

INQUIRY INTO THE MACEDONIAN ORTHODOX CHURCH PROPERTY TRUST BILL 2010

Organisation: Macedonian Orthodox Church Diocese of Sydney and New Zealand

Date Received: 20 September 2010

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

Date received: 20/09/2010

**SUPPLEMENTARY SUBMISSION TO
THE NSW LEGISLATIVE COUNCIL**

GENERAL PURPOSE STANDING COMMITTEE NO. 3

**responding to questions taken on notice at Public Hearing on
23 August 2010 and additional questions on notice and responding to
various matters raised in other submissions**

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

**FOR THE MACEDONIAN ORTHODOX CHURCH DIOCESE OF
AUSTRALIA AND NEW ZEALAND**

17 September 2010

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1. **PART ONE AMENDMENTS TO THE BILL**

1.1 **First Print of the Macedonian Orthodox Church Property Trust Bill 2010**

This part of the submission sets out the Church's suggested amendments to the first print of the Bill as introduced in Parliament on 10 June 2010.

It is noted that the references throughout this submission to the **Church** are references to the Macedonian Orthodox Church Diocese of Australia and New Zealand, as that term is defined in the Bill.

For your Committee's information, it is noted that the writers of this submission had some discussions with the NSW Department of Justice following the introduction of the first print of the Bill in Parliament, regarding required improvements and amendments to the Bill, as we understand is usually the process when drafting and settling new legislation. However, owing to the referral of the Bill to the present Committee's inquiry, those discussions with the Department of Justice have not been progressed.

It is emphasised that the suggested amendments to the Bill represent the Church's efforts and good will in arriving at a version that will satisfy and address all concerns of the Committee, and consequently the NSW Parliament when considering the enactment of the Bill, but also matters that have been raised in various submissions to the Committee in relation to the Bill.

Enclosed at **Annexure A** of this submission is a copy of the Bill showing the suggested amendments as marked-up changes, which are explained in the paragraphs that follow.

1.2 **Definitions**

(a) **Church**

The definition of "**Church**" has been amended to state the correct and official name of the universal Macedonian Orthodox Church, being "Macedonian Orthodox Church – Ohrid Archbishopric" of

which the Diocese of Australia and New Zealand is an integral part. It is believed that the amendments to this definition address all concerns raised in a number of submissions in respect of the description of the universal Macedonian Orthodox Church.

(b) **Trust and trustee**

The references to “**Trust**” and “trustee” have been replaced with “**Corporation**” and “**member**”, respectively. To this end, we note that Mr Leeming SC in his initial submission to the Committee confirms that there is no obstacle to the Parliament creating a corporation and calling it a trust. At the public hearing of 23 August 2010 some discussion was had as to the adequacy of applying the term “Trust” as the name of a corporation formed under the Bill and the use of the term “trustee” by reference to the members of the corporate body, when indeed the corporation is the entity that will act as trustee rather than its individual members. This was raised, notwithstanding and acknowledging that this nomenclature is adopted as convention in many other similar church Acts. In order to achieve clarity, it is suggested that the name of the statutory body include the word “corporation” so as to state “Macedonian Orthodox Church Property Trust Corporation” and defined simply as “Corporation”. Further, it is suggested that members of the Corporation be referred to as “members” rather than trustees.

We note that in suggesting the above amendments, we followed the practice utilised by the Catholic Church in Australia whereby legislation in the various States and Territories provides facility for a Diocese to, upon notifying the Attorney General, bring into existence a statutory corporation to act as a trustee for the Church in the relevant Diocese. The most common name of such statutory body is “The Roman Catholic Trust Corporation for the Diocese of ...”.

(c) **property and trust property**

A new definition of “**property**” has been inserted to clarify the meaning of that term as used in the definition of “**trust property**” as well as throughout the Bill.

The above amendment has been modelled on the definitions of these terms in the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994*, which similarly as in the present case applies to a single Archdiocese on the territory of Australia and the statutory body acts as trustee for property within and outside the boundaries of the State of New South Wales.

(d) Other

The deletion of the definitions of “**date of commencement**” and “**relevant transfer date**” are consequential amendments as a result of deleting Part 3 of the Bill, as is explained in paragraph 1.6 below.

1.3 Extraterritorial application (clause 4)

It is suggested that this clause be deleted as a consequence of the deletion of the vesting provisions in Part 3, as is explained in paragraph 1.6 below.

We are not aware that any other similar church Act contains such provision. It is our understanding that clause 4 was inserted in the Bill as a saving provision, to affirm the intended extraterritorial application of the Bill in respect of the vesting of properties situated outside the State of New South Wales and imposes, as Mr Leeming SC says in his initial submission at paragraph 9, a personal obligation to effect registration of property in the name of the Corporation should such extraterritorial vesting be outside the legislative competence of the NSW Parliament.

Therefore, upon deletion of the vesting provisions in Part 3 of the Bill, it is considered that clause 4 is made redundant and therefore should be deleted.

1.4 Arrangements for other churches to use trust property (clause 13)

Mr Leeming SC in his initial submission (at paragraphs 11 to 13) identifies certain drafting issues in relation to this clause. This provision is in a standard, unamended form contained in a number of other church Acts.¹

The Association of Macedonian Communities in Australia Inc in its submission and at the public hearing strongly opposed the inclusion of clause 13 in the Bill, for the fear that it will give the Bishop an unfettered power to allow properties of the Macedonian Orthodox Church to be utilised for the services of the Serbian Orthodox Church or some other religion, without first obtaining the consent of the Archiepiscopal Church-People's Assembly and the Holy Synod of the Macedonian Orthodox Church. The Church confirms that this is not the intention and to provide full assurances to all those that are concerned that this clause may allow the Church the utilisation of properties as is suggested above, it proposes deletion of the clause.

1.5 Variation of trusts (clause 14)

Mr Leeming SC in his initial submission (at paragraph 14) questions the operation of this clause in light of relevant provisions of the *Charitable Trusts Act 1993*. Similarly as clause 13, this provision is in a standard, unamended form contained in a number of other church Acts². Senior Counsel queries whether the effect of section 14 is to impliedly repeal the *Charitable Trusts Act 1993*. We consider

¹ section 10 *Antiochian Orthodox Church Property Trust Act 1993 (NSW)*, section 13 *Christian Israelite Church Property Trust Act 2007 (NSW)*, section 11 *Coptic Orthodox Church (NSW) Property Trust Act 1990 (NSW)*, section 9 *Holy Apostolic Catholic Assyrian Church of the East Property Trust Act 1992 (NSW)*; section 11 *Methodist Church of Samoa in Australia Property Trust Act 1998 (NSW)*, section 32B *Anglican Church of Australia Trust Property Act 1917 (NSW)*

² section 17 *Roman Catholic Church Communities' Lands Act 1942 (NSW)*; section 9C *Roman Catholic Church Trust Property Act 1936 (NSW)*; section 11 *Antiochian Orthodox Church Property Trust Act 1993 (NSW)*, section 14 *Christian Israelite Church Property Trust Act 2007 (NSW)*, section 12 *Coptic Orthodox Church (NSW) Property Trust Act 1990 (NSW)*, section 10 *Holy Apostolic Catholic Assyrian Church of the East Property Trust Act 1992 (NSW)*; section 12 *Methodist Church of Samoa in Australia Property Trust Act 1998 (NSW)*, section 32 *Anglican Church of Australia Trust Property Act 1917 (NSW)*

that this is arguably not the case, as clause 4(3) of the *Charitable Trusts Act 1993* provides that that Act does not apply to the exclusion of the provisions of any other Act relating to charitable trusts.

The Association of Macedonian Communities in Australia Inc in its submission and at the public hearing strongly opposed the inclusion of clause 14 in the Bill, for the fear that it will give the Bishop and his appointees an unfettered power to declare that the trust property is subject to another trust and wilfully place the Macedonian Orthodox Church properties in Australia on trust for the purposes of the Serbian Orthodox Church or some other purposes, contrary to the intentions of the donors with whose contributions the properties were accumulated. Without going into detail to rebut these allegations, the Church confirms that such variation of trusts is not the intention and to provide full assurances to all those that are concerned that this clause may allow the Church the variation of trusts as suggested above, it proposes deletion of the clause.

1.6 Part 3 Vesting of property in Trust

The potential constitutional and jurisdictional issue that may arise for the New South Wales Parliament as a result of the proposed vesting of property located in and outside the State of New South Wales under clause 17, has been raised in many submissions (including those of Mr Leeming SC, the Hon Tony Kelly MLC, the NSW Government etc) and discussed at some length at the public hearing of 23 August 2010.

As discussed with the Committee at the public hearing, it is suggested that clause 17 be deleted, with a view of ensuring that the above mentioned issues do not arise. The option of retaining the Liverpool property in section 17 was also raised at the public hearing, however we consider that removing all references to automatic vesting will result in simplified drafting as it will cause consequential removal of many other provisions which deal with vesting. In addition, and more importantly, it is apparent from the opposition to the Bill that the main concerns relate to control (or relinquishing of it) over property and income of community organisations which feel threatened by the enactment of the Bill. For this reason, and again, to provide full assurances to all persons concerned that the Bill will have

the effect of somehow overtaking (directly or indirectly, voluntarily or forcefully) of property owned by Macedonian community organisations, the Church suggests that in addition to the vesting provisions, all other references to procedures by which properties may become subject to the Bill in future, be deleted. Therefore, it is suggested that clauses 18 to 24 be deleted.

The intention of the Church is that the process to develop the Bill has and will continue to be inclusive of the comments and aspirations of its community and those others that would wish to support it.

This course of action has been chosen in an attempt to show to those that oppose the Bill that the objectives of the Church are confined to dealings with the communities that demonstrably support it and that those that are opposed need not be concerned that their or any other properties are sought after.

Therefore, these suggested amendments propose that the Bill constitute a statutory corporation dedicated to act as the trustee of the Church without reference to identified property. This will mean that properties to be included in the future will be as a result of agreements between relevant parties. Accordingly, it is suggested that the only clause to be retained in this part is the one which relates to relief from stamp duty assessable on dutiable transactions that parties to any agreement wish to implement (clause 25). Clause 22 of the Bill provides stamp duty relief in respect of property that vests under Part 3 (and this will no longer be necessary if clause 17 is deleted), whereas clause 25 deals with stamp duty relief on future transfers of property to the Corporation from a person or body that holds that property on behalf of a parish or community of the Church. This clause is modelled on clause 21A of the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994 (NSW)*, which was inserted by a subsequent amendment to this Act to improve efficiencies in stamping of transfer instruments. The Second Reading Speech of the amending Act provides the rationale for why this provision was necessary to be explicitly included in the legislation³.

³ <http://www.parliament.nsw.gov.au/Prod/parlment/hansart.nsf/V3Key/LC20060329034>

We note that the Church agrees to an amendment of clause 25 (now 14) in accordance with the suggestion in the submission of the NSW Government that the word “conveyance” be replaced with “dutiable transaction”.

1.7 Part 4 Miscellaneous

Clause 29(2) is suggested to be deleted as a consequence of a deletion of the vesting provisions.

