQUIRY INTO THE MACEDONIAN ORTHODOX CHURCH PROPERTY TRUST BILL 2010

Organisation: Macedonian Orthodox Community of the City of Greater
Wollongong

Date Received: 27 July 2010

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Organisation: Macedonian Orthodox Community of the City of Greater
Wollongong

Name: Mr Fote Lozenkovski

Position: President

Date received: 27/07/2010

MACEDONIAN ORTHODOX COMMUNITY
OF THE CITY OF GREATER WOLLONGONG
"ST. DIMITRIJA SOLUNSKI"



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МАКЕДОНСКА ПРАВОСЛАВНА ЦРКВА
СВЕТИ ДИМИТРИЈА СОЛУНСКИ



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Our Ref: 2010/MOCPTB/01

26TH July, 2010

Your Ref:

To the Director
General Purpose Standing Committee No. 3,
Legislative Council, Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Director,

RE: **OBJECTION TO LEGISLATION OF THE PROPOSED
MACEDONIAN ORTHODOX CHURCH PROPERTY TRUST BILL 2010**

We refer to the above mentioned Bill introduced by the Hon. Fred Nile Reverend in June 2009 and read before the Legislative Council on 10th June, 2010 (Second Reading).

Prior to any debate, as moved on motion by the Hon. Greg Donnelly MP, we the Management Committee of the Macedonian Orthodox Community of the City of Greater Wollongong "St. Dimitrija Solunski", established in 1968, on behalf of our financial members and approximately 20,000 parishioners in the Illawarra area, seek to advise you and all members of the Legislative Council and the Legislative Assembly of nthe Parliament of NSW that we **VEHEMENTLY OPPOSE** legislation of the proposed Macedonian Orthodox Church Property Trust Bill 2010 ("the Bill"), for the following reasons:

1. GENERAL EFFECT OF THE BILL

- 1.1 The sole purpose of the Bill is to transfer ownership of properties acquired and maintained by financial donations and voluntary work of Australian – Macedonian Orthodox communities in NSW to a Corporation to be controlled by the Macedonian Orthodox Church of Skopje in the Republic of Macedonia, more precisely by the direct control of the Bishop of the Macedonian Orthodox Church Dioses of Australia and New Zealand, Metropolitan Petar Karevski ("the Bishop").
- 1.2 The Macedonian Orthodox Church of Skopje, Macedonia ("MOC") has not made any financial contribution towards the acquisition and maintenance of any of the Macedonian Community real property in Australia. All assets including the real property currently held in the name of various Macedonian community organisations has been acquired with moneys and labour provided by ordinary working Australian-Macedonians often at the sacrifice of their own financial prosperity. The property is used not only for religious purposes but also for the use of cultural, educational,

artistic and sporting community organisations such as dancing groups, soccer clubs, theatres, community fundraising groups, pensioner groups, chess clubs, aged day care groups and the like.

- 1.3 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. Moreover, the Bill will enable a centralised system of administration of the property, legitimately avoiding accountability and scrutiny under existing Australian laws.
- 1.4 There has been no community consultation about the Bill, contrary to what is inferred in the second reading speech. 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 ware 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.
- 1.5 Lack of community consultation prior to creating a statute is contrary to the democratic, transparent and participatory system in our State and contrary to the requirements and practice of the Attorney General of NSW. It is our view that Parliaments are better placed and responsible for the weighing up of competing rights within communities; they are institutions designed for consultation, discussion and resolution of challenging questions. Passing this Bill in the current state of conflicting views within the community, would be naive and irresponsible and in furtherance of Macedonian community polarisation caused by legal proceedings currently on foot.
- 1.6 Despite the Honourable Member's announcement in 2009 that the introduction of the Bill would "resolve this long drawn-out and distressing legal battle and bring about reconciliation" in reference to Court proceedings commenced by the Bishop and a dismissed Priest against the Macedonian Orthodox Church St. Petka Incorporated, relating to land in St George area, there is no mention of that litigation in the second reading speech. Incidentally, the said 13 years long proceedings have, to date, exceeded the sum of \$2,000.000 to the detriment of the Defendant (St Petka Church in Rockdale). Such costs have in fact been to the detriment of the benevolent and hard working members of the Australian - Macedonian community in this area.
- 1.7 The only property in NSW that is vested automatically in MOC under the Bill, is that which is already in the name of the Bishop and his colleagues. This does not justify a legislation unless the Bill is a means to acquire other property presently owned by Macedonian Community organisations. The MOC is not engaged in any significant religious, charitable and educational activities. Any claims by the MOC that such activities are undertaken would be misleading as would be to say that the MOC has accumulated significant landholdings. As far as we know, apart from the properties in the Bishop's own name, the rest of the property is owned and managed by the various Macedonian Community organisations.
- 1.8 Notwithstanding that, it is important to note that the Macedonian community in NSW and in all other States has worshiped in accordance with the Orthodox faith taught and practiced by the MOC and has been willing to accept the spiritual jurisdiction of the Bishop.

