

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

Organisation: Association of Macedonian Communities in Australia

Date Received: 23 August 2010

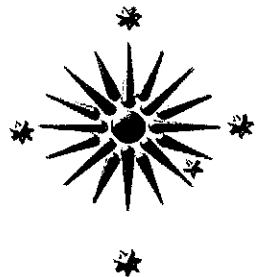
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Sections of this submission omitted by resolution of the Committee, 23 August 2010

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AMCA

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23 August 2010

Inquiry into the Macedonian Orthodox Church Property Trust Bill 2010

Submission to General Purpose Standing Committee No 3

The Association of Macedonian Communities in Australia Inc strongly opposes the Macedonian Orthodox Church Property Trust Bill 2010 and disputes the basic premises and purposes underlying its design.

The Bill represents an attack on the founding principles by which Macedonian Orthodox communities in Australia have been established, and have operated and accumulated assets since 1956. Those principles include freedom of religion, freedom of association, democratic, independent, and accountable self-government in the interest of the local Australian Macedonian Orthodox community, respect for general Australian law governing the registration and operation of non-profit and charitable organisations, and the right to preserve and promulgate the Macedonian ethnic heritage free of the repressive assimilation that Macedonians have been subjected to by state and church regimes in different parts of the Macedonian homeland for centuries.

ABOUT THE ASSOCIATION OF MACEDONIAN COMMUNITIES IN AUSTRALIA (AMCA)

The Association of Macedonian Communities in Australia (AMCA) is incorporated in South Australia. It is an affiliation of independent Macedonian ethnic community organisations from across Australia, including eight incorporated Macedonian communities, which, 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

All of the above churches, which are attended by tens of thousands of parishioners, were loosely affiliated to an unincorporated Macedonian Orthodox Diocese of Australia until bishop Petar Karevski was appointed as its clerical Head, by the Holy Synod of the Macedonian Orthodox Church in Macedonia (renamed on 12 November 2009 to "Macedonian Orthodox Church – Ohrid Archdiocese"), in 1996.

The fact that, under Clause 17 of the Bill, the only properties that are proposed to automatically vest in the new trustee corporation are those whose current legal owners are Petar Karevski (i.e. the bishop), Jovica Simonovski (a priest and the bishop's deputy) and Tone Gulev (a priest appointed by the bishop), suggests that none of the incorporated associations that operate churches which bishop Petar considers to be within his Diocese genuinely support the appropriation of community-funded church property envisaged by the Bill.

Historical structure and political context of the Macedonian Orthodox Church

1.1 The Bill is based on a misguided presumption that the Macedonian Orthodox Church is historically hierarchical in its management and control of property.

- 1.2 The Macedonian Orthodox churches in Australia, America and Canada, as well as the modern Macedonian Orthodox Church in the Republic of Macedonia, were established as self-governing, legally decentralized institutions by a grass-roots movement of the Macedonian Orthodox people. Their establishment was led by the Macedonian national independence movement, with the objective of freeing the Macedonian people from oppressive state and church regimes. The clerics who provided spiritual leadership in the establishment of self-governing Macedonian Orthodox churches did so in defiance of the clerical hierarchies by which they were ordained and under which they served until they broke away.
- 1.3 Prior to 1913, the Macedonian homeland was under the religiously and politically oppressive rule of the Ottoman Empire for five centuries. In the course of the 19th century, the Ottoman Empire, under international pressure, allowed the national Orthodox churches of neighbouring Bulgaria, Greece and Serbia to operate in various parts of Macedonia. The desire of indigenous Macedonians to have their own Macedonian Orthodox Church was not respected. Macedonians, most of whom were historically Orthodox Christians, could only choose between the Serbian, Greek or Bulgarian Orthodox church. The clerical hierarchies of these churches used their resources and influence to indoctrinate and assimilate the Macedonian people into the new Serbian, Greek or Bulgarian and national identities, as defined by their nation-states.
- 1.4 In the Balkan Wars of 1912/13, Macedonia was occupied and divided by Serbia, Greece and Bulgaria. All of these states denied the Macedonian people the right to self-determination and the right to preserve and promulgate their autochthonous Macedonian identity, culture, language and historical heritage. Serbia insisted that the Macedonian people are Serbs. Greece insisted that the Macedonians are Greeks. Bulgaria insisted that the Macedonians are Bulgarians. The national Orthodox Church of each of these states used its religious influence to promote these politically, culturally and ethnically oppressive policies.
- 1.5 The “Macedonian Orthodox Church – Ohrid Archdiocese” (MOC-OA) operates only in the part of Macedonia that was under Serbian rule between the Balkan Wars and WWII, and subsequently achieved the status of a federal Republic in the Yugoslav Federation of nations, before declaring independence in 1991.