2. PART TWO QUESTIONS TAKEN ON NOTICE

2.1 Page 19 of the Transcript – Dr John Kaye

Just to go to the idea of deleting section 17 of the Act, which is really the source of the extraterritorial problem, section 17(2 (a) we do not really need because we know that, as in the case of all of them, the proprietors of these particular properties would be interested in making then transfer anyway. Can I take you to section 17(3)? Is it your opinion that we still need section 17(3)? Section 17(3) refers to the trust being taken to be successor in law of the Bishop and two other names priests.

It is proposed that the whole of clause 17 be deleted from the Bill. Please refer to explanation and analysis in paragraph 1.6 above.

2.2 Page 19 of the Transcript - Dr John Kaye:

Can I ask about private international law aspects of that? I am not an expert on private international law, obviously, but will the advice you give to us cover the issue of private international law aspects?

The provisions that made reference to private international law (being clauses 4 and 17) have now been proposed to be deleted.

For completeness, we note that private international law, or conflict of laws, is a set of rules which amongst other things addresses questions of 1) in which legal jurisdiction may a case be heard and 2) the law concerning which jurisdiction(s) apply to a given dispute. Thus, in cases where not all facts are linked to a single jurisdiction, courts will apply the principles of private international law to determine which legal system and the law of which jurisdiction will apply to the issues in the case.

The effect of clause 4, and in particular clause 4(2), is for the operation of the Bill (when enacted) to prevail in relation to things, acts, transactions and matters wherever situated, done, entered or occurring even if the rules of private international law would require the application of law other than the provisions of the Bill. On our review, no other church property trust legislation contains a similar

provision and we consider that to avoid any confusion and inadvertent jurisdictional or constitutional questions as to the legislative competence of the NSW Parliament in this regard, such references should be deleted.

Consequently, by virtue of section 118 of the Constitution of Australia, full faith and credit shall be given, throughout the Commonwealth, to the Bill thus accepting that the Corporation has come into existence and it will be accepted as a statutory corporation with the functions set out in the Bill in all other states in Australia. However, whilst this would mean that the Corporation may hold property in and outside the State of New South Wales, the dealings of the Corporation in property and other transactions outside the boundaries of the State of New South Wales will be subject to the laws of the relevant State or Territory. Further, the principles of private international law will apply and govern transactions relating to cross-border dealings.

2.3 Page 19 of the Transcript - Dr John Kaye

You will get back to us with your review of how this can be drafted to do that?

Refer to answer in paragraph 2.2.

2.4 Page 23 of the Transcript - Chair

...Leaving that aside for the moment, to my mind as a simple suburban lawyer I understand the concept of a trustee, the trust and, ultimately, a beneficiary in accordance with the terms and conditions of the instrument of trust that was created. The reality here, as I see it, is that if you were to remove the words “the trustee” and use “the church”, once property is transferred from the existing holders, the registered proprietors, to the new corporate entity created by this bill, the property will remain with that entity and will be dealt with by that entity in accordance with the terms and conditions of the instrument, not subject to some ultimate beneficiary coming along and saying, “Now I want you to transfer that to me”. That is where the confusion arises for me in relation to this

issue of the trustee holding property for the trust when I do not ultimately see the beneficiary via the instrument. Am I misreading this?

The Bill has a two fold purpose: firstly, to constitute the Corporation and secondly, to impose upon it singular objects being solely to act as trustee for the purposes of the Church and perform various functions in pursuit of these objects. Therefore, the Bill serves not only as a governing document for the Corporation (akin to a constitution), but it also contains the terms on which it is to hold and deal with property for the purposes of the Church as trustee (akin to a trust instrument).

As is explained in paragraph 1.2(b) above, for clarity, all references to “Trust” or “trustee” are suggested to be removed from the Bill. However, this does not change the basic role and function of the statutory corporation, as is the case and convention with all other corporations established under similar church Acts around the country, and that is to be a statutory trustee for the respective Church.

Importantly, a statutory trustee of this nature holds property on behalf of the Church, and thus on a charitable trust for purposes, and not trust for persons or beneficiaries.

The legal ingredients necessary for a charitable trust to come into existence are a trustee, trust purposes and objects, and trust property. Owing to the suggested changes to the Bill to remove clause 17, as set out in Part One of this submission, there will be no property that will vest in the Corporation at the time when the Bill is enacted. The trust for the purposes of the holding and dealing with property for the purposes of the Church will come into existence once the Corporation acquires trust property and thus, the legal ingredients of a charitable trust will be satisfied.

As with all other Christian churches, properties brought into existence for the purposes of the Church, have to remain held and used for those purposes. Once property becomes property of the Corporation, it will be by definition trust property, and it must at all times be held and dealt with for the purposes of the Church.

The notion that the Corporation holds property as trustee for the Church is not only consistent with all Church laws and regulations as to the permitted manner of holding assets for the Church, but it is also important for this function to be explicit and transparent in order to provide comfort to the Church and the wider community that there is no (mis)appropriation of assets for any person's private gain, rather the trust on which Church assets are held is maintained.

2.5 Page 23 of the Transcript - The Hon. Trevor Khan

...Can I ask you to look at clause 19 and contemplate whether under clause 19(1) that method of transfer into the trust is the only circumstance you contemplate property being transferred into this new entity? Is there, for instance, a possibility the property could be transferred into the entity pursuant to some sort of order of the Supreme Court, or I there some other contemplation?

For the reasons explained in Part One of this submission, it is suggested that clause 19 be removed. Consequently, to address Hon. Khan's question, any limitation that is apparent on the terms of clause 19(1) as to the manner in which property could be transferred into the Corporation, will disappear.

In any event, it is our view that despite the terms of clause 19, the Corporation's functions in clause 7 are sufficiently broad to allow the Corporation to acquire or otherwise accept property regardless of the reason or manner in which it becomes entitled to it. The specific procedure in clause 19 was only supposed to give comfort to potential qualifying transferees that transfers to the Corporation could only occur with mutual consent.

2.6 Page 23 of the Transcript - Reverend the Hon. Fred Nile

We have covered a number of potential amendments to the legislation. Could I ask you to consolidate those proposed amendments that you have agreed to, in your minds, on behalf of the Bishop, so that we know with authority that they have that support?

The proposed amendments to the Bill are set out in Part One of this submission.

3. **PART THREE** **ADDITIONAL WRITTEN QUESTIONS ON NOTICE**

3.1 **Question 1**

In evidence, My Hoy stated:

The constitution says that it is not up to him [the Bishop] who owns property or what property is purchased. That is determined by a diocesan ruling committee which is elected. So what we have before you even get to the acquisition of property is that you have a consultative process.

Could you outline the roles, functions and operations of the diocesan ruling committee? How is it elected? What is the role of the diocesan ruling committee in the acquisition and management of church property? How would the proposed Trust work with the diocesan ruling committee in the acquisition and management of the church property?

Answer to Question 1

The Diocesan Ruling Committee (**DRC**) is the executive, governing and controlling body of the operations of the Church in administrative and material-financial aspects (article 30 of the Diocesan Statute enclosed at Annexure B of the initial submission of the Church). It is the executive body of the Diocesan Assembly, which in turn is comprised of clergy and faithful and is the highest legislative and church-ruling body in jurisdictions given to it by the Constitution of the Macedonian Orthodox Church and church-administrative body for all administrative and material tasks in the Diocese.

Each member of the DRC is answerable for their work to the Diocesan Assembly and in the event of any financial losses or material damage to the Church, caused by negligence or unconscionable conduct, the member shall be held responsible and shall be liable for damages (article 35 of the Diocesan Statute). The DRC reports for its work to the Diocesan Assembly.

The functions and powers of the DRC include (article 41):

- preparation of a budget for the income and expenditure of the Church;
- preparation of annual financial report relating to the income and expenditure of the Church, to be approved by the Diocesan Assembly;
- approval of budgets and annual financial reports of the Church Communities, churches, monasteries, funds and other bodies of the Church;
- preparation of annual reports relating to the overall workings of the Diocese relating to financial, material and culturally-educational activities;
- submission of motions for projects for the Diocesan Assembly;
- conduct of audits and oversight of all churches and monasteries, committees and parish councils and their executive bodies regarding the tasks and obligations from an administrative and material-financial nature as well various funds;
- maintenance of inventories in relation to church assets and evidence of ownership of real property as well as insurances;
- determination to write-off Church assets, bad debts;
- settling disputes/conflicts relating to Church and monastic assets and chattels;
- authorisation of building of new Church buildings, buildings for church ruling bodies and organs of the Church and major repairs to churches and sacred objects;
- direct supervision over the material and financial workings of the Church Communities and monasteries and appointing representatives or committees in its place;
- recommendation to the Diocesan Church Court of salaries and top up of salaries of the Bishop, Deputy Bishop, parish priests and other parish office bearers;

- determination of assistance of financially weaker churches as well as the educational institutions of the Macedonian Orthodox Church;
- determination on borrowings from financial institutions for purchasing of any asset, movable and immovable for the Church, parishes, churches and monasteries in the Church;
- proposal of the level of material obligations of the church communities within the Church;
- receipt and investigation of applications for new churches and church communities and advice to the Bishop; and
- undertaking other work relating to material/practical administration of the Diocese and undertaking tasks delegated by the Diocesan Assembly and other bodies and organs of the church.

The DRC approves the acquisition and disposition of all property of the Church, church communities and monasteries in accordance with the Statute of the Church and the canons of the Holy Orthodox Church, including the approval of borrowings to fund acquisitions.

The members of the DRC constitute the Diocesan Committee of Trustees, which is a body that is the protector of all assets of the Church, including parishes, church communities, monasteries and diocesan assets. Article 98 of the Diocesan Statute sets out the rules and obligations of the Diocesan Committee of Trustees and at paragraph (4) indicates the burdensome process before a property may be sold. No Church Community, Monastery or Parish Council may sell or otherwise dispose of church property except by decree signed by the Metropolitan and approved by a resolution of the Church Community, Monastery or Parish, the Diocesan Committee of Trustee and by a decision of the Holy Bishops' Synod of the Macedonian Orthodox Church and the Archbishopric Ruling Committee.

The DRC is comprised of lay persons and clergy, some of whom hold office *ex officio* and some are elected. The composition of the DRC mirrors the composition of the membership of the Corporation as is set out in section 5 of the Bill. The members set out in paragraphs (a) to (d) and (f) are appointed

by virtue of their office and the members referred to in paragraphs (e) and (g) are elected by the Diocesan Assembly. Please note that paragraphs (e) and (g) do not make reference to the election by the Diocesan Assembly, but rather refer to those persons being the current members of the DRC. This is for the purposes of not inadvertently creating a parallel processes of election, and therefore under the Bill clergy and lay persons elected under items 4 and 6 of Article 31 are appointed by the Bishop as members of the Corporation.

What is important is that the composition of the Corporation mirrors the composition of the DRC, the membership is exactly the same. As such, the DRC essentially will take on and perform the role of the Corporation, which is appropriate given the role of the DRC under the Statute in relation to administration and management of property. The governance under the Bill does not create a new or parallel process, rather it reflects the structure under Church laws of the governance and operations of the executive arm of the Church.