2. DEFECTS IN THE BILL

2.1 Definition of "Church"

As defined, this is not a legal entity. The Diocese may be registered as a business name but it is not an incorporated association, company or other corporate entity. The only legal entity referred to in the definition, is the MOC which is a "legal person" under Macedonian law. Under Australian Law, the MOC represents a foreign legal person.

2.2 Definition of "Diocesan Statute"

The authorisation and certification by the Archbishopric Church and Lay Assembly of the Macedonian Orthodox Church, said to be on 24 February 1996, is in doubt as a result of the MOC's refusal in the NSW Supreme Court to produce minutes evidencing that authorisation when doubt had been cast as to whether any meeting of the assembly to grant authority, had taken place.

2.3 Extraterritorial Operation of the Act

Similar Victorian Legislation is before the Legislative Assembly of Victoria and on the Notice Paper No 171 on Tuesday 22 June 2010 which would have the effect, if passed into law, of transferring the Victorian property described in Section 17 of the NSW Bill, into a Victorian corporate trustee.

There is the likelihood that the Victorian Bill will be withdrawn due to the advice received from the Victorian Attorney General's office that that the Victorian bill was not proceeded with 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 (contrary to the assurances his office had been receiving).

2.4 The Trust

Clearly the proposed trust is to be controlled by the Metropolitan (the Bishop) with no community representation. The Bishop is the head of the hierarchy of the MOC and subject to its rules without any reference to Australian laws. The rules of the MOC may give the Bishop unrestricted power or require the Bishop to sell properties in Australia and remit the proceeds to Macedonia or any other place in the world for that matter. In fact the MOC rules could seek to implement procedures with consequences adverse to the Macedonian community in NSW or at least not in the best interest of the said community. As regards the procedure and By laws of the Trust, again, it proposes to give the Bishop unrestricted powers.

2.5 Functions of the Trust

Sub section 7(1)(g) clearly gives the Bishop carte blanche "to do...(whether or not of the kind referred to in this section) that the Metropolitan considers to be necessary, appropriate or desirable.". Clearly, should this Bill be passed, the Metropolitan will be in a position to do legally whatever he alone considers to be necessary, appropriate or desirable. From the community's experience with the abovementioned legal proceedings, the Macedonian community's trust in the Bishop has sadly diminished and his Grace's intentions and motives with respect to this Bill are questionable.

2.6 Lack of Controls

The looseness and lack of accountability to Law of the State appears to be hallmark of this legislation. There is clearly a complete lack of any control in the manner in which the trust will be administered. Those controlling the Trust will not be subject to any regulatory requirements, auditing procedures or corporate governance and regulations to which existing incorporated associations are subject.

2.7 Claims and Liabilities of the Trust

The Bishop, Petar Karevski, has been and still is involved in numerous Court proceedings. The effect of section 23 of the Bill is to relieve the Bishop of liabilities accrued by him in the course of proceedings involving land being transferred tot he Trust. For example, the Victorian property to be transferred was the subject of the judgement with costs against the Bishop, the Deputy Bishop and Tone Gulev. These liabilities, should the Victorian bill have be past, could become liabilities of the Trust, freeing the Bishop, the Deputy Bishop and Tone Gulev from such liabilities.

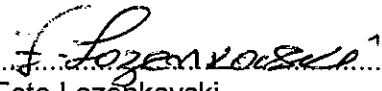
3. POSSIBLE CONSTITUTIONAL INVALIDITY

The object of the Bill as set out in the first paragraph of the Explanatory note is, inter alia, "to constitute a statutory corporation to hold property on behalf of the Macedonian Orthodox Church".

The validity of the Bill as a State legislation dealing with the acquisition of Australian property by a *foreign charitable institution* (the MOC) , may be in doubt as it may conflict with the effect of Commonwealth legislation. This doubt arises from the *Foreign Acquisition Takeovers Act 1975 (C'th)* and the Regulation made under that Act.

Consequently, until this issue of validity is resolved and other matters of concern raised in this letter, it is our respectful submission and plea to the Parliament of NSW that this Bill cannot be supported.

Yours faithfully,


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Fote Lozenkovski
President
26 July 2010