Macedonians currently living within the borders of neighbouring Greece, Bulgaria, Serbia and Albania are not offered the opportunity to establish their own Macedonian Orthodox churches. They continue to be subjected to systematic national assimilation by the Serbian, Greek and Bulgarian Orthodox churches. The hierarchy of the MOC-OA is doing very little, if anything, to support them in achieving respect for their basic human rights. This is a key point of distinction between the MOC-OA in Macedonia and Macedonian Orthodox communities abroad, which are made up of Macedonian migrants from all parts of Macedonia.

1.6 The process of the establishment of the modern Macedonian Orthodox Church has been traced to a resolution by the Supreme Headquarters of the Macedonian People's Liberation Army and Partisan Divisions to appoint father Veljo Manchevski (a rebel priest originally ordained by the Serbian Orthodox Church) as its Religious Head, dated 15 October 1943.¹

1.7 The earliest recorded meetings of a Holy Synod and Church-people's Assembly of the Macedonian Orthodox Church occurred on 17-19 July 1943, without the presence or blessing of any bishop.²

1.8 The first Macedonian Church-people's Assembly acknowledged in the preamble to the current Constitution of the MOC-OA, held on 4 March 1945, was also held without the presence or blessing of any bishop. Among the resolutions of that Assembly were the following:

- “1. That the (medieval) Ohrid Archdiocese be renewed as a Macedonian independent church that will not be subservient to any other Church;**
- 2. That it shall have its own national bishops and its own national clergy as a guarantee of the preservation of its distinct national characteristics.”³**

¹ Prof. Dr. Cane Mojanoski, *The Autocephaly of the Macedonian Orthodox Church (Documents)*, Makedonska Iskra, Skopje 2004, p. 10.

² As above, p. 11.

³ As above.

1.9 A subsequent Assembly of Macedonian Priests, held in May 1946, resolved:

“1. That the Church in the People’s Republic of Macedonia have national bishops, national clergy and self-government in the resolution of all internal church-people’s matters.

2. That bishops be elected by the people and the priests.”

1.10 The Macedonian Orthodox Church in the Republic of Macedonia operated without any bishops and without recognition by any other Orthodox Church hierarchy from at least 1943 to 1958. During that time, its legitimacy as an Orthodox Church was disputed by the hierarchy of the Serbian Orthodox Church within Yugoslavia, as well as by other Orthodox Church hierarchies.

1.11 On 4-6 October 1958, a Macedonian Church-people's Assembly held in Ohrid Macedonia adopted a Constitution for the establishment of an autonomous Macedonian Orthodox Church, which would be in canonical unity with the Serbian Orthodox Church, and have bishops approved by the Serbian Orthodox Patriarch. On 17 July 1967, an Archiepiscopal Church-people's Assembly of the Macedonian Orthodox Church declared autocephaly, that is, complete independence from the Serbian Orthodox Church.

1.12 Article 4 of the foundational constitution of the Macedonian Orthodox Church makes it clear that it was conceived as a decentralised affiliation of various legal entities, each of which was to be independent in the legal ownership and control of its property:

“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."

1.13 The definition of local church communities as separate legal persons remains a part of the Constitution of the MOC-OA to this day. However, Article 172 of the current version of the Constitution, which was passed in 1994, ambiguously attempts to subvert the right of individual church communities to independently determine how they will use their properties, by providing that they accumulate their properties **"for the Church"** and manage them **"in accordance with this Constitution and church regulations, which are passed on the basis of this Constitution."** This provision was introduced in Macedonia without the free and democratic consent of the members of individual Macedonian Orthodox church communities in Australia, America, Canada and Western Europe. Most of those communities continue to rely on the democratic constitutions and legislation and regulations by which they are incorporated in their new homelands.