3.2 Question 2

The Bill provides for the future voluntary transfer of properties into the proposed Trust. The committee heard evidence from members of the Macedonian community that they fear the Bishop with exert undue influence on their community to transfer community property into the trust. What is your response to this?

Answer to Question 2

The Bill refers to the future voluntary transfer of property only in clause 19 and there only to circumstances where it is firstly, held by persons on trust for the Church and secondly, after both the transferor and the transferee consent in writing to the transfer. Therefore, the statutory corporation to be formed by the Bill following its enactment could only receive under clause 19 property that has been dedicated as property set aside for the Church. There is no room for the undue influence of the Bishop in these circumstances. In any event, it has now been suggested that all property transfer and

related provisions be deleted from the Bill, to show that those opposed to the Bill should not feel threatened that their properties will be taken away from them (refer to paragraph 1.6 above).

Nevertheless, can the Bishop exert undue influence on a community of the Church to cause that Church community property be entrusted for the Church or transferred to the Church?

Constitutionally, the Bishop alone can not determine that property be acquired by or for the Church. This is a decision that is determined by the DRC for Diocesan properties, or alternatively a decision initially made at a local, Church Community level and approved by the DRC. Constitutionally, as mentioned above, the membership of the DRC are liable to indemnify others for damage suffered to the Church due to negligence or unconscionable conduct (article 35 of the Diocesan Statute).

The exertion by Bishop Petar or on his behalf of an undue influence, or otherwise misappropriation of Church assets, is a serious breach of canon law. Relevantly, the Canons of the Holy Orthodox Church provide:

“If, on the other hand, the Bishop and the Presbyters serving with him be traduced on the alleged ground that they are appropriating to themselves goods belonging to the church, whether it be from the fields or from any other alleged property of the church, on the alleged ground that the indigent are being oppressed, whereas, in point of fact, calumny and defamation are being inflicted by the words upon those so governing and they are charged with liability to correction, the holy Synod or Council must determine what ought to be done” (Canon XXV of the Twenty-Five Canons of the Regional Council held in Antioch).

Undue influence is the unconscionable use of an ascendancy or authority by one over another to obtain an unfair advantage. Examples are: doctor and patient; parent and child; Bishop and believer etc. An attempt to exert undue influence is actionable in civil legal proceedings. Also, if ever applied in the manner suggested by the opponents (eg. threatening to withdraw a priest if no property transfer is forthcoming) is potentially a criminal offence under section 192C of the *Crimes Act 1900 (NSW)*,

which specifies that the attainment of property by one from another by fraud is an offence punishable by imprisonment.

In addition to the deletion of Part 3 of the Bill in almost its entirety, the Church in good faith and to assert its position that the allegations of undue influence are without basis, instructed us that it intends that a protocol be submitted to the DRC for approval that will set out the steps to be taken when a transfer to the Corporation is contemplated, including the publication to the relevant Church Community of the property intended to be transferred, and the convening of a meeting of the community to seek confirmation of acceptance that the transfer proceed and that the DRC be advised accordingly.

Further, in response to the allegations that the Bishop will exert undue influence by the threat of the action of a withdrawal of a priest from a community, it is noted that this matter is dealt with within the canons of the Holy Orthodox Church which would require a suitable notice to be provided to the community of its defaults in compliance with Church laws and give a reasonable opportunity for the default to be rectified. A failure to honour this procedure is cause for a valid complaint to be made to the Holy Bishops' Synod of the Church which by its Constitution must be examined within the canonical court processes provided for in the Constitution and Statute of the Church.

Further, in some responses made to this Inquiry, parties that are opposed to the Bill indicate that this power provided to Bishop Petar under the Bill will be abused, which is denied vehemently. We are instructed that Bishop Petar, a Bishop in the Church for in excess of 30 years, has never had cause to defend an exercise of his power in the Courts of the Church.

The transcript of the public hearing of 23 August 2010 together with the submission of Mr Aleksandrov on behalf of the Association of the Macedonian Communities in Australia Inc. which contain insinuations that relate to the exercise by Bishop Petar of his powers, have been provided to Bishop Petar and the Bishops of the Holy Synod who in support of Bishop Peter and this Bill provided a further letter of support validating their position and rejecting insinuations that Bishop Petar has

abused his power and that representations have been made by opposing parties in Australia that he has abused his power. A copy of this letter dated 16 September 2010 in the Macedonian language and a translation in English is enclosed as **Annexure B** of this submission.

3.3 Question 3

In its submission the NSW Government indicated that church property trust legislation would only be supported by the Government if it has the general support of the church community. What actions has the Church taken to ensure the general support of the church community in relation to this Bill? Given the large sections of the Macedonian community oppose the bill, how will you generate a consensus?

Answer to Question 3

It is submitted that the Church community in the present case comprises the following Church Communities that are in communion with the Church:

1. Resurrection of Jesus Christ, Rockdale, New South Wales;
2. Holy Mother of God, Liverpool, New South Wales;
3. St Basil the Great, Newcastle, New South Wales;
4. St Clement of Ohrid, Port Kembla, New South Wales;
5. Monastery "St Petka", Kembla Grange, New South Wales;
6. St Dimitrij of Solun, Wollongong, New South Wales;
7. St Ilija, Queanbeyan, New South Wales;
8. St Clement of Ohrid, Canberra;
9. Holy Mother of God, Brisbane, Queensland;
10. Nativity of the Holy Mother of God Cathedral Temple, Sydenham, Victoria (in construction);
11. Monastery St Prohor Pcinski, Donnybrook, Victoria;
12. St Prophet Ilija, Footscray, Victoria;
13. Monastery St Naum of Ohrid, Rocklyn, Victoria (in construction);

14. St Nikola, Preston, Victoria;
15. St Petka, Mill Park, Victoria;
16. St Zlata of Meglen, Hoppers Crossing, Victoria;
17. St Dimitrij of Solun, Springvale, Victoria;
18. St John the Baptist, Geelong, Victoria;
19. Holy Mother of God, Woodville South, South Australia;
20. St Nikola, North Perth, Western Australia (69 Angove St, North Perth);
21. St Nikola, North Perth, Western Australia (8 Macedonia Place, North Perth).

All of these Church Communities have been represented by their Parish Priest at the public hearing of 23 August 2010, who are each under appointment of Bishop Peter.

As mentioned in the initial submission by the Church (at Part Five), 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. At Annexure G of the initial submission of the Church, enclosed was a letter from His Eminence dated 13 June 2010 informing all Church Communities, Churches, Parishes and Monasteries of the introduction of the Bill in the NSW Parliament and the general effect of the Bill, referring them to the Parliamentary website for copies of the second reading speech and the Bill. This correspondence was sent by His Eminence from Bitola, Macedonia, both in the English and the Macedonian language, to ensure that in his absence from the Diocese the communities are nevertheless informed of the legislative process. This correspondence highlighted what was known to be the biggest concern of many Church Communities - that their properties will not be taken away from them.

In the meantime, the Parish Priests on various occasions have outlined the nature, structure and objectives of the Bill at Church services or meetings convened for that purpose, producing relevant correspondence from the Bishop and correspondence in support of the Bill from the Holy Synod of the

Church. The Church Communities were informed of the request by the NSW Parliament that letters in support of the Bill need to be provided by the Church Communities and Monasteries. These letters of support have promptly been provided by most of the above listed communities. The letters of support from each of the above community have been provided under the Church's initial submission. They fall in three categories:

- the letters of support from the committees of Church Communities and Monastery that are included in section 17 of the Bill (listed at point 2, 10, 11 and 19 above), confirm that their properties are Diocesan properties that have been acquired and held temporarily in the name of three individual trustees and that they consent to their respective properties being automatically vested in the Corporation;
- the letters of support from committees of Church Communities listed at point 12, 13, 14, 15 and 16 above that have already resolved and wish to transfer their property to the Corporation upon the enactment of the Bill; and
- letters of support from the remaining Church communities that state their understanding that the Bill does not affect their properties and on that basis they provide their support.

In relation to the Church Communities in the third category, there were some that expressed objection to the Bill out of fear that their property could be mandatorily acquired by the Church. Some of them expressed their concerns in writing to the Bishop - this being the Port Kembla community and the community from Western Australia (8 Macedonia Place). The Bishop, being in Macedonia at the relevant time, exchanged correspondence with the presidents of the committees of these two communities explaining the effect of the Bill and providing all assurances that there will be no acquisition or vesting, mandatory or otherwise, of their properties. Following Bishop's arrival in Australia in late July of this year, the Bishop met and continued his discussions with the Port Kembla community following which at a general meeting the support was successfully voted on and a letter of support was unreservedly provided to the Church and this has been lodged with the Church's initial

submission. However, the good will and openness to a consultation process demonstrated in the discussions between the Bishop and the Port Kembla community, has not been evidenced by other Church communities whose committees have not to date provided their support for the Bill.

In relation to the Church Communities referred to in items 6 to 9 and 21 above, letters of support have been provided by the Parish Priests in their name and on behalf of the parishioners which they serve and which support the Church. These are part of the Church's initial submission. The committees of these communities argue that there was lack of consultation in relation to the Bill in respect of which the Church wishes to make aware the Committee of the following information:

(a) Macedonian Orthodox Community of WA Inc.

Enclosed at Annexure C are copies of self-explanatory correspondence between His Eminence, Bishop Petar and the President of the Macedonian Orthodox Community of WA Inc, Mr Sotir Novachkov. Mr Novachkov expressed the concerns of this community with the Bill in a letter to the Bishop dated 19 June 2010. This was promptly responded by a letter of 21 June 2010 from the Bishop providing a detailed explanation of the property provisions and the effect of the Bill.

It is therefore doubtful the claim by the Macedonian Orthodox Community of WA Inc. in their submission that there has been no consultation in relation to the Bill, when the Bishop engaged in personal correspondence with the writer of that submission in good faith and to clarify any misconceptions. The submission is extensive on attacks of the Bishop reducing his informing of the Church Communities to what is referred to as "circular letters", and yet there is no reference in the submission to the Bishop's genuine attempt to engage in meaningful discussion and explanation.

(b) Macedonian Orthodox Community of the City of Greater Wollongong

We are informed that in the week before the public hearing of 23 August 2010, this community organised a general meeting at which the effect of the Act was to be explained and considered.

The Bishop requested that he attend at such meeting as it was seen as a good opportunity for discussion and consultation. Unfortunately, we are informed that because of the actions of a few who are in opposition of the Bill, the Bishop was unable to speak to the community. We are informed that His Eminence was locked out of the church and the electric power was turned off to preclude him from addressing the community. It is believed that there is a consensus amongst the parishioners that support the Bill, as confirmed in the letter from the parish priest.

