

Submission
No 429

INQUIRY INTO THE MACEDONIAN ORTHODOX CHURCH PROPERTY TRUST BILL 2010

Organisation: Macedonian Orthodox Church Diocese of Australia and New Zealand

Date Received: 12 August 2010

Supplementary
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Organisation: Gadens Lawyers on behalf of the Macedonian Orthodox Church
Diocese of Australia and New Zealand

Date received: 12/08/2010

A SUBMISSION TO THE NSW LEGISLATIVE COUNCIL

GENERAL PURPOSE STANDING COMMITTEE NO. 3

INQUIRY INTO THE *MACEDONIAN ORTHODOX CHURCH*

PROPERTY TRUST BILL 2010

MACEDONIAN ORTHODOX CHURCH DIOCESE OF AUSTRALIA
AND NEW ZEALAND

August 2010

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EXECUTIVE SUMMARY

The Bill is for the Macedonian Orthodox Church within the Diocese of Australia and New Zealand (**Church**) and relates solely to the formation of a statutory corporation as a trustee to hold property of the Church and for the purposes of the Church.

The administration and management of the proposed property trust is identical to the Constitutional requirements of the Macedonian Orthodox Church and the practices of Australian Governments.

Properties that are sought to be owned by the property trust are confined to properties that have been mandated for its ownership by participating communities of the Macedonian Orthodox Church.

PART ONE

THE MACEDONIAN ORTHODOX CHURCH

History of the Macedonian Orthodox Church worldwide

The Macedonian Orthodox Church (MOC) is one of the most ancient Christian Churches of the East, with history dating back to the founding of the Christian churches in Macedonian cities by St Paul the Apostle. It 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.

Like other Christian Churches, MOC is 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. The attendance of Bishops and other representatives of the Holy Orthodox Church from what is now the Republic of Macedonia is recorded at early ecumenical councils of the Church at the time of the Roman Empire.

The territory of what is the now the Republic of Macedonia formed part of the Roman Empire (later Byzantine Empire). The first Archbishopric was established in 535AD by the Emperor Justinian I, centred on the city of Justiniana Prima in what is now Macedonia. Numerous events over the centuries of history of what is now Macedonia have caused the Archbishopric to be abolished, merged into other Archbishoprics and then re-established over time. In 1958, at a general assembly of delegates representing members of the Orthodox Church in Macedonia, an Archbishop was elected of the re-established Archbishopric of Ohrid (known under this name since the end of the 9th century AD), a written constitution of MOC was adopted and a church government established comprising of a Church Court and a Church legislative Council, providing for canonical and executive government of the affairs of the Church. These events in year 1958 marked the beginning of an independent autocephalous MOC.

MOC continues to have a hierarchical structure in common with other episcopal Christian Churches, with authority residing in a multilayered order and ascending ultimately to the Archbishop of Ohrid and Macedonia as its spiritual head, 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 Bishops' Synod (**Holy Synod**), which comprises all Diocesan Bishops and Vicar Bishops. The Holy Synod is the supreme legislative, judicial and doctrinal body of the Macedonian Orthodox Church.

The jurisdiction of MOC extends not only throughout Macedonia, which has always been at the heart of the development of the Christian faith in that country, but also in diasporas of its peoples in their communities outside the territory of Macedonia. Worldwide, MOC has ten dioceses, of which seven are located on, and three are located outside, the territory of Macedonia, comprising of approximately 500 church communities with over 2000 churches and 20 active monasteries.

The Macedonian Orthodox Church Diocese of Australia and New Zealand

The Diocese of Australia was established as a separate Diocese in 1974, with its own ruling committee and other administrative organs, although it was under the auspices of the Bishop of America and Canada.

The Diocese of Australia was expanded to include New Zealand in 1996. The Diocese of Australia and New Zealand is an integral part of MOC, and throughout this submission the Macedonian Orthodox Church Diocese of Australia and New Zealand is referred to as the **Church**.

Constituent documents of MOC and the Church

Organisationally, MOC looks to achieve its temporal objectives by a universal Constitution and various other governing documents within Dioceses.