1.14 The establishment of a self-governing Macedonian Orthodox Church in Australia dates back to 1956, that is even before the official declaration of an autonomous Macedonian Orthodox Church in 1958, when the Macedonian Orthodox Community of Melbourne and Victoria democratically elected its first church committee and bought the property on which it built the church of St. George.⁴ A majority of the members and leaders of that Community were and still are Macedonians originating from the part of Macedonia under Greek state rule. There was no Macedonian Episcopal hierarchy operating in any part of the Macedonian homeland in 1956. The only Episcopal hierarchies operating in parts of Macedonia were the Greek Orthodox Church (in the parts of Macedonia under Greek and Albanian state rule), and the Bulgarian Orthodox Church (in the part of Macedonia under Bulgarian state rule). Both of those Church hierarchies, along with the Serbian and other non-Macedonian Orthodox Church hierarchies, had branches in Australia. A key motivation of the Macedonian Orthodox

⁴ Peter Hill, "The Macedonians in Australia", Hesperian Press, 1989, p. 89.

Community of Melbourne and Victoria was not to be under their jurisdiction and to remain legally independent.

1.15 Article 75 of the Community's foundational 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."** There was no reference at all in the constitution to any specific Orthodox Church's hierarchy.⁵

1.16 When an administratively autonomous Macedonian Orthodox Church was subsequently established in the Republic of Macedonia, under the canonical jurisdiction of the Serbian Orthodox Patriarch, in 1958, its bishops accepted the St. George church as the first Macedonian Orthodox parish outside of Macedonia.⁶ However, the Macedonian Orthodox Community of Melbourne and Victoria, with its parish, retained its self-governing status. It did not make any amendments to its constitution that would legally bind it to the autonomous Macedonian Orthodox Church in the Macedonian Republic.

1.17 The foundation stone for the St. George church was laid on 2nd August 1959, blessed by a priest of the Syrian Orthodox Church, father George Haydar. The church was consecrated on 1st August 1960, by a bishop and priest from Macedonia. Its first parish priest was also from Macedonia, but it never accepted the jurisdiction of the Serbian Patriarch, even though the Church in Macedonia was under his canonical jurisdiction until 1967.⁷

1.18 All other Macedonian Orthodox communities and churches established in Australia prior to bishop Petar's arrival in 1996 followed the independent self-governing model of the Macedonian Orthodox Community of Melbourne of Victoria, with respect to property ownership and control. However, some of them, like the Macedonian Orthodox Church Community "St. Petka" Inc and Macedonian Orthodox Church Community "St. Nikola" in Preston Victoria adopted constitutions that put them under the canonical jurisdiction of the Macedonian Orthodox Church in Macedonia for what the founders thought would be only spiritual, rather than material purposes. Communities that accepted

⁵ As above.

⁶ As above.

⁷ As above.

such provisions, without an understanding of the potential implications under trust law, ultimately became the targets of extremely costly and complex legal proceedings by bishop Petar, in his attempt to put their properties under the absolute and unaccountable control of himself or his appointees.

1.19 In 1996, having been freshly appointed by the Synod of the MOC-OA in the Republic of Macedonia to head its Australian Diocese, bishop Petar tried and failed to persuade existing Macedonian Orthodox communities in Australia to accept a new Diocesan Statute and By-Laws that would give him absolute and unchecked control over their funds, assets and appointment of office-bearers and delegates to his Diocesan Assembly. He then resorted to legal action, which led to claims of property having been held on trust for the MOC-OA that were previously unheard of.

1.20 The founders of the St. Nikola Community in Preston Victoria were the first to be sued. They promptly lost the proceedings due to inability to afford effective legal representation. They lost much of their own property, including homes, on legal costs. That is what they remember as the bishop's and the MOC-OA's show of appreciation for their countless voluntary hours in the establishment of the St. Nikola church.

1.20 The court victory against the St. Nikola Community emboldened the bishop to sue the MOCC St. Petka Inc in Rockdale NSW. Those proceedings have been on foot for 14 years now and the Community is severely struggling to afford effective legal representation. Bishop Petar's source of funds for his legal expenses in the ongoing proceedings remains undisclosed.

