

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

Organisation: Christian Democratic Party NSW

Date Received: 30 July 2010

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Organisation: Christian Democratic Party NSW
Name: Revd the Hon Fred Nile MLC
Date received: 30/07/2010



Parliamentary Inquiry

Macedonian Orthodox Church Property Trust Bill 2010

Submission to:

General Purpose Standing Committee No.3

Legislative Council, NSW Parliament

By Rev Hon Fred Nile MLC,
Christian Democratic Party, NSW



Rev. Hon. Fred Nile ED., L.Th., M.L.C.

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Friday, 30 July 2010

Beverly Duffy, Director
General Purpose Standing Committee No.3
Legislative Council, NSW Parliament,
Sydney NSW 2000

Dear Beverly,

I wish to make a submission to the Inquiry on the *Macedonian Orthodox Church Property Trust Bill 2010* as a Member of the NSW Legislative Council. Please find attached:

- Background information to the Bill
- Enclosed 2nd Reading Speech
- Copy of the original Bill
- Copy of current Bill
- Copies of supporting letters.

Yours Sincerely,

Rev Hon Fred Nile MLC

Historical Background

Paul Whelan, on behalf of the ALP Government, gave notice of the first 'Macedonian Orthodox Trust Bill 1998' on Tuesday 17th November 1998. It was introduced and passed in the Legislative Assembly on Wednesday 18th November 1998.

The bill was then introduced by Hon Jeff Shaw MLC in the Legislative Council, where it lapsed when Parliament was prorogued on February 3rd 1999 for the 1999 NSW State Election.

The Rev Hon Fred Nile, as a private member, gave notice for the introduction of the same bill on Tuesday May 5th 2010. As a result of continuing criticism, the Rev Hon Fred Nile held discussions with stake holders and drafted a completely new bill that only affects the four supportive Parishes that are willing to join the Trust.

The Rev Hon Fred Nile then gave a second reading speech on this new bill on June 10th 2010, and then moved that the bill be referred to General Purpose Standing Committee No.3 to allow submissions from concerned stakeholders.



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MEDIA RELEASE

Macedonian Orthodox Church Property Trust Bill

Tuesday, 15th June 2010

The Rev Fred Nile MLC, Leader of the Christian Democratic Party, has successfully introduced the 'Macedonian Orthodox Church Property Trust Bill 2010' into the NSW Parliament

"The objective of this bill is to constitute a statutory corporation to hold property for the Macedonian Orthodox Church Diocese of Australia and New Zealand, to specify the functions of that statutory corporation and to vest in the statutory corporation property held in trust for the benefit of the church. The Bishop of the Diocese, His Grace Metropolitan Peter Karevski, whom I have met on a number of occasions, as well as other church representatives, has asked for the enactment of this bill to facilitate the administration of his diocese and, in particular, to provide for a corporate trustee with perpetual succession to hold the church's property. The establishment of a corporate trustee will make it possible for property of the church in the diocese to be held by a single body, thereby overcoming the difficulties in having several trustee bodies acting for the church and ensuring a succession of trustees. It is a longstanding policy of this Parliament to assist churches to organise their financial and property affairs by sponsoring a bill such as this to establish property trusts to manage their present and future holdings.

The church acknowledges the existence within itself of juridical structures that are utilised for the proper administration and management of its operation, thus ensuring that the asset base of the church is identified, protected and preserved for the purposes of the church. The orthodox church is not dissimilar from other Christian denominations in this regard. The significant benefit from a supportive Government that passes legislation is that the community will understand that the church is acknowledged, organised and well administered. The trusteeship and property holdings of the church are disorganised at present. The lack of legal status and disorganisation of landholdings hinders the day-to-day financial arrangements of the church. Banking and mortgage dealings are defeated or impeded by the difficulties associated with the management through individual and sometimes missing or deceased trustees.