The worldwide MOC is regulated by its Constitution as adopted in November 1994 (**MOC Constitution**) (refer Annexure A). The MOC Constitution is a repository of the canonical legislation of the Church as it has been developed over the centuries and is consistent with the legislation of other

Christian Orthodox denominations. The operations of the Dioceses of MOC outside the territory of the Republic of Macedonia are governed by a Diocesan Statute, which must be made in accordance with the Orthodox canons and the MOC Constitution and be confirmed by the Diocesan Assembly (the supreme administrative body of MOC in the relevant Diocese), after the expression of the prior opinion of the Holy Synod at its plenary session and approved by the Archbishopric Church and Lay Assembly¹.

Further, the operations of church communities within a Diocese is governed by By-Laws, which must be in accordance with the Orthodox canons, the MOC Constitution and the Diocesan Statute, and approved by the Archbishopric Church and Lay Assembly².

The operations of the Church are governed by a Statute which has been approved 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 amended from time to time (**Statute**) (refer Annexure B) .

Governance of the Church

Under the MOC Constitution, the Holy Synod is vested with the responsibility to establish Dioceses with a designated ecclesiastical jurisdiction by the appointment of a Bishop to exercise the authority of MOC in a Diocese. A Diocesan Bishop is responsible for ordaining and incardinating clerics within a Diocese who vow solemnly to administer as their pastor to those of the faithful of the MOC who they are appointed to serve.

The Church is currently administered by its Diocesan Bishop, His Eminence, Metropolitan Petar Karevski (**His Eminence**), pursuant to the powers vested in him by the Holy Synod. Under his

¹ Article 190 of the MOC Constitution

² Article 193 of the MOC Constitution

administration are 21 clerics (20 Priests and 1 Igumen) who have been appointed to serve 18 Church Communities and 3 Monasteries, the details of which are listed at Annexure C. These Church Communities and Monasteries are organised in two Diocesan Provinces – the Diocesan Province for New South Wales, Queensland and Canberra and the Diocesan Province for Victoria, South Australia and Western Australia. The Diocesan Province is a juridic structure recognised under the Statute of the Church (Article 55 and following, of the Statute), which comprises a number of Church Communities. A Deputy Prelate is appointed by the Bishop to undertake the spiritual supervision of the clergy, the faithful and all religious activities within the Diocesan Province.

PART TWO CHURCH PROPERTY

Overview

As with other Christian denominations, assets of the Church are mainly derived from the benefactions of the faithful.

The MOC Constitution requires strict compliance by all Dioceses of the management and administration of assets wherever they are held. Assets of each Diocese are organised and governed in accordance with the Statute of each Diocese and the By-laws of the Parishes within each Diocese³.

Further, the MOC Constitution provides that the Diocesan Bishop sets out his governing responsibilities in relation to dogmatic, theological and liturgical questions independently and in cooperation with clergy who are in clerical orders, but in administration and management of material and financial affairs he works together with the priests, monks and people of the Diocese who are represented in Diocesan bodies and agencies⁴.

Trust for the purposes of the Church

The principles of trust law are long instilled in Christian churches and have been inherited from early Roman civilizations, whereby assets are acquired for a dedicated purpose and held by responsible persons solely for that purpose.

All Church assets are received and held by the Church for its charitable purposes and not for its clerics or individuals within the faithful. Assets therefore are to be entrusted and held for the existing and future operations of the Church, and for no other purpose, and in accordance with the MOC Constitution and the Statute.

³ Article 173 of the MOC Constitution

⁴ Article 71 of the MOC Constitution

The Statute affirms that all assets of the Church are to be held on trust under the immediate authority of a Diocesan Committee of Trustees as the protector of all assets of the Church in the Diocese⁵.

Pursuant to article 97, the Diocesan Committee of Trustees is constituted by the members of the Diocesan Ruling Committee (**DRC**), being the executive, governing and controlling body of the operations of the Church in administrative, material and financial aspects⁶. Thus, the DRC performs the functions of the Diocesan Committee of Trustees. The DRC has imposed on it rights and obligations relating to the Church's assets ownership, including appointing and dismissing temporary trustees to certain church, monastery and diocesan property until the enacting of trust legislation for the properties of the Church⁷.