Contemporary political hostility surrounding the Macedonian Orthodox Church

2.1 The Serbian Orthodox Church disputes the autocephalous status of the Macedonian Orthodox Church on the basis that it broke away without approval from the Serbian Patriarchy and that it is a non-canonical, 'communist' creation. The hierarchy of the Serbian Church has also maintained the hostile nationalist position that the Macedonian people are historically Serbs. Other Orthodox Church hierarchies have either actively supported or otherwise appeased the position taken by the Serbian Orthodox Church. Orthodox Macedonians

worldwide find this position to be a violation of their right to freedom of religion, freedom of association and freedom to preserve and promulgate their distinct ethnic, cultural and linguistic heritage and identity.

2.2 Bishop Petar is one of several modern bishops in Macedonia who have a history of supporting the Serbian position on the independence of the Macedonian Orthodox Church. On 7 May 2002, he led a delegation of three Macedonian bishops who signed an agreement with the Serbian Orthodox Church to the effect that the "Church in Macedonia" would relinquish its Macedonian national identity, adopt the name Ohrid Archdiocese and come under jurisdiction of the Serbian Patriarch. Numerous sources suggest that a majority of bishops in the Holy Synod of the MOC were prepared to ratify that agreement, but backed off due to vehement opposition by bishop Kiril, bishop Agatangel, some lower ranking clerics, and overwhelming public revolt and political pressure within the Republic of Macedonia. Given the political volatility in the Republic of Macedonia, this position could easily change, against the will of Macedonian Orthodox Australians.

2.3 Despite the positions taken by bishop Petar and other Orthodox Church hierarchies, most Orthodox Macedonians are proud of the self-determination and the commitment to democratic, decentralised and transparent self-government that led to the establishment of independent Macedonian Orthodox churches in the Republic of Macedonia and Australia, as well as in America, Canada and Western Europe.

Lack of accountability and potential for abuse of power

3.1 If passed, the Bill will give absolute, unfettered, non-transparent and unaccountable control over Macedonian Orthodox churches and related properties in Australia to bishop Petar. It will thereby disenfranchise thousands of Macedonian Orthodox Australians who have contributed to the accumulation of those properties on the premise that they would be used for their communities' benefit and in accordance with well-established democratic processes and financial checks and balances.

The explicit purpose of the Bill is to vest all rights over Macedonian Orthodox churches and related properties in Australia to a new corporation. According to

Clause 5, that corporation will consist of the “Metropolitan” (the bishop), seven persons who will be directly appointed by the bishop, and three office-bearers of his Diocese, who by virtue of the practical operation of the Diocesan Statute are also selected by the bishop. The effect of this is that all of the powers of the new corporation will be ultimately vested in the bishop.

It is our understanding that no democratically governed Macedonian Orthodox community organisation in Australia supports the establishment of despotic power over church and related properties envisaged by this Bill. To the extent that Parliament has received supportive submissions purporting to represent relevant organisations of the Australian Macedonian Orthodox community, we urge the Inquiry to examine the validity of such representations most rigorously.

3.4 We dispute the claim in the Second Reading that **“the bill follows the governance of the church in relation to matters regarding the assets of the church but causes the utilization of property assets by the church to be subject to civil and canonical accountability required by its statute.”**

3.5 It is misleading to say that the Bill will establish a **“statutory body, the constitution of which cannot be changed except by an Act of Parliament.”**

The Bill relies on the Diocesan Statute for constitutional provisions concerning civil and canonical accountability. But there is no provision in the Bill requiring an Act of Parliament to effect changes to the Diocesan Statute i.e. constitution. We question whether Members of the NSW Parliament, including Reverend the Hon. Fred Nile, have ever analysed the Diocesan Statute, or the Constitution of the MOC-OA to which the operation of the Diocesan Statute is allegedly subject, let alone considered the extent to which bishop Petar respects and implements them.

- 3.6 The Diocesan Statute applied by bishop Petar provides no effective mechanism for delegates who purportedly represent local Macedonian Orthodox community churches in the Diocesan Assembly to hold the bishop accountable in relation to appropriation of Diocesan assets and funds.
- 3.7 The Diocesan Statute effectively gives the bishop absolute and unfettered personal control over all matters concerning the Diocese and churches and church communities within the Diocese.

⁸ See Macedonian language interview with bishop Timotey, by Miroslav Spirovski, in 'Nova Makedonija', 3 February 1998.