The advantages will be in relation to cross-colateralisation of the church's securities, as vesting properties in a single entity will enhance security for lenders. The need for the bill arises because the church seeks to vest its property in a single corporate body that is able, in perpetuity, to hold property on behalf of the church, its parishes and institutions. The concern is that when the property is vested in trustees, incorporated

associations or companies there is no accountability to the church. Further, there is concern that, should there be a failure to appoint future trustees, or a failure to comply with the requirements of legislation regulating a corporate body, the interests of the church may be adversely affected and property lost to the church. It is possible also that where property is held by a corporate body, the interests of the church may be adversely affected by the actions of its members.

Whilst the spiritual affairs of the Macedonian Orthodox church are its concern and responsibility, the Parliament can assist the church to organise its property affairs. By this bill, the Parliament will assist the church by providing an appropriate structure to support its religious and charitable activities and order its secular affairs. 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. Vesting the property of the church in a single body also enables the church to maintain proper records of its property and facilitates any proposed borrowings on the security of its property. The bill deals only with establishing a corporate trustee and the holding by it of the property of the church and the administration of that property. For the benefit of honourable members, I will outline the major provisions of the bill.

The bill will provide for the creation of a statutory trust to be known as the Macedonian Orthodox Church Property Trust, which is referred to in clause 5 (1). The trust will have power to hold property throughout Australia in accordance with clause 4, and will vest in it certain powers in relation to dealings with property and investment of funds in accordance with clauses 7 and 10. The bill will empower the holding of the property by the trust, the blending of the trust funds, and the variation of trusts pursuant to clauses 11 and 12. By the bill, the trust may make arrangements with a church of another denomination concerning the use of trust property in accordance with clause 13, and may be appointed the executor or administrator of an estate under clause 15.

The property trust will be a body corporate with perpetual succession. It will enable the property of the church to be held by the trust to overcome the problems associated with certain properties currently being held by individual trustees and for whom successors have to be appointed. The membership of the trust in clause 5 (2) reflects the composition of the Diocesan Committee of Trustees, being the protector of the church's assets, pursuant to its statute. As such, the bill follows the governance of the church, in relation to matters regarding the assets of the church, but causes the utilisation of property assets by the church to be subject to civil and canonical accountability required by its statute.

The bill is similar in content to other church property trust legislation passed by various Australian parliaments, including State parliaments, and has been prepared in

accordance with the New South Wales Government's policy of assisting churches to better administer their temporal affairs. However, the further importance of this legislation is that it provides a facility by which the Parliament can assist the church to put at rest any feeling of misconception as to who has any entitlement to property. This has been at the heart of problems within the community. The bill will vest four diocesan properties in the trust pursuant to clause 17. Those properties are currently held by the bishop, the deputy bishop, and other clerics as trustees on appointment by the Diocesan Committee of Trustees. They hold those properties as trustees until the enactment of a property trust bill.

It is important to emphasise that the bill does not effect any automatic vesting, mandatory or compulsory transfers of any other properties to the trust, whether the properties are held by parishes of the church or otherwise. For example, for historical reasons, a number of parishes hold parish property in the name of individual parish members, or in other legal structures. Properties held in such way will not be automatically transferred into the trust when it is created. The bill provides a mechanism for any property to be transferred to the trust at a later stage, after the bill takes effect, but only after the consent of both a current trustee wishing to transfer property in the trust, as well as the consent of the Metropolitan to such transfer. This is the most important part of this bill. It is provided for in clause 19, which reflects the reality of every other ordinary conveyance of property where the content and agreement of all parties to a transfer is necessary for a transfer to be effected.

Clause 20 deals with the circumstances of such later transfer, if the consent of all current trustees cannot be obtained because of absence, or death, in which case the Metropolitan can consent on their behalf, provided that the detailed procedure in clause 20 is followed. Clause 18 provides for vesting in the trust of property that is acquired after the date that the bill comes into effect when a gift, disposition or a trust of property is made or declared, for or on behalf of the church, or to the bishop or another person on behalf of the church, to ensure that such gifts, dispositions or trust property do not fail because of the bill. Division 2 of part 3 provides standard provisions relating to the requirement for relevant registration authorities to record the transfer of interests in land that are necessary as a result of the vesting or transfers of property under clauses 17, 19, or 20.