The DRC comprises episcopal, clerical and lay representation, with some members being appointed *ex officio* by virtue of their ecclesiastical office or position on the Diocesan Assembly, and others being appointed by the Bishop or elected by the Diocesan Assembly. Having regard to the functions of the DRC, its composition reflects the embedded principle of cooperation in the administration and management of material and financial affairs of the assets of the Church (as prescribed by Article 71 of the MOC Constitution).

Ownership of Church assets

Historically, and as is the case with many other Christian churches in Australia, Church communities have brought into existence properties owned variously by individuals or entities established for the purposes of the Church.

⁵ Article 96 of the Statute

⁶ Article 30 and following of the Statute

⁷ Article 98.2 of the Statute

Following the adoption of the Statute, the cooperative objectives in holding and dealing with the properties held, for or on behalf of MOC⁸ referred to in the Overview above, have been adopted by some Church communities and applied in a few recent acquisitions of property for the Church. To this end, authority for vesting ownership in appropriate persons was sought by the DRC.

Pursuant to article 98.2 of the Statute, the DRC appointed the Deputy Bishop, Fr Jovica Simonovski and Fr Tone Gulev to act as trustees to purchase and hold properties for the Church, with the view that those properties will eventually be transferred to the statutory trustee once relevant legislation is enacted. His Eminence was also appointed to act as trustee of the properties of the Church by a resolution of the Holy Synod in 2001.

Pursuant to the above appointments, His Eminence, Deputy Bishop Simonovski and Fr Gulev acquired as trustees for the Church the following four properties, referred to throughout this submission as

Diocesan Properties:

- (a) The Macedonian Orthodox Church “Holy Mother of God”, situated at and known as 37–39 Atkinson Street, Liverpool, 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,
- (c) The Macedonian Orthodox Monastery “Saint Prohor Pchinski” Monastery, situated at and known as 130 Spring Road, Donnybrook, Victoria, and
- (d) The Macedonian Orthodox Church “Holy Mother of God”, situated at and known as Lots 4 and 5 Curtis Street, Woodville South, South Australia.

⁸ Article 71 of the MOC Constitution

Consequently, Church communities that are related to the above four properties acknowledge that these are the assets of the Church, and the individual trustees that hold the properties acknowledge, accept and desire that assets they hold are to be entrusted for the purposes of the Church.

Concerns with the current structure of Church's property holdings

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.

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.

Furthermore, a divergence of opinion has appeared in some sections of the Macedonian community relating to their misunderstanding of a charitable trust for purposes of the Church resulting in questions relating to who has an entitlement to the properties of the Church. Some in the community consider that properties registered in the name of the individual trustees for the Church (and in particular, the Diocesan Properties) are properties which have been acquired for those persons' benefit. Much confusion abounds with this attitude and the DRC is forced to repeatedly inform the communities of the Church, through media or other communications, that these properties are held for the purposes of the Church and are to be transferred and vested in a statutory trust, once legislation is enacted.

PART THREE STATUTORY PROPERTY TRUST

Statutory property trust for the Church

The Church seeks that there be a statutory property trust established to hold, for its purposes, its properties in perpetuity, in observance with its constituent requirements.

When achieved, it will provide for the Church a single central vehicle that will hold all assets of the Church in accordance with its Statute and the MOC Constitution.

Other forms of incorporation unsuitable

The hierarchical structure and the geographical extension of the ecclesiastical jurisdiction of the Church renders it unsuitable for incorporation under various State Acts for Incorporated Associations or under the *Corporations Act 2001 (Cth)* (**Corporations Act**).

The form of incorporation and the rules of a trust corporation for the Church must be consistent with the Statute of the Church and its hierarchical governance and organisation, and these matters cannot be adequately addressed under other forms of incorporation at civil law.

For example, 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.

Similarly, 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.

Further, because of the hierarchical structure of MOC, an attempt to align governance provisions of the Church and the appointment and election of members of decision making bodies with those in the Corporations Act and State legislation for incorporated associations, is just not possible.

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.