- 3.13 A resolution by the Diocesan Assembly dated 24/9/2004, and proposed by Bishop Petar, made the following offer to three of the fourteen Macedonian Orthodox communities that were until that time rejected as “non-churches” by the bishop on the basis that an incorporated association or company could not be a church or hold church property:

“...to join the Macedonian Orthodox Church Diocese of Australia and New Zealand, if they accept the Holy canons, the Constitution of the Macedonian Orthodox Church and the Statute of the Diocese, as basic church law acts, according to which all Macedonian Orthodox Church Communities, Churches, Parishes and Monasteries in the MOC, and the Diocese of Australia and New Zealand, which have accepted and recognize the canonical jurisdiction of the MOC, are governed.

Also, the abovementioned Macedonian Orthodox Church Communities are obliged to abolish the registration of the so-called Macedonian Orthodox Church of Australia Inc.

The above-mentioned Macedonian Orthodox Church Communities, which separated and excommunicated themselves from the MOC Diocese of Australia and New Zealand, only to avoid transferring their churches and church properties to the MOC, may continue in future to hold the churches with their properties as company property, and to still be in unity with the MOC, but in that case, their elected members (parishioners) will not be able to vote and to be elected (and to participate) in the bodies and organs of the Macedonian Orthodox Church Diocese of Australia and New Zealand, as well as in the Archiepiscopal Management Committee and the Archiepiscopal Church-people’s Assembly, up until such time as they pass a resolution that they accept the Macedonian Orthodox Church Property Trust Bill [1998].

Apart from the abovementioned, they are obliged to fulfil their financial obligations to the Macedonian Orthodox Church Diocese of Australia and New Zealand for the period up to their separation from the MOC, as well as to withdraw their legal [defamation] proceedings against the Diocesan Ruling Committee."

**Power to place Macedonian Orthodox church properties in Australia under the
jurisdiction of another denomination**

- 4.1 If this Bill is passed, it will empower bishop Petar and other present or future like-minded bishops of the MOC-OA to place Macedonian Orthodox church properties in Australia under the jurisdiction of the Serbian Orthodox church or another denomination, contrary to the free will of Macedonian Orthodox Australians with whose contributions those properties were accumulated. There is nothing in this bill to protect the free will of Macedonian Orthodox Australians against such a decision being imposed by the unaccountable hierarchy of the MOC-OA in Macedonia.
- 4.2 The variation of trust provisions in **Clause 14** of the Bill give the bishop and his appointees a discretionary power to declare that the trust property is subject to another trust. This will effectively allow the bishop to wilfully place Macedonian Orthodox Church properties in Australia on trust for the purposes of the Serbian Orthodox Church or some other purposes that are contrary to the intentions of the donors with whose contributions those properties were accumulated.
- 4.3 There is nothing in the Bill that would require the bishop to obtain the consent of the Archiepiscopal Church-people's Assembly and Holy Synod of the MOC-OA before placing Macedonian Orthodox Church properties in Australia under another trust.
- 4.4 The provision in **Clause 13** for arrangements for **other** churches to use trust property will allow the bishop and his appointees to use Macedonian Orthodox Church properties for services of the Serbian Orthodox Church or some other religion, contrary to the intentions of the donors with whose contributions those properties were accumulated.
- 4.5 There is nothing in the Bill that would require the bishop to obtain the consent of the Archiepiscopal Church-people's Assembly and Holy Synod of the MOC-OA before using Macedonian Orthodox Church properties for the purposes of another denomination.
- 4.6

Special powers and protections for trustees and reduced safeguards against neglect of implied intentions of donors