(c) Queanbeyan community

We are informed that the Bishop and the Parish Priest at this Church Community attended a general meeting on the weekend before the public hearing of 23 August 2010, at which the effect of the Bill was explained and discussed. When the question of support was put to the vote, it was successful whereby of 33 present members 27 voted for and 6 voted against. Nevertheless, the consensus amongst the parishioners that support the Bill, suggested in the letter of support from the Parish Priest, has been confirmed. We are informed that for unexplained reasons the committee has not yet provided the letter of support for the Bill as voted at the general meeting.

Finally, and importantly, there are members of the Macedonian community that oppose the Bill and who have filed submissions to this Inquiry, albeit they are not part of the Church community which the Bill is to support when enacted. They comprise various incorporated associations and companies which are claimed to be represented by Mr Igor Aleksandrov on behalf of the Association of Macedonian Communities in Australia Inc. This Association cannot constitutionally be associated with the Church as its governing document provides that:

“Part 2 – Objects

3. The Church association is established external to, operates independently to, and does not authorise the jurisdiction of autocephalous Macedonian Orthodox Church established in 1967 with the seat of the Archbishopric in Skopje, Republic of Macedonia.”

Therefore, it is submitted to this Committee that, in the main, the parties that are opposed to the Bill are not and constitutionally cannot be part of the Church community.

The opposition in substance appears to be centred around an argument that if the Bill is enacted, Parliament will not in turn pass legislation to support the aggregation of their associations and companies into a statutory corporation that will represent their interests. On this basis, this opposition is against the NSW Government's intentions to support the Macedonian Orthodox Church in a statutory trust enactment, if the Church community is in consensus. Accordingly, given this approach of the opposition and the basis for their arguments that are, principally, political concerns, which we submit is outside the terms of reference of this Inquiry, it appears questionable if they will concede to the passing of the Bill. Notwithstanding this, we are informed that the Church will, as it has always in the past, continue to be open to consider proposals for anyone of their communities to rejoin and accept the Statute, Church laws and the teachings of the Church. Further, the approach that the Church has taken in its preparedness to reconsider substantial amendments to the Bill, whilst listening and acting upon the matters raised in the numerous submissions to this Committee, demonstrates its genuine interest at achieving a position that will not be seen as a treat by any person of the Church communities or others.

At Annexure E enclosed are further letters of support received from individual parishioners from the above Church communities that appear in opposition and from others.

Finally, we emphasise that Governments support and have supported established churches by enacting legislation as is proposed here because existing civil structures are not suited for their purposes. Assets of an established Church community are held for purposes, that is, the existing and future purposes of the Church. Assets held by an incorporated association or a company are held for communities or persons that comprise their membership, who ultimately have the right to enjoy them. Assets of a Church are not ultimately owned by the community, or beneficiaries, but are held to facilitate the perpetual operations of the Church.

3.4 Question 4

The Committee received evidence that the enactment of the proposed Bill would allow the Trust to sell property and remit proceeds to Macedonia or elsewhere. Is this a possibility? How would this work?

Answer to Question 4

The acquisition of property for the purposes of a church at which a community will worship is a purpose within the Church, that cannot be varied. This means that a church which is erected on property becomes the asset of the Church, however for the purposes only of that community now and in the future. Thus, whilst a single legal entity for the Church will appear to hold properties of various Church communities in aggregate, established canonical principles will ensure that remain being held on behalf of each separate community.

The Church laws provide that the assets of a Diocese must always be utilised, maintained and retained within that Diocese. It will be a serious breach of the laws of the Church if assets are sold up and proceeds applied outside of the Diocese. Further, it will also be a breach of trust if the statutory corporation (when formed) receives property for the purposes of the Diocese, and permits proceeds from a sale of those assets to be remitted out of the Diocese. Such a breach of trust is actionable at law and the individuals who are responsible will be personally liable. This means that all of the persons comprising the DRC who as mentioned above are responsible for Diocesan property dealings, will be personally legally exposed and can be held responsible for losses sustained by the Diocese.

Furthermore, and in addition, statutory corporations are ordinarily entitled for endorsement by the Australian Taxation Office as charitable institutions. This endorsement carries a requirement that the objects and the expenditure be applied principally in Australia. Therefore, sending proceeds outside Australia could prejudice such charitable endorsement.

4. **PART FOUR RESPONSE TO OTHER SUBMISSIONS**

This part of the submission addresses matters raised in the various submissions lodged with this Committee and in respect of which we have not commented elsewhere in this submission.

4.1 **NSW Government**

The Church understands and acknowledges the Government's position as set out in the letter of 4 January 2000 (attached to the Government's submission) by late Mr Shaw, then Attorney General, that the legislation needs to have the general support of the Church community. We refer to the analysis in section 3.3 above as to who comprises the Church community in the present case.

The submission of the NSW Government raises four legal policy issues, which we are of the view have now been addressed with the suggested amendments to the Bill.

4.2 **Mr Leeming SC**

Senior Counsel queries whether the general obligations of trustees will apply to the statutory corporation to be formed under the Bill. Further, that it is a question of policy whether it should be provided that particular provisions of the *Trustee Act 1925* or the *Trustee Companies Act 1964* apply to the statutory corporation.

It is our view that the *Trustee Act 1925* applies to all "trustees" defined to include a "trustee company", which in turn is defined to include a company or a trustee formed under an Act of Parliament in the State of New South Wales. Therefore, the *Trustee Act 1925* will apply to the Corporation, once it commences acting as trustee. The operation and application of the provisions of the *Trustee Act 1925* vary, some provisions apply regardless of anything to the contrary in the instrument of trust, others apply only if there is nothing to the contrary in the trust instrument. For example, the provision referred to by Senior Counsel regarding the power to diversify investments in s.14C, will apply unless there is contrary intention in the trust instrument.

We do not think that the *Trustee Companies Act 1964* is relevant in the present case, as we consider that it only applies to licensed trustee companies under the relevant provisions in the Corporations Act.

Finally, Senior Counsel suggests that clause 32 of the Bill gives different protection than that ordinarily available to trustees under section 85 of the *Trustee Act 1925*. This provision is in a standard form as that appearing in many other church Acts⁴.

4.3 Mr Peter Breen

We have been requested by the Church to query the statement in Mr Breen's submission that as at year 2006 the legal expenditure of the Association of Macedonian Communities in Australia Inc. was in excess of \$5 million. The Committee is referred to the submission of the Macedonian Orthodox Community of the City of Greater Wollongong where at paragraph 1.6 the legal costs to date are stated to be \$2 million. The Church has information presented by the lawyers for the Association of Macedonian Communities in Australia Inc. in the recent trial that the legal costs of the association to date are approximately \$1 million. This is obviously not relevant to the Inquiry, however it is raised for completeness, given the stark difference in representations made to the Committee.

The essence of Mr Breen's submission is that the passing of the Bill could potentially breach section 116 of the Australian Constitution which provides:

"The Commonwealth shall not make any law for establishing nay religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth".

We submit that the Bill is not a law for:

⁴ section 28 *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994*, section 23 *Antiochian Orthodox Church Property Trust Act 1993 (NSW)*, section 27 *Christian Israelite Church Property Trust Act 2007 (NSW)*, section 21 *Coptic Orthodox Church (NSW) Property Trust Act 1990 (NSW)*, section 21 *Holy Apostolic Catholic Assyrian Church of the East Property Trust Act 1992 (NSW)*; section 23 *Methodist Church of Samoa in Australia Property Trust Act 1998 (NSW)*, section 24 *Lutheran Church of Australia (NSW District) Property Trust Act 1982*

- “the establishing any religion”. It is a Bill that a statutory corporation be formed for the purpose of acting as a trustee for the Church, it has nothing to do with the establishment of any religion.
- “for imposing any religious observance”. The Bill does not refer to any religious observance nor does it refer to any imposition, nor spiritual or doctrinal matters.
- “for prohibiting the free exercise of any religion”. Again, no reference is contained in the Bill to anything relating to the exercise of religion.
- ”no religious test...as a qualification for any office or public trust under the Commonwealth”. The Bill does not propose that the Corporation to be formed represent or act on behalf of any public trust in any manner nor does it provide that it act on behalf of Commonwealth or a State.

Further, it is wrong to suggest that this is legislation for appropriation of the assets of the Macedonian Orthodox Church community in Australia to a body under the effective control of the parent church in Macedonia. Refer to the explanation in paragraph 3.4 above in this submission. This Bill relates only to property and assets within the ecclesiastical jurisdiction and territory of the Church, that is, the Diocese of Australia and New Zealand. No money, property, income or proceeds may be applied outside of the Diocese or for purposes other than the purposes of the Diocese.

On the basis of this interpretation and analysis, the case law referred to in Mr Breen’ submission can have no relevance nor impact upon the Bill. It would appear that State Parliaments when enacting approximately 40 other Acts similar to the Bill, have also determined that the referred provision of the Australian Constitution has no effect in the circumstances as in the present case.

4.4 Mr Keith McConnell

This submission contains numerous inaccuracies:

- we are instructed by the Church that it is not correct that mortgaging property is contrary to Orthodox principles. There is no prohibition against borrowing under the canons of the Holy Orthodox Church. The Statute of the Church specifically vests in the DRC the power to approve borrowings for property acquisitions of the Church.
- it is wrongly assumed that the Bill, if enacted, will have the effect of transferring ownership of properties to a foreign institution. Refer to the arguments in section 3.4 of this submission.
- the statement that the Macedonian Orthodox Church is not engaged in significant religious, charitable and educational activities in Australia is incorrect and offensive. Church communities that administer the mission of the Church are integral part of the Church.
- it is wrongly assumed that the definition of Church is a reference to the mother Church and consequential arguments on the basis of the Bill being for the benefit of a foreign institution and of possible constitutional invalidity, fail;
- it is wrongly stated that the trust proposed by the Bill is totally controlled by the Metropolitan. Refer to the explanation in section 3.1 of this submission for explanation of the composition of the Corporation.
- the statement that the looseness and lack of accountability to Australian laws is a hallmark of the Bill, ignores the fact that the Bill replicates the regime adopted by Parliaments of this country for established churches for which a statutory trust corporation has been enacted.
- the suggestion that costs awarded against the individual trustees in a court judgement in Victoria of last year could become liabilities of the Corporation is incorrect. We are instructed that these have been paid in full and there are no outstanding liabilities that could become liabilities of the Corporation, when formed.

- the argument on constitutional invalidity and possible breach of section 109 of the Australian Constitution is unsustainable, the Corporation will not hold property for the mother Church but for the Church in Australia.

4.5 Association of Macedonian Communities in Australia Inc

In this submission various passages have been omitted, we understand, on a determination by the Committee that they remain confidential. However, appearing on <http://amca2010.wordpress.com/> is the full text of this submission. In the omitted parts, serious, unsubstantiated and malicious innuendo references have been made to His Eminence, Bishop Peter and are objected to vehemently, and it is submitted that this action constitutes a breach of the process under which the Inquiry is to be conducted.

The extent and frequency of error and deceptive presentation of alleged facts takes this submission outside the terms of reference and into character assassination of His Eminence, Bishop Peter.

We are instructed that the apparently factual grounds detailed in the submission are untrue and Bishop Petar and the Church reject them. The submission, for a large part, deals with political issues and innuendo, and given the terms of reference of this inquiry we will not comment on those, unless the Committee seeks further explanation from the Church.