Other denominational statutory bodies

The Federal and State Governments of Australia facilitate advantages in incorporation, control, operation and taxation of charitable, not-for-profit bodies, which are availed by a broad range of legislation. In particular, it is the practice of Governments to facilitate the establishment of perpetual trustee corporations that are to achieve the trust objectives of various Christian denominational churches, within and subject to the framework of Australian law. Refer to Annexure D.

PART FOUR

MACEDONIAN ORTHODOX CHURCH PROPERTY TRUST BILL 2010

Previous attempts of the Church to establish statutory body

Attempts were made in 1998 for the enactment of statutory property trust legislation for the Church in NSW, which were unsuccessful and the proposed bill lapsed when the NSW Parliament prorogued in February 1999.

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 NSW Parliament to proceed to introduce the Bill the subject of this Inquiry.

This Bill differs from the 1998 version in that it addresses certain matters of concern of some in the Macedonian community, by specifying clearly the property to which it will relate.

Macedonian Orthodox Church Property Trust (“Trust”)

This Bill, will be of historic importance to the Church as, like other Christian churches, 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.

The definition of “Church”, whilst referring to its parentage with the Archbishopric in Macedonia, clearly relates solely to its existence as a discrete Diocese within the territorial limits of Australia and New Zealand. This approach is consistent with that adopted in many other Christian church property trust legislation, which also have institutional parentage in other countries⁹.

⁹ For example, *Antiochian Orthodox Church Property Trust Act 1993 (NSW)*, *Christian Israelite Church Property Trust Act 2007 (NSW)*, *Coptic Orthodox Church (NSW) Property Trust Act 1990 (NSW)*, *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994 (NSW)*, *Holy Apostolic Catholic Assyrian Church of the East Property Trust Act 1992 (NSW)*; *Methodist Church of Samoa in Australia Property Trust Act 1998 (NSW)*, etc all provide an example where the relevant Church on the territory of Australia to which the Act relates is part of a Church founded and with a seat overseas.

Further, property held by the Trust is not limited to property within New South Wales. This is important as it will reflect the national nature of the Church. Because the territory of the Church equates with the whole of Australia and New Zealand, the Bill will cause that its property will be centrally held and administered. Again, there is legislative precedent for this.¹⁰

The proposed extraterritorial function of the Bill provides capacity for the statutory trustee to register ownership, for and on behalf of the Church, of property in other States and Territories. It is acknowledged and accepted that the relevant laws of each State and Territory will apply and, in certain instances, prevail in relation to dealings with such property not located in New South Wales.

Composition of the Trust

Clause 5(2) reflects the constitutional governance of the Church in that the composition of the Trust will equate with that of DRC, setting out as trustees the members of the DRC as prescribed in Article 30 of the Statute, being:

- a) the Bishop and Deputy Bishop, who hold office *ex officio*;
- b) the Diocesan Secretary, who is appointed by the Bishop (refer to Article 15 of the Statute);

¹⁰ The *Antiochian Orthodox Church Property Trust Act 1993 (NSW)* provides an example of a single statutory body formed for the Antiochian Orthodox Church in the Diocese of Australia and New Zealand, where property is not limited to property located in NSW. The *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994 (NSW)* does not limit property that may be held by the trust to NSW property, where as in the case of MOC there is a single diocese for the whole of Australia. The *Holy Apostolic Catholic Assyrian Church of the East Property Trust Act 1992 (NSW)*, the *Methodist Church of Samoa in Australia Property Trust Act 1998 (NSW)*, the *Christian Israelite Church Property Trust Act 2007 (NSW)* similarly do not limit the property that may be held by the trust to NSW property. Refer also to the NSW and Victorian legislation for the Coptic Orthodox Church: *Coptic Orthodox Church (NSW) Property Trust Act 1990 (NSW)* and *Coptic Orthodox Church (Vic) Property Trust Act 1990 (Vic)* – these relate to two Dioceses of the Coptic Orthodox Church in Australia – Diocese of Sydney and Affiliated regions and Diocese of Melbourne and Affiliated regions, where there is no limitation on the definition of property in either Act, as the Diocese in each case extends beyond the boundaries of the State of NSW or Victoria (as applicable). By contrast, the Roman Catholic Church or the Anglican Church in Australia have State legislation which limits the definition of property to the relevant State, given their structuring into numerous Dioceses on the territory of Australia, and a statutory trustee is established for each Diocese within Australia.