- 5.1 The Bill unjustifiably affords bishop Petar's trustee corporation special powers or protections that are not generally afforded to trustees. Macedonian Orthodox Australians whose donations have been used to accumulate and maintain properties that would come under the new trustee corporation will not be entitled to the legal assurances that other donors to trusts can generally rely on.
- 5.2 We refer to the published submission to this inquiry by Mark Leeming SC, in which he suggests that **Clause 13** has the potential to operate retrospectively. According to Mr Leeming, **"A person who gave property to the predecessors of the Trust on terms that it be used for the purposes of the Church, but which terms did not expressly prevent its use by another denomination, would be affected by cl. 13 if the Trust entered into a scheme of co-operation with another denomination. Generally speaking, retrospective legislation should be avoided absent some special reasons."** We see no special reasons why this bishop and his trustee corporation should have the benefit of retrospective legislation, with disregard for the intentions of Macedonian Orthodox Australians who have contributed to the accumulation and maintenance of affected properties.
- 5.3 In relation to **Clause 14**, Mr Leeming suggests that it may impliedly repeal the Charitable Trusts Act 1993, ss6 and 12-16. There is no public interest to be served in allowing this bishop and his proposed trustee corporation to be exempt from the operation of any provisions of the Charitable Trust Act 1993. The potential exemption would be unfair to Macedonian Orthodox Australians who have voluntarily contributed to the accumulation and maintenance of affected properties without notice that such properties could be placed on trust for the Serbian Orthodox Church or some other denomination.
- 5.4 We also refer to Mr Leeming's submission in relation to **Clause 32**, which entitles trustees and executors of trust property to be indemnified out of trust property for certain expenses and liabilities, in a way that is **"typical of the protection afforded to statutory officeholders."** We object to the Bill making the liability of any trustee less strict than it would otherwise be pursuant to s. 85 of the Trustee Act.

5.5 Since 1996, the Macedonian Orthodox Church Community “St. Petka” Inc has been forced to spend hundreds of thousands of dollars and immeasurable human resources on defending legal proceedings by bishop Petar, in which he seeks to advantageously interpret and enforce the terms of the trust on which St. Petka’s property was originally acquired.

Clause 19 and potential effect on community organisations whose properties are not listed in Clause 17 (2)

6.1 We dispute the claim that this Bill doesn’t affect Macedonian Orthodox communities that are opposed to it. We are aware that the Bill “does not effect any **automatic** vesting, **mandatory or compulsory** transfers of any properties to the trust” other than those listed in **Clause 17 (2)**. However, **Clause 19** provides a process for “vesting of **other** property held on trust for the Church”.

6.2 The ‘Church’ is defined in **Clause 3** 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.” *Since 12 November 2009, the*

name of the Church in the Republic of Macedonia is "Macedonian Orthodox Church – Ohrid Archdiocese" (MOC-OA).

6.3 We reject as unsubstantiated and misleading the presumption that Macedonian Orthodox churches and related properties in Australia other than those listed in **Clause 17 (2)** are held on trust for the Diocese or for the MOC-OA.

6.4 In his Second Reading speech for this Bill, the Reverend Hon. Fred Nile claims that **"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 monastery."** None of the Macedonian Orthodox churches and related properties that were acquired and developed in Australia between the 1960s until 1995 were accumulated by Bishop Petar's Diocese, by the MOC-OA, or by any trustees acting on their behalf. All such properties were accumulated by self-governing Macedonian Australian communities.

6.5 Given that none of the properties listed in clause **17 (2)** of the Bill were accumulated in the 1960s or at any time before 1995, Reverend Nile's reference to landholdings accumulated since the 1960s indicates that this Bill is in fact primarily intended to affect existing Macedonian Orthodox communities whose properties are not specifically identified in the Bill.

6.6 **Clause 19** provides for transfer to the new corporation of property **"held on trust for the Church on or after the date of commencement by any person or persons"**.

6.7

The Parliament has been misled about the Diocesan Statute

7.1 the Parliament have been misled into believing that the Diocesan Statute has been passed by a Diocesan Assembly, and authorised and certified by the Archbishopric Church and Lay Assembly (more accurately translated as “Archiepiscopal Church-people’s Assembly”) on 24 February 1996” (see the definition of “Diocesan Statute” in Clause 3 of the Bill).

7.2 A majority of the associations whose delegates are supposed to comprise the Diocesan Assembly and whose churches the Diocesan Statute purports to affect have never approved it in its current or any other final form. They have not approved the Statute at general meetings of their members or amended their own constitutions or relinquished ownership of their properties to comply with the despotic rule provided for by the Statute.

7.3 According to article 190 of the Constitution of the MOC-OA:

The composition of the Diocesan Assembly, as well as the organisation of the Diocesan bodies and organs of the dioceses of the MOC outside of the territory of Macedonia, are regulated by a separate statute, which, in accordance with the provisions of this Constitution,

is passed by the Diocesan Assembly, after a previously provided opinion by the Holy Synod of the MOC, in plenary composition, and is approved by the Archiepiscopal Church-people's Assembly.