We identify some of the more relevant statements that are objected to by the Church and their grounds:

- the reference at 1.11 to the establishment of “autonomous” Macedonian Orthodox Church is incorrect, that should be a reference to “independent”;
- the statement at 1.13 that local church communities as separate legal persons remain a part of the Constitution of the Macedonian Orthodox Church – Ohrid Archbishopric (**MOA**) is incorrect. The Bishop advises that under latest decisions of the Holy Bishops’ Synod that are yet to be incorporated in a consolidated version of the Constitution, it has been determined

that the only legal person is the MOA, and all others listed in the foundation Constitution (at 1.12) have been revoked. Therefore, the suggestion that there is an attempt in article 172 of the Constitution to subvert rights of communities to independently determine how to use their property, is incorrect. It is also wrong that article 172 was introduced without the free and democratic consent of communities in the diaspora. The Bishop informs us that delegates from communities in the diaspora voted on the passing of the relevant amendments to the Constitution;

- we are informed that the matters stated in paragraph 1.18 are incorrect representations of events. The churches referred therein operated trusts for the Church under the *Religious and Successory Charitable Trusts Act 1958 (Vic)* and the court proceedings related to breaches of those trusts and abuse of powers by those that acted as trustees;
- the matters in section 2 relate to political issues. Whilst we refrain from commenting on such matters and allegations, we make a brief comments on a statement of alleged facts in paragraph 2.2 as it is used later in the submission as an argument on the inadequacy of the Bill. We are instructed that it is not correct that Bishop Peter led a delegation that signed an agreement with the Serbian Orthodox Church regarding a relinquishment of control of the MOC. Without going into the detail, and we will be pleased to expand should the Committee require, the “agreement” referred to was only a draft proposal from the Serbian Orthodox Church towards the resolution of outstanding issues. That proposal was not accepted by the Holy Bishops’ Synod, and it is of no relevance;
- the repeated and numerous examples of acts of coercion and violence purportedly exercised by the Bishop, and which have been omitted from the submission published by the Committee, are serious allegations that are vehemently rejected;
- at paragraph 3.5 – we submit that it is not misleading to state that the Bill, which comprises the constitution of the proposed Corporation, cannot be changed except by amendments

passed by Parliament. The fact that the Diocesan Statute may change from time to time, will have no implication on the provisions of the Bill that will continue to apply in the same manner. Indeed, the fact that there are provisions in the Bill that have been modelled on provisions of the Diocesan Statute (eg. composition and governance of the Corporation), will impliedly make it difficult or impractical to vary a provision of the Diocesan Statute when similar changes to the corresponding provision in the Bill cannot be effected without legislative amendments.

- paragraph 3.13 – it is rejected that the resolution stated in this paragraph regarding the conditions on which communities may join the Church illustrates the propensity for Bishop Peter’s abuse of power. The underlined text, which is obviously of concern to the writer and the Association he represents, simply indicates that whilst a church community that joins the Church may retain ownership over its property, if it is to do so then members from that community cannot be elected to serve on organs and bodies of the Church that make decisions regarding properties and assets of the Church.
- section 4 and 5– it is believed that matters raised in this section are now addressed by the proposed deletion of section 13 and 14 of the Bill. For completeness, it is noted that the allegations that the Holy Synod has not been properly briefed are wrong. We are instructed that the Holy Bishops’ Synod was informed of this statement and provided a further letter of support, now enclosed at Annexure B.
- section 6 – it is also believed that the matters and concerns raised in this section are now addressed by the proposed deletion of Part 3 of the Bill. The serious allegations against the Bishop that he will use undue influence and coercion to force property transfers to himself are rejected. Refer to the explanation in section 3.4 of this submission.
- section 7 – the Church submits that the matters set out in this section are grossly inaccurate. The passing of the Diocesan Statute has been considered and held valid by the Supreme Court

in Victoria and the Supreme Court in New South Wales. Refer to Mr O’Connell’s submission which confirms this on page 4.

- section 8 – the Church rejects a suggestion that the Church communities or the supporters of the Bill have been misled about its effect. Most of this section is omitted as confidential and the reasons for it are apparent when considering the extent and length at which the attacks of the Bishop personally continue and aggravate as the argument in the submission develops. For clarity to the Committee, a common attack on the Bishop in recent times by the writer of this submission is that the Bishop misled the public by suggesting that the enactment of the Bill will be a recognition of the Macedonian Orthodox Church. We are instructed that this sentence is taken out of context, and when spoken, the word “recognition” was never intended to have a strict legal, technical meaning but rather, that the Church will receive similar acknowledgement as that afforded to other Christian churches with statutory corporations.

In relation to the matters stated in paragraph 8.10, the Bishop instructs us that with the relevant statement he was alluding to individuals in community organisations that are hiding behind the veil of a company or an incorporated association, and sue on personal grounds using company’s/association’s money, and fail to bear personal responsibility. Further, the references to the trustees being personally liable, was to allude to the fact that trust assets cannot be used to indemnify a trustee when they are in breach of the trust relationship. It is submitted that there is no misleading, or at the very least no intentional misleading, of the public in these statements.

- section 9 – the statement that the Bill conflicts with Government policy is unclear. The Bill is not substantially similar to the 1998 version of a Bill, as is suggested in the submission. It is fundamentally different, particularly with the proposed amendments. The serious allegations in paragraph 9.2 of a campaign that the Bishop and his followers led is vehemently objected to and we are instructed that the matters set out therein are not true.

- section 12 – the Committee determined that this should be confidential for the obvious reasons. We emphasise that this is not a Bill for the Bishop or for his personal aims. This is a Bill for the Church, which is well organised, is growing and is in need of a statutory trustee to be able to better the organisation and management of its assets, and hold and manage them in accordance with the regime adopted for other churches in this country.

4.6 Macedonian Orthodox Community of the City of Greater Wollongong

This submission resembles the submission lodged by Mr Connell, and thus our comments are the same as stated in section 4.4 above.

4.7 Macedonian Orthodox Community of Newcastle and District

The essence of this submission appears to be the belief that the effect of the Bill is that it will put control of the properties of Macedonian communities in the hands of the Macedonian Orthodox Church overseas. We refer to our comments in section 3.4 above.

4.8 Australian Workers Union

This submission does not substantiate why the Bill appears bizarre and is not making sense to the members of the union and union. We reserve our client's rights to comment should more substantiated arguments be put forward.

**5. PART FIVE
CORRECTED TRANSCRIPT**

A copy of the corrected transcript relating to the presentation on behalf of the Church is enclosed at Annexure D.

**Annexure A – Amended version of the first print of the Macedonian
Orthodox Church Property Trust Bill 2010**

Annexure B – Letter from Holy Bishops’ Synod dated 16 September 2010

**Annexure C – Correspondence with Macedonian Orthodox Community of
WA Inc**

Annexure D – Corrected Transcript

Annexure E - Further letters of support from individual parishioners

Macedonian Orthodox Church Property Trust Bill 2010

This explanatory note relates to this Bill as introduced into Parliament.

(c) to provide for ~~other~~ property held in trust for the Church to be transferred ~~and vest in~~ the statutory corporation without stamp duty liability; ~~if the current trustees and the Metropolitan consent or if the current trustees are deceased, absent or under a legal disability and the Metropolitan consents on their behalf.~~

MELBDOCS-1232033-V1-MOC BILL WITH AMENDMENTS 17 SEPTEMBER 2010.DOC-BAA/BAA,BAA/BAA,BAA/BAA
BAA/BAA,BAA/BAA,BAA/BAA,BAA/BAA,BAA/BAA,BAA/BAA,BAA/BAA,BAA/BAA,BAA/BAA,BAA/BAA,BAA/BAA

Clause 56 specifies the procedure of the Trust Corporation.

Clause 67 specifies the functions of the Trust Corporation. These include:

- (a) buying, holding and selling Church property, and
- (b) acquiring property by gift or by devise or bequest, and
- (c) borrowing money for Church purposes.

Clause 78 empowers the Trust Corporation to make by-laws.

Clause 89 enables the Trust Corporation to hold or acquire property alone or jointly.

Clause 94 provides for the investment of funds by the Trust Corporation.

Clause 101 enables the Trust Corporation to invest, as one fund, money held for different purposes.

Clause 112 empowers the Trust Corporation to make advances from its trust funds, and specifies how such advances may be made.

~~**Clause 13** enables the Trust to make arrangements with a church of another denomination concerning the use of trust property.~~

~~**Clause 14** enables the Trust to vary the terms of a trust if it has become impossible or inexpedient to carry out those terms.~~

Clause 125 enables the Trust Corporation to be the executor or administrator of an estate in which the Church has a beneficial interest. The clause will also enable the Trust Corporation to accept appointment as trustee of property held for the Church's benefit.

Clause 136 authorises the Trust Corporation to act on behalf of the Church in settling the compensation payable in the event that any trust property is compulsorily acquired.

Part 3 Vesting of property in Trust

Division 1 Vesting of property in Trust

~~**Clause 17** provides for the vesting in the Trust, on the date of commencement, of all property and rights held on trust for the Church by Bishop Petar Karevski, Father Jovica Simonovski and Father Tone Gulev, including the property listed in the clause.~~

~~**Clause 18** provides for the vesting in the Trust of property acquired after the date of commencement.~~

~~**Clause 19** provides for the later vesting of other property, if the current trustees and the Metropolitan consent.~~

~~**Clause 20** provides for the later vesting of other property that is held on trust, if the Metropolitan is unable to obtain the consent of all current trustees and consents on their behalf.~~

Division 2 Provisions relating to vesting of property

~~**Clause 21** requires registration authorities to record the transfer of interests in land that are necessary as a result of the operation of the proposed Part.~~

~~**Clause 22** provides that the vesting of property in the Trust by the proposed Part does not affect any reservation, mortgage, charge, encumbrance, lien or lease that affected the property or any trust on which the property was held, immediately before the vesting of the property.~~

~~**Clause 23** provides that, when property vests in the Trust in accordance with proposed section 17, 19 or 20 the rights, liabilities and obligations of the former trustees in relation to the property will become the rights, liabilities and obligations of the Trust.~~

~~**Clause 24** provides that certain gifts, dispositions and trusts of property do not fail but take effect on or after the date of commencement, as gifts, dispositions and trusts in favour of the Trust.~~

Division 3 Payment of duty not required

~~**Clause 25** provides that duty under the *Duties Act 1997* is not chargeable in respect of, or in connection with, a conveyance to the Trust of property from a person or body that holds that property for or on behalf of any parish or community of the Church.~~

Part 34 Miscellaneous

Clause 14 provides that duty under the *Duties Act 1997* is not chargeable in respect of, or in connection with, a conveyance to the Corporation of property from a person or body that holds that property for or on behalf of any parish or community of the Church.

Clause 1526 provides for the custody and use of the seal of the TrustCorporation.

Clause 1627 provides for the execution on behalf of the TrustCorporation of deeds and instruments required by law to be in writing and for the entering into of oral contracts on its behalf.