- c) a representative from the monasteries of the Church, referred to as Monastic Elder in the Statute of the Church, who is appointed by the Bishop (refer to Article 94 of the Statute);
- d) the deputy president of the Diocesan Assembly of the Church, who holds office *ex officio* by virtue of his position at the Diocesan Assembly; and
- e) the two clerics and three lay persons, that are current members of the DRC.

Procedure of the Trust

Clause 6 ensures that matters relating to decision making, quorum and holding of meetings of the Trust are consistent with the equivalent provisions in the Statute relating to the DRC. This clause reflects what is a common provision in other church Acts¹¹.

Functions and powers of the Trust

The Bill variously sets out the functions and powers of the Trust, in a manner that is consistent with other denominational trustee legislations¹².

Properties affected by the Trust

This is a significant difference to the 1998 version. Unlike the automatic vesting mechanism commonly appearing in a number of church property trust legislation that relates to all properties that immediately before the enactment of the relevant legislation are held on trust for a church by natural

¹¹ Clause 6 is in similar terms as clause 6 of the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994 (NSW)* and clause 10 of the *Coptic Orthodox Church (Victoria) Property Trust Act 2006 (Vic)*.

¹² Clause 7 reflects what is contained in clause 10 of the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994 (NSW)*. Similarly, the power for the Trust to make by-laws in clause 8 is consistent with section 11 of the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994 (NSW)* and clause 23 of the *Coptic Orthodox Church (NSW) Property Trust Act 1990 (NSW)*. The ability of the Trust to pool as one or more common fund trust funds held by it for different purposes or activities, reflects the provisions in section 10 of *Coptic Orthodox Church (NSW) Property Trust Act 1990 (NSW)*, section 15 of the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994 (NSW)* and section 9D of the *Roman Catholic Church Trust Property Act 1936 (NSW)*. Further, clause 13 dealing with co-operative use of property is on the same terms as clause 16 of the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994 (NSW)*, etc.

persons or incorporated bodies, the Bill solely deals with the four Diocesan Properties currently held by the three individual trustees on behalf of the Church, the details of which are listed in clause 17.

Clause 17 proposes that the four Diocesan properties be immediately divested from the current trustees and vested in the Trust, upon the enactment of the Bill. This is consistent with the terms of the trust on which these properties are currently held by the three individual trustees, His Eminence, Deputy Bishop Simonovski and Fr Gulev. Furthermore, it is consistent with the Statute of the Church (in particular Article 98.2 of the Statute) which provides that such appointed trustees are temporary trustees pending the enactment of statutory property trust for the Church.

A confirmation of their status as Church properties is confirmed by the provision of correspondence by the Diocesan Ruling Committee to NSW Parliament (enclosed at Annexure E), acknowledging that the properties listed in clause 17 of the Bill were acquired following, in each instance, a direction of the DRC pending the formation of a statutory trustee.

In addition, the management committees of the Church Communities and the Elder of the Monastery related to these four Diocesan Properties have also provided letters to the NSW Parliament (enclosed at Annexure E), confirming their understanding that the relevant land will vest in the Trust upon enactment under the applicable paragraph of clause 17(2) of the Bill.

Properties not affected by the Trust

No property, other than the four Diocesan properties, is affected by the Bill. The Bill does not contain any mandatory transfer of property nor is any person compelled to transfer any other property to the statutory trust. This is important as it is believed it will put at rest misconceptions held by some in the communities as to who has entitlement to properties of the Church, Church communities and properties of communities that are not within the spiritual jurisdiction of MOC.

The Bill however provides a procedure in clause 19 for any person who holds property on trust for the Church and wishes to transfer it to the Church, to provide consent to such transfer which will be effected only if the consent of the Metropolitan is also given. This reflects the requirements of any

usual conveyance where the consent of both parties to the transfer is required. Furthermore, an eligible transferee is a person who holds property on trust for the Church. Thus, a transfer to the Trust cannot be contemplated in circumstances where a proposed transferee does not first confirm or declare that the property it wishes to transfer is held on trust for the Church¹³.