7.4

8.1 The substance of this Bill does not enjoy informed support even among the parishioners of the churches listed in Clause 17 (2) or within the highest governing bodies in the MOC-OA, including its Archiepiscopal Church-people's Assembly and the Holy Bishop's Synod.

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⁹ Македонската црква е најстара православна црква меѓу сите словенски православни цркви, *Утрински Весник* бр. 933, 4-8-2002.

8.9 The Australian Securities & Investments Commission's public database of corporate and business names lists the "Macedonian Orthodox Archdiocese of Australia and New Zealand Incorporated" as an association incorporated in NSW, under number INC9882840. Unfortunately, the database does not include names of office-bearers and we have had no opportunity to make further inquiries prior to this submission.

8.10 In promoting this Bill on a Macedonian language radio interview in Melbourne, on 15 August 2010, bishop Petar stated (in Macedonian):

"...once that property is under a trustee, there is no legal possibility for anybody to abuse that property because if I as an individual do anything at all that would place me in a situation where legal proceedings are conducted against me, the legal dispute will automatically be conducted against me as a person who does not at all touch the property of which I am a trustee.

That means that I can be held accountable with my personal property if any court proceedings are commenced against me, or if I

am fined. The property is separate from the trustee as a personality and is thereby completely protected.

In the alternative case, if we have persons who are in an incorporated association or in companies then those persons are protected as members of that incorporated association or company and when you sue that person he will say: 'Not me. They are suing because I am a member of that incorporated association or company, and I am protected, and that association or company will be in dispute with the person who is suing me,' and in that case the incorporated association or company pays for every breach that he has personally committed."

The Bill conflicts with existing Government policy – Similarity to Macedonian Orthodox Trust Bill 2008

9.1 This Bill is substantially similar to the Macedonian Orthodox Church Property Trust Bill 1998, which was introduced by the Government, under the false belief that it enjoyed broad support from the Macedonian Orthodox community in NSW. In response to objections to that Government Bill, we received a letter from the **Hon Morris Iemma MP, on behalf of the then Premier of NSW**, dated 26 May 1999, in which we were assured as follows:

“Following introduction of the Bill, the Government was advised that some Macedonian Orthodox community organisations held concerns about the Bill and that members of the Macedonian Orthodox community are currently involved in a Supreme Court action to this matter.

In light of this court action and the concerns expressed by community members the NSW Government will take no further action to proceed with the Bill until the Supreme Court action has been resolved. The Attorney General has also assured me that his Department will continue to liaise with the Macedonian Orthodox community to establish the level of support for the Bill prior to any re-introduction.”

- 9.2 The Supreme Court proceedings referred to above have not yet been resolved. There have been no attempts by the Attorney General's Department to liaise with us regarding support for the reintroduction of legislation similar to the 1998 Bill. Bishop Petar's contested claim that the properties of the Macedonian Orthodox Church Community "St. Petka" Inc were accumulated and are held in trust for the MOC-OA is the most fundamental matter in the ongoing Supreme Court proceedings, and pending appeals to existing rulings. These proceedings have cost the local Macedonian Australian community millions of dollars in legal fees, ancillary expenses and lost income. They have resulted in the parishioners of the St. Petka church in Rockdale being denied the services of a priest for almost 7 years now, due to interim rulings that this bishop has an exclusive right to appoint a priest

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In an interview conducted on 3 January 2008, posted on the official MOC-OA website, Bishop Naum was asked: **What do you think, when will the situation with the property of the MOC in Australia be solved?**

He answered:

First peace must reign between the faithful in the Australia and New Zealand Diocese of the MOC, and that will occur when one or perhaps even two new bishops are appointed as the authorized prelates, behind whose work will stand a united Holy Synod of the Macedonian Orthodox Church.

For us, in Australia, there occurred a failure of the stages of solving the problems. The problems must first be solved on a spiritual level, and only after that on the material level. The problems must first be solved by prayer, in our heart, and only then outside of us. The church above all is its people, only after come its buildings.¹⁰

¹⁰ <http://www.mpc.org.mk/MPC/SE/vest.asp?id=2604>

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