The bill also has standard provisions stating that vesting of property under part 3 of the bill is not a dutiable transaction for the purposes of the Duties Act 1997, and thus provides exemption from stamp duty for such transfers. That is a very important provision. The bill will thus avoid the cost of transferring church property to new trustees each time a trustee dies or retires, and will enable the church to better invest its funds. These provisions of the bill are consistent with the approach taken in other property trust legislation. Similar orthodox church property trust bills have received bipartisan support when they passed through both Houses of Parliament. 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 specific benefit to members of the Australian Macedonian community and their families by assisting the church to grow

in Australia. The bill is part of a tradition of assistance set by a long line of State governments to assist such institutions.

The background of the Macedonian Orthodox Church is that it is one of the most ancient Christian churches of the East that recognises the Patriarch of Constantinople, which is first in honour among all the Eastern Orthodox bishops, and presides over any council of orthodox primates and/or bishops in which the Patriarch of Constantinople takes part and serves as primary spokesman for the orthodox communion, especially in ecumenical contacts with other Christian denominations. The Macedonian Orthodox Church, which is one of the great family of orthodox churches, is a self-governing body. Its history dates back to the founding of Christian churches in Macedonian cities by St Paul the Apostle.

The church was founded on the day of the Pentecost when the Holy Spirit descended upon the Apostles in a small upstairs room in Jerusalem. That is recorded in the Bible in the Acts of the Apostles. When Saint Paul was travelling on his great evangelical work throughout Macedonia and Greece, he wrote in his personal epistles the famous words to Silas and to the church in Jerusalem, "Come over into Macedonia and help us." The work of the holy Apostle Paul was continued throughout the centuries by the Macedonian Orthodox Church. The church's jurisdiction spreads not only throughout Macedonia, which has always been at the heart of the development of the Christian faith, but also in communities abroad. Worldwide the church has 13 dioceses, 500 parishes, more than 2,000 churches and 20 active monasteries.

The church is hierarchical in nature, with authority residing in a multilayered order and ascending ultimately to the Archbishop of Ohrid and Macedonia as its Governor, who is elected for life by the Archbishopric Electoral Church and Lay Council in accordance with the canonical and constitutional provisions of the Holy Orthodox Church. The Archbishop presides over the Holy Bishop's Synod, which is referred to as the Holy Synod, and that comprises all diocesan bishops and vicar bishops. The Holy Synod is the supreme legislative, judicial and doctrinal body of the church.

Under the constitution of the church, the Holy Synod is vested with responsibility for the creation of dioceses and the enthronement of bishops to govern them. Following such an appointment, a bishop has supreme authority in all matters regarding the dioceses, including all pastoral, financial and administrative affairs. The bishop ordains the clergy and is responsible for their appointment to various offices within the diocese. In accordance with the constitution, all assets raised by the church in a diocese remain at all times the assets of the church in that diocese.

The church in the diocese of Australia and New Zealand is administered by His Grace, Metropolitan Petar Karevski—who, as I said earlier, I have met a number of times—pursuant to the powers vested in him by the Holy Synod of the Mother Church and the Statute of the Diocese, which was 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.

Since its establishment in Australia in the 1960s the church has accumulated significant landholdings—parish churches, church halls, manses and other residential properties, picnic and sports grounds and licensed reception centres for the use and benefit of local communities, a cathedral and a monastery. The church engages in significant religious, charitable and education activities. The church fulfils a social role and keeps the community together in a unique way. I am pleased to have met with the Macedonian Parish Congregations and clergy, and when this bill is passed by both Houses of Parliament I look forward to it being a blessing to the Macedonian Orthodox Church. I pray that Almighty God will again pour out His Holy Spirit on the Macedonian Orthodox Church as he did on the day of Pentecost, as well as on all the other Christian churches in Australia. I call on all members to support this important bill”, Rev Nile said.

End.