This provides a further safeguard and comfort to the broader community not only that a transferee of property must consent to a transfer of its property to the Trust, but more importantly it must be holding such property on trust for the Church (as defined in the Bill) before it will be eligible to transfer.

Further, the Church Communities referred to in the correspondence in Annexure F, confirm that on enactment, properties referred to will be transferred to the Trust as properties of the Church.

Other provisions relevant to future transfers of property to the Trust

Clause 18 of the Bill provides that any gifts, dispositions or trusts of property that are made to the Bishop or any other person on behalf of the Church or to the Church after the enactment of the Bill will take effect as gifts, dispositions or trusts in favour of the Trust. This is a standard provision, common in other church property trust legislation, to ensure that any such gifts, dispositions or trusts do not fail as a result of the passing of the Bill¹⁴.

Clause 20 provides a procedure to ensure that the process of transfer of properties to the Trust is not unduly frustrated by the practical inability to obtain the consent of a current trustee of property

¹³ Refer to section 7 of the *Roman Catholic Trusts Corporation 1907 (Vic)*, which provides similarly as is proposed by the Bill that automatic vesting of property to the trust only apply to property which immediately prior to the passing of that legislation was held by the Bishop of the Roman Catholic Church in Victoria. However, under sections 8 and 10 of the Act, for all other property held by any other person on trust for that Church the consent of such trustee and its acceptance by the Trust is required before the property can vest in the Trust. Consequently, the process provided under clause 19 of the Bill is similar to the procedures for vesting and transfer of property prescribed under the *Roman Catholic Trusts Corporation 1907 (Vic)*. For completeness, it is noted that the vesting/transfer process in the *Roman Catholic Church Trust Property Act 1936 (NSW)* does not contain similar provisions as under this legislation all property within the relevant ecclesiastical jurisdiction automatically vested in the body corporate created under that Act.

¹⁴ This provision mirrors section 15 of the *Coptic Orthodox Church (Vic) Property Trust Act 2006 (Vic)*, and has the same effect as, for example, section 21 of the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994* or section 7 of the *Coptic Orthodox Church (NSW) Property Trust Act 1990 (NSW)*.

because a person has died, is absent or under any other disability¹⁵. This may arise in instances where say, a Church Community is desirous to transfer property to the Trust however one of three trustees holding the property of the Church Community has died and the relevant trust instrument does not deal with survivorship or another person that can act for that absent trustee.

Further submissions

The Church is aware that certain drafting improvements are required to the Bill, relating in particular to matters of jurisdiction. The Church will look forward to discussions with the relevant personnel at NSW Parliament.

¹⁵ Refer to sections 8 to 10 in the *Roman Catholic Trusts Corporation Act 1907 (Vic)*, on which clause 20 is modelled, with necessary variations as applicable to the Church.

PART FIVE
SUPPORT FOR THE BILL BY CHURCH COMMUNITIES, MONASTERIES AND OTHERS

The Church has long awaited the opportunity for the NSW Parliament to consider again the establishment of a statutory property trust for the Church. Resolutions have been passed on numerous occasions in the past by the Diocesan Assembly of the Church that steps be taken by the DRC to seek the enactment of legislation establishing a property trust that will hold the assets of the Church.

The Holy Synod has been informed of the current considerations and fully supports the attempts for the enactment of the Bill. Refer to Annexure H.

The various parts of the Church have also been kept informed of the progress of the legislative process in the NSW Parliament (refer to Annexure G), and significant support has been received by the clergy, Church Communities and Monasteries of the Church. Refer to Annexure H.

Support has also been received from various community organisations and parishioners. Refer to Annexures I and J.

The Church is aware that there are some in the Macedonian community that have signalled opposition to the Bill for various reasons. The Church draws attention to the fact that the Bill seeks the formation of a property trust to hold the property of the Church solely. It does not intend to seek to hold property of members the Macedonian community that oppose the Bill or any others.