Clause 1728 enables the TrustCorporation to appoint agents to execute documents on its behalf.

Clause 1829 enables the TrustCorporation to certify that it holds property on trust for the Church.

Clause 1930 provides that, if a person obtains a receipt for money paid to the TrustCorporation, the person will not be liable if the money is lost or misapplied or is not applied.

Clause 2031 is intended to remove the need for a person involved in a property dealing with the TrustCorporation to inquire whether the TrustCorporation has power to deal with property and will protect the person even if the person had notice that the TrustCorporation had no such power.

Clause 2132 entitles members of the TrustCorporation and others to be indemnified out of trust property against liability for certain things done by them in good faith concerning the property.

Clause 2233 provides for the service of documents on the TrustCorporation.

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New South Wales

Macedonian Orthodox Church Property Trust Bill 2010

Introduced by Revd the Hon F J Nile, MLC First print

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New South Wales

Macedonian Orthodox Church Property Trust Bill 2010

No , 2010

A Bill for

An Act to constitute as a corporation the Macedonian Orthodox Church Property Trust Corporation, to specify the ~~Trust~~Corporation's functions, ~~to provide for the vesting of certain property in the Trust~~, and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Macedonian Orthodox Church Property Trust Act 2010*.

2 Commencement

This Act commences on a day to be appointed by proclamation.

3 Definitions

In this Act:

by-laws means the by-laws of the TrustCorporation.

Church means the Macedonian Orthodox Church, Diocese of Australia and New Zealand with its seat in Melbourne, being an integral part of the Macedonian Orthodox Church – Ohrid Archbishopric with its seat in Skopje, Macedonia, a hierarchical religious body whose leader, overseer and shepherd is the Archbishop of Ohrid and Macedonia.

conveyance includes transfer, assignment and assurance.

~~*date of commencement* means the date on which this Act commences;~~

Corporation means the Macedonian Orthodox Church Property Trust Corporation constituted by this Act.

Deputy Bishop means the Deputy Bishop of the Church, who is appointed by the Metropolitan.

Diocesan Assembly means the Diocesan Assembly of the Church, constituted under the Diocesan Statute.

Diocesan Ruling Committee means the Diocesan Ruling Committee, constituted under the Diocesan Statute.

Diocesan Secretary means the person from time to time occupying the office of Secretary of the Church, who is appointed by the Metropolitan.

Diocesan Statute means the statute of the Church 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, as in force from time to time.

exercise a function includes perform a duty.

function includes a power, authority or duty.

member means a member of the Corporation.

Metropolitan means the Bishop of the Macedonian Orthodox Church, Diocese of Australia and New Zealand, appointed by the Holy Bishops' Synod of the Macedonian Orthodox Church or, if there is a vacancy in the See, the person for the time being exercising the authority of the Bishop who has been appointed by the Holy Bishops' Synod of the Macedonian Orthodox Church.

property includes property located outside of New South Wales,

~~*relevant transfer date* means:~~

~~(a) — in relation to land transferred by the operation of section 17 — the date of commencement, and~~

~~(b) — in relation to land transferred by the operation of section 19 or 20 — the date of consent of the Metropolitan under either of those sections.~~

Trust means the Macedonian Orthodox Church Property Trust constituted by this Act.

trust property means property held by the TrustCorporation.

~~*trustee* means a member of the Trust.~~

4 Extraterritorial operation of Act

~~(1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following:~~

~~(a) land situated in or outside the territorial limits of the State,~~

~~(b) things situated in or outside the territorial limits of the State,~~

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- (c) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State;
- (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State or Territory.
- (2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.
- (3) To the extent that the vesting of any property by this Act is beyond the legislative competence of the Parliament of New South Wales, and this Act does not vest any of the property in the Trust without the need for conveyance, then each person who holds that property on trust for the Church is, to the extent that the person is amenable to the law of New South Wales, required to do all that is necessary to actually transfer it.

Part 2 Constitution and functions of TrustCorporation

54 Constitution of TrustCorporation

- (1) There is constituted by this Act a corporation under the corporate name of the Macedonian Orthodox Church Property Trust Corporation.
- (2) The TrustCorporation is to consist of the following members:
- (a) the Metropolitan,
 - (b) the Deputy Bishop,
 - (c) a representative from the monasteries of the Church, who is appointed by the Metropolitan,
 - (d) the Diocesan Secretary,
 - (e) 2 clerics of the Church, being current members of the Diocesan Ruling Committee, who are appointed by the Metropolitan,
 - (f) the deputy president of the Diocesan Assembly,
 - (g) 3 lay persons, being current members of the Diocesan Ruling Committee, who are appointed by the Metropolitan.

65 Procedure of TrustCorporation

- (1) Subject to this section, the trusteesmembers are to conduct the business of the TrustCorporation in accordance with the by-laws.
- (2) The Metropolitan is to preside at a meeting of the TrustCorporation.
- (3) The quorum for a meeting of the TrustCorporation is a majority for the time being of the members (one of whom must be the Metropolitan).
- (4) Every meeting of the TrustCorporation at which a quorum is present is competent to transact any business of the TrustCorporation.
- (5) A question arising at a meeting is determined by a majority of votes and, in the case of equality of votes, the Metropolitan has a casting vote.
- (6) The TrustCorporation may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, video conference, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

76 Functions of TrustCorporation

- (1) The functions of the TrustCorporation are as follows:
- (a) to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, the Church,
 - (b) to acquire property by gift, devise or bequest and to agree to and carry out the conditions of the gift, devise or bequest,
 - (c) to borrow or lend money for the purposes of the Church,

- (d) to mortgage, charge or otherwise encumber trust property,
- (e) to make gifts and donations of property held by it for religious and charitable purposes,
- (f) to enter into any guarantee or indemnity that may assist the TrustCorporation or the Church in the exercise of its functions,
- (g) to do and suffer all other things (whether or not of the kind referred to in this section) that the Metropolitan considers to be necessary, appropriate or desirable,
- (h) to do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for or incidental to the exercise of its functions under this Act.
- (2) The TrustCorporation has such other functions as are conferred or imposed on it by this Act.
- (3) This section does not limit section 50 of the *Interpretation Act 1987*.

87 TrustCorporation may make by-laws

- (1) The TrustCorporation may make by-laws, not inconsistent with this Act:
 - (a) for the control and management of, and dealings with, trust property, and
 - (b) with respect to the procedure for conducting the business of the TrustCorporation.
- (2) A certificate under the seal of the TrustCorporation to the effect that a by-law specified in the certificate, or in an annexure to the certificate, was in force on a day specified in the certificate is, until the contrary is proved, evidence that the by-law was in force on that day.
- (3) A by-law may be amended or repealed by a subsequent by-law made under this section.

98 TrustCorporation may hold property jointly

The TrustCorporation may hold or acquire property either alone or jointly as a joint tenant or tenant-in-common.

409 TrustCorporation may invest trust funds

The TrustCorporation:

- (a) may invest or lend any funds that it holds on trust in accordance with the terms of any trust to which the funds are subject, and
- (b) may also invest or lend any such funds in accordance with the *Trustee Act 1925*, unless the investment or loan is expressly forbidden by the instrument (if any) creating the trust to which the funds are subject.

410 Blending of trust funds

- (1) The TrustCorporation may invest trust funds held by it on trust for different purposes or activities, or any part of those funds, as one fund (*the fund*).
- (2) Income arising from an investment of funds in accordance with subsection (1) is to be apportioned ratably among the several purposes or activities for which the funds are held on trust.
- (3) Any loss arising from an investment of funds in accordance with subsection (1) is to be apportioned ratably among the several purposes or activities for which the funds are held on trust.

421 TrustCorporation may make advances

- (1) The TrustCorporation may make advances out of its trust funds for any activity, service, institution or interest of the Church.
- (2) Any sum so advanced is taken to be an investment of the money and bears interest at a rate fixed by the TrustCorporation.
- (3) If the terms of any such advance so provide, the sum advanced and any interest on that sum is taken to be a charge on those assets (if any) that the TrustCorporation holds for the activity, service, institution or interest of the Church for which the advance was made.

13 Arrangements for other churches to use trust property

- ~~(1) In this section, *scheme of co-operation* means a scheme entered into by the Trust:~~
 - ~~(a) with or involving a church of another denomination or any congregation or activity of such a church, and~~

- (b) concerning the use of trust property.
- (2) The Trust may permit trust property to be used and managed for the purposes of a scheme of co-operation on such terms and conditions as the Trust determines.
- (3) Any proceeds derived by the Trust from a scheme of co-operation are to be applied in the manner decided by the Trust.
- (4) Conditions that the Trust may determine under this section include:
 - (a) conditions with respect to the making of monetary contributions towards the acquisition, construction, alteration, maintenance or repair of property vested in or held on behalf of a co-operating church or congregation, and
 - (b) the giving or taking of a security or charge over any property.
- (5) Trust property may be used in accordance with a scheme of co-operation except to the extent that the property is subject to an express trust expressly forbidding its use in that manner.
- (6) Trust property is not to be regarded as property that is subject to an express trust expressly forbidding its use under a scheme of co-operation merely because it is directed to be held on trust for worship within, or for the purposes of, the Church.

124 Trusts may be varied

- (1) The Trust may by resolution declare that, in its opinion, it has become impossible or inexpedient to carry out or observe the terms of a trust of property vested in it, whether as to its purpose or any other of its terms.
- (2) The Trust may, by the same or a later resolution, declare that the property is subject to another trust and, on the making of such a declaration:
 - (a) the trust that is to be replaced ceases, and
 - (b) the property is to be held subject to the other trust.
- (3) In making such a declaration, the Trust must ensure that the property is dealt with as nearly as is possible for the purposes for which the property was held immediately before the resolution.
- (4) However, the Trust may by resolution declare that, in its opinion, it is impossible or inexpedient to deal with the property in accordance with subsection (3) because of circumstances arising after the creation of the trust that is to be replaced.
- (5) On making a resolution under subsection (4), the Trust may hold, dispose of or otherwise deal with and apply the property for such purposes for the use and benefit of the Church as the Trust declares by resolution.

1235 TrustCorporation may act as executor, administrator or trustee

If authorised by the TrustCorporation to do so, a trusteemember or a person employed by the TrustCorporation may, on behalf of the TrustCorporation:

- (a) swear an affidavit, or
- (b) make a declaration or statement, or
- (c) give security and do any other act or thing, that is, by any charter, enactment or rule of court, required to be done by a person who is applying for or granted probate or letters of administration, or who is administering a trust.

1346 TrustCorporation may make claims for compensation on compulsory acquisition etc

In relation to the exchange, dedication or compulsory acquisition of any trust property, the TrustCorporation may:

- (a) act on behalf of the Church and make claims for compensation, and
- (b) agree to and settle any such claims for such amount, and on such terms and conditions, as it thinks fit.

Part 3 Vesting of property in Trust

Division 1 Vesting of property in Trust

17 Vesting of certain property in Trust on the date of commencement

(1) On the date of commencement, all property and rights vested in or held by Bishop Petar Karevski, Father Jovica Simonovski and Father Tone Gulev on trust for the Church are divested from those persons and are, to the extent that they were so held, vested in the Trust (without the need for any further conveyance);

(2) Without limiting subsection (1), on the date of commencement, the following land vests in the Trust (without the need for any further conveyance):

(a) The Macedonian Orthodox Church “Holy Mother of God”, situated at and known as 37–39 Atkinson Street, Liverpool, New South Wales and being the land more particularly described in Certificate of Title Volume 10673 Folio 236 of the Register kept under the *Real Property Act 1900* of 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 and being the land more particularly described in Certificate of Title Volume 9361 Folio 679 of the Register kept under the *Transfer of Land Act 1958* of Victoria;

(c) The Macedonian Orthodox Church “Saint Prohor Pehinski” Monastery, situated at and known as 130 Spring Road, Donnybrook, Victoria and being the land more particularly described in Certificate of Title Volume 10689 Folios 945, 946, 947 and 948 of the Register kept under the *Transfer of Land Act 1958* of Victoria;

(d) The Macedonian Orthodox Church “Holy Mother of God”, situated at and known as Lots 4 and 5 Curtis Street, Woodville South, South Australia, and being the land more particularly described in Certificate of Title Volume 5477 Folio 51 of the Register Book kept under the *Real Property Act 1886* of South Australia;

(3) On and from the date of commencement, the Trust is taken to be the successor in law of Bishop Petar Karevski, Father Jovica Simonovski and Father Tone Gulev for all purposes, including private international law.

18 Operation of a gift, disposition or trust after date of commencement

(1) This section applies to a gift, disposition or trust of property that, on or after the date of commencement, is made or declared (whether by deed, will or otherwise) to, in favour of, or for the purpose of:

- (a) the Bishop (on behalf of the Church), or
- (b) any other person (on behalf of the Church), or
- (c) the Church;

(2) Such a gift, disposition or trust of property takes effect when it is made or declared:

- (a) to or in favour of the Trust, and
- (b) for a purpose of the Trust corresponding with, or similar to, the purpose for which it was, or was taken to be, made or declared;

(3) Such a gift, disposition or trust:

- (a) does not fail only because of the provisions of this Act, and
- (b) if it is capable of taking effect to any extent, takes effect to that extent as if it were made or declared:
 - (i) to or in favour of the Trust, and
 - (ii) for a purpose of the Trust corresponding with, or similar to, the purpose for which it was, or was taken to be, made or declared.

19 Vesting of other property held on trust if current trustees consent

(1) This section applies if:

- (a) property (*the relevant property*) is held on trust for the Church on or after the date of commencement by any person or persons (*the current trustees*), and
- (b) each of the current trustees consents in writing to a transfer of the relevant property to the Trust;

(2) The Metropolitan may, by writing under his hand, consent to the transfer of the relevant property to the Trust.

(3) If the Metropolitan consents to the transfer, the relevant property is, on the date of consent of the Metropolitan, divested from the current trustees and is, to the extent that it was held on trust for the Church, vested (without the need for any further conveyance) in the Trust.

(4) If such a transfer is registered in accordance with section 21, the registration operates as a discharge of all such current trustees from the duties of the trust.

20 The Metropolitan may consent to transfer of other property held on trust, on behalf of absent or disabled trustees

(1) This section applies if:

(a) property (~~the relevant property~~) is held on trust for the Church on or after the date of commencement by any person or persons (~~the current trustees~~), and

(b) the Metropolitan has sought the consent of each current trustee to the transfer of the relevant property, and

(c) the consent of any current trustee cannot be obtained because that person has died, is absent or is under any other disability, but the consent of the remaining trustees has been obtained, and

(d) the Metropolitan has given notice of his intention to consent to the transfer of the relevant property in a newspaper circulating generally in the place where the relevant property is located, and

(e) no proceedings have been taken by any current trustee within 30 days after the publication of that notice or, if such proceedings have commenced, those proceedings have been finally determined in favour of the Metropolitan.

(2) The Metropolitan may, by writing under his hand, consent to the transfer of the relevant property to the Trust.

(3) If the Metropolitan consents to the transfer, the relevant property is, on the date of consent of the Metropolitan, divested from current trustees and is, to the extent that it was held on trust for the Church, vested (without the need for any further conveyance) in the Trust.

(4) If such a transfer is registered in accordance with section 21, the registration operates as a discharge of all current trustees from the duties of the trust.

Division 2 Provisions relating to vesting of property

21 Registration authorities required to record conveyances of land

(1) The appropriate registration authority, on being requested to do so and on delivery of any relevant instrument, must issue all necessary certificates of registration or title and make any recordings on the relevant Register that are necessary because of the operation of section 17, 19 or 20.

(2) In this section:

~~appropriate registration authority:~~

(a) in relation to land in New South Wales—means the Registrar General of this State, and

(b) in relation to land in the Australian Capital Territory—means the registrar general referred to in the *Land Titles Act 1925* of the Australian Capital Territory, and

(c) in relation to land in the Northern Territory—means the Registrar General referred to in the *Land Title Act* of the Northern Territory, and

(d) in relation to land in Queensland—means the chief executive referred to in the *Land Act 1994* of Queensland, and

(e) in relation to land in South Australia—means the Registrar General appointed under the *Real Property Act 1886* of South Australia, and

(f) in relation to land in Tasmania—means the Recorder referred to in the *Land Titles Act 1980* of Tasmania, and

(g) in relation to land in Victoria—means the Registrar of Titles appointed under the *Transfer of Land Act 1958* of Victoria, and

(h) in relation to land in Western Australia—means the Registrar referred to in the *Transfer of Land Act 1893* of Western Australia:

relevant Register:

- (a) in relation to land in New South Wales—means the Register required to be kept under the *Real Property Act 1900* of New South Wales, and
- (b) in relation to land in the Australian Capital Territory—means the register required to be kept under the *Land Titles Act 1925* of the Australian Capital Territory, and
- (c) in relation to land in the Northern Territory—means the land register required to be kept under the *Land Title Act* of the Northern Territory, and
- (d) in relation to land in Queensland—means the land registry required to be kept under the *Land Act 1994* of Queensland, and
- (e) in relation to land in South Australia—means the Register Book required to be kept under the *Real Property Act 1886* of South Australia, and
- (f) in relation to land in Tasmania—means the Register required to be kept under the *Land Titles Act 1980* of Tasmania, and
- (g) in relation to land in Victoria—means the Register of land required to be kept under the *Transfer of Land Act 1958* of Victoria, and
- (h) in relation to land in Western Australia—means the Register required to be kept under the *Transfer of Land Act 1893* of Western Australia:

22 Provisions relating to vesting of property

- (1) The vesting of the property in the Trust by this Part does not affect:
 - (a) any reservation, mortgage, charge, encumbrance, lien or lease that affected the property, or
 - (b) any trust on which the property was held, immediately before the vesting of the property.
- (2) No attornment to the Trust by a lessee of land vested in the Trust by this Part is necessary.
- (3) The vesting of property by this Part is not a dutiable transaction for the purposes of the *Duties Act 1997*.
- (4) A dutiable transaction within the meaning of the *Duties Act 1997*, or an instrument that effects or evidences a dutiable transaction and that occurs or is executed or registered only for:
 - (a) a purpose ancillary to, or consequential on, the operation of this Part, or
 - (b) the purpose of giving effect to this Part, is not chargeable with duty under the *Duties Act 1997*.

23 Claims and liabilities in relation to Trust

- (1) On and from the relevant transfer date, the following provisions have effect in relation to property vested in the Trust in accordance with section 17, 19 or 20:
 - (a) the rights and liabilities of a former trustee become rights and liabilities of the Trust to be exercised and discharged in accordance with this Act,
 - (b) the obligations of a former trustee become obligations of the Trust to be performed in accordance with this Act,
 - (c) proceedings before a court or tribunal by or against a former trustee that, immediately before the relevant transfer date, were pending or in the course of being heard become proceedings by or against the Trust,
 - (d) to the extent to which an act, matter or thing done or omitted to be done on behalf of a former trustee had any force or effect immediately before the relevant transfer date, it becomes an act, matter or thing done or omitted to be done by the Trust,
 - (e) a reference in any document to a former trustee is to be read as a reference to the Trust,
 - (f) time that had commenced to run in relation to a former trustee is taken to be time that had commenced to run in relation to the Trust.
- (2) In this section:

former trustee means a person in whom, immediately before the relevant transfer date, property was held on trust for the Church.

24 Operation of gifts, dispositions or trusts of property

~~(1) A gift, disposition or trust of property transferred by section 17 that, before the relevant transfer date, has been or is taken to have been made or declared (whether by deed, will or otherwise) to, in favour of, or for the purpose of Bishop Petar Karevski, Father Jovica Simonovski or Father Tone Gulev (on behalf of the Church):~~

~~(a) does not fail only because of the provisions of this Act, and~~

~~(b) if it is capable of taking effect to any extent on or after the date of commencement, takes effect to that extent as if it were made or declared:~~

~~(i) to or in favour of the Trust, and~~

~~(ii) for a purpose of the Trust corresponding with, or similar to, the purpose for which it was, or was taken to be, made or declared.~~

~~(2) A gift, disposition or trust of property transferred by section 19 or 20 that, before the relevant transfer date, has been or is taken to have been made or declared (whether by deed, will or otherwise) to, in favour of, or for the purpose of the Bishop (on behalf of the Church) or any other person (on behalf of the Church) or the Church:~~

~~(a) does not fail only because of the provisions of this Act, and~~

~~(b) if it is capable of taking effect to any extent on or after the date of commencement, takes effect to that extent as if it were made or declared:~~

~~(i) to or in favour of the Trust, and~~

~~(ii) for a purpose of the Trust corresponding with, or similar to, the purpose for which it was, or was taken to be, made or declared.~~

Division 3 Payment of duty not required

25 Payment of duty not required in certain cases

~~Duty under the *Duties Act 1997* is not chargeable in respect of, or in connection with, a conveyance to the Trust of property from a person or body who holds that property for or on behalf of any parish or community of the Church.~~

Part 34 Miscellaneous

145 Payment of duty not required in certain cases

~~Duty under the *Duties Act 1997* is not chargeable in respect of, or in connection with, a conveyance dutiable transaction to the Corporation of property from a person or body who holds that property for or on behalf of any parish or community of the Church.~~

1526 Custody and use of seal of TrustCorporation

(1) The seal of the TrustCorporation is kept by the Secretary of the TrustCorporation and may be affixed to a document only:

(a) in accordance with a resolution of the TrustCorporation, and

(b) in the presence of the Metropolitan, or in the absence of the Metropolitan, a person appointed by the Metropolitan for the purpose of signing the document, and not fewer than 2 other trusteesmembers, and

(c) with an attestation by the signatures of those members of the fact of the affixing of the seal.

(2) An instrument purporting to have been sealed with the seal of the TrustCorporation and to have been signed by the Metropolitan, or in his absence, by the appointed person, and not fewer than 2 other trusteesmembers is taken to have been executed in accordance with this section.

1627 How TrustCorporation may execute certain documents

(1) Any instrument relating to any property or matter that, if made or executed by an individual, would by law be required to be in writing under seal may be made on behalf of the

TrustCorporation in writing under the seal of the TrustCorporation.

(2) Any instrument relating to any property or matter that, if made by or between individuals, would by law be required to be in writing signed by the parties to be bound by it may be made

on behalf of the TrustCorporation in writing by any person acting under its authority, express or implied.

(3) Any contract relating to any property or matter that, if made between individuals, would by law be valid although made orally only (and not reduced to writing) may be made on behalf of the TrustCorporation by any person acting under its authority, express or implied.

2178 TrustCorporation may appoint agents

(1) The TrustCorporation may, by writing under its seal, expressly empower any person, in respect of any specific matter, to execute any deed or other document on its behalf as its agent or attorney.

(2) Any deed signed by such an agent or attorney on behalf of the TrustCorporation binds the TrustCorporation and has the same effect as if it were under the seal of the TrustCorporation.

2189 Evidence of certain matters relating to TrustCorporation

~~(1) A certificate under the seal of the TrustCorporation to the effect that property specified in the certificate is held by it on trust for the Church is, in any legal proceedings, evidence that the property is so held.~~

~~(2) A certificate under the seal of the Trust to the effect that the estate or interest of a person specified in the certificate in land so specified is an estate or interest vested in the Trust by this Act is, for the purposes of any application by the Trust to be registered under the Real Property Act 1900 as the proprietor of that estate or interest, evidence of its contents.~~

31920 Persons exonerated from liability on receiving receipt for money paid to TrustCorporation

A receipt for money paid to the TrustCorporation that:

- (a) is executed under the seal of the TrustCorporation, or
- (b) is in writing signed by not fewer than 2 trusteesmembers, or
- (c) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the TrustCorporation, exonerates the person by whom or on whose behalf the money is paid from any liability for the loss, misapplication or non-application of the money.

3204 Inquiries relating to dealings with trust property unnecessary in certain cases

Whenever the TrustCorporation acquires, disposes of or otherwise deals with property, it is not necessary for:

- (a) the other party or parties to the transaction, or
- (b) the Registrar-General or any other person registering or certifying title to the property, to inquire whether the TrustCorporation has power to acquire, dispose of or otherwise deal with the property and none of those persons is affected by notice that the TrustCorporation has no such power.

3221 Certain persons to be indemnified out of trust property

A trusteemember, and any other person, exercising in good faith a function in relation to trust property in accordance with this Act or any by-law of the TrustCorporation, and the executor or administrator of any such trusteemember or person, are entitled to be indemnified out of trust property against all expenses and liabilities that they have incurred in connection with the exercise of the function.

3223 How documents may be served on TrustCorporation

Any document may be served on the TrustCorporation by delivering it to, or sending it by post to, the Diocesan Secretary or any person apparently authorised by the TrustCorporation to accept service.



МАКЕДОНСКА ПРАВОСЛАВНА ЦРКВА
MACEDONIAN ORTHODOX CHURCH
СВЕТИ АРХИЕРЕЈСКИ СИНОД
HOLY BISHOP'S SYNOD

САС бр. 137
10.09.2010 год.
СКОПЈЕ

До Парламентот на Нов Јужен Велс
Парламентарна комисија за распит
околу Македонската православна Црква (МПЦ)
-Предлог закон за старателство на имотите 2010 г.

Почитувани господа и госпоѓи,

Откако имавме можност да го прочитаме Записникот од 23 август 2010 година, од заседанието на Комисијата за сослушување во врска со Предлог законот за старателство на имотите на Македонска православна црква (МПЦ) 2010 година, во оние делови на изјавите на господата Љупчо Стефановски и Игор Александров, во кои се вели дека сме примиле претставници од Македонската православна црковна општина (МПЦО) „Свети Димитриј Солунски“ од Волонгог, како и од други црковни општини од Македонската православна црква, Епархија за Австралија и Нов Зеланд (МПЦЕАНЗ), и дека на Светиот архиерејски синод на МПЦ не му бил образложен споменатиот Предлог закон за старателство на имоти на МПЦ 2010 година, одговорно тврдиме дека не сме примиле претставници на ниту една Црковна општина од МПЦЕАНЗ, ниту, пак, сме разговарале нешто во врска со споменатиот Предлог закон.

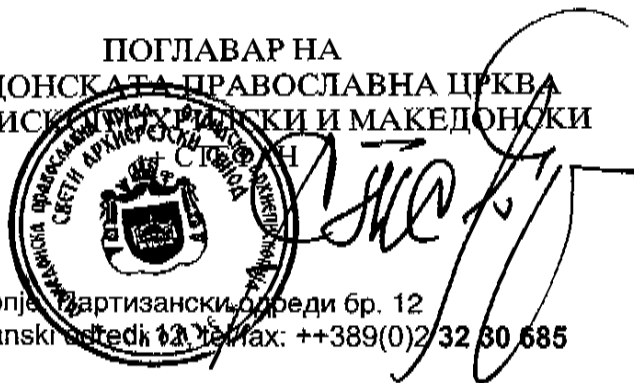
Светиот архиерејски синод (САС) на МПЦ, по прашањето на Предлог законот за старателство на имотите на МПЦ 2010 година, откако Неговото Високопреосвештенство, митрополитот Петар даде писмено појаснување на споменатиот Предлог закон, едногласно даде своја безрезервна поддршка за донесување на Предлог законот за старателство на имотите на МПЦ 2010 година во Парламентот на Нов Јужен Велс (САС бр. 101 од 30. 06. 2010) и ставот на САС по тоа прашање е непроменет.

Напоменуваме дека ниту јавно, ниту, пак, тајно, односно во доверба е кажано некому што и да било од Наша страна во врска со Предлог законот за старателство на имотите на МПЦ 2010, или во врска со работењето на надлежниот архиереј на таа Епархија, митрополитот Петар, што значи дека реченото пред Комисијата не е вистинито или, пак, е со задни намери.

Останувајќи со особено почитување до ценетиот Парламент и парламентарната Комисија, се надеваме дека правилно ќе бидеме разбрани.

Со Божји благослов,

ПОГЛАВАР НА
МАКЕДОНСКАТА ПРАВОСЛАВНА ЦРКВА
АРХИЕПИСКОП НА СВ. АРХИЕРЕЈСКИ И МАКЕДОНСКИ



MACEDONIAN ORTHODOX CHURCH HOLY BISHOPS' SYNOD

HBS No. 137
16.09.2010
Skopje

To the Parliament of New South Wales
Inquiry Committee
into the Macedonian Orthodox Church Property Trust Bill 2010

Respected Sirs and Madams,

We have had an opportunity to read the transcript of 23 August 2010, from the Committee's public hearing in relation to the Macedonian Orthodox Church Property Trust Bill 2010, and in reply to those parts of the statements made by Mr Ljupco Stefanovski and Mr Igor Aleksandrov, where it is said that we had accepted visitation from representatives from the Macedonian Orthodox Church Community "Saint Dimitri of Solun" from Wollongong, as well as from other church communities from the Macedonian Orthodox Church Diocese of Australia and New Zealand (MOCDANZ), and that the above mentioned Property Trust Bill for the Macedonian Orthodox Church 2010 had not been explained to the Holy Bishops' Synod of the MOC, we responsibly assert that we have not had any meetings with representatives from any Church Community from the MOCDANZ, nor had we discussed anything relating to the mentioned Bill.

Following the written explanation provided by His Eminence Metropolitan Petar in relation to the above mentioned Bill, the Holy Bishops' Synod (HBS) of the MOC, unanimously provided its unreserved support for the enactment of the Macedonian Orthodox Church Property Trust Bill 2010 in the Parliament of New South Wales (HBS No. 101, from 30.06.2010), and the position of the HBS in relation to this matter remains unchanged.

We emphasise that neither publicly, nor secretly, in other words in confidence, had on our part anything been said to any person in relation to the Macedonian Orthodox Church Property Trust Bill 2010, or in relation to the conduct of the overseeing Bishop of that Diocese, Metropolitan Petar, which means that what was stated before you the Committee is not true, or has an ulterior motive.

We remain particularly respectful of the Parliament and the Inquiry Committee, and in hope that we will be properly understood.

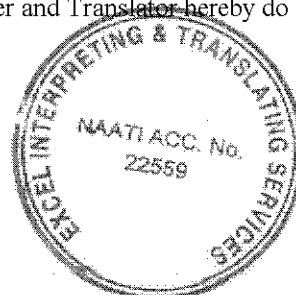
With God's blessing

HEAD OF THE
MACEDONIAN ORTHODOX CHURCH
ARCHBISHOP OF OHRID AND MACEDONIA
(Signed "Stefan", official stamp affixed)

Republic of Macedonia – Skopje, Partizanski Odredi No. 12, Tel/ Fax: ++389(0)2 32 30 635

In witness that this is a true and correct translation of a document written in the Macedonian Language, I, Boris Petrusev, NAATI (Acc. No: 22559) and PAATI (Acc. No: 10) accredited Interpreter and Translator hereby do affix my stamp and signature.

Sydney 16. 9. 2010



To Biljana
Macedonian Community of W.A. Inc.

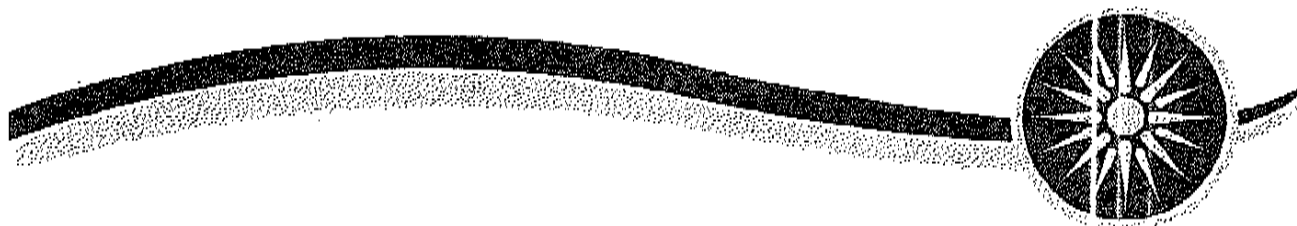
Macedonian Orthodox Church of St Nikola

W.A. Macedonian Club Inc.

Stirling Lions Soccer Club

PO Box 12, North Perth WA 6906 Cnr Albert St and Macedonia Place North Perth WA Ph - 08 9328 7852

email: admin@macedoniawa.com.au web: www.macedoniawa.com.au



19 June 2010

Your Grace Bishop Petar,

In reply to your Circular Letters No 13 dated 1 June 2010 and No 42 dated 13 June 2010 and subsequent telephone conversations and emails since then between your Secretary Father Ljupco Karevski and our Parish Priest the Very Reverend Father Stanko Jovanovski, we would like to advise you of the following:

The Macedonian Orthodox Church of St Nikola situated at 8 Macedonia Place North Perth as a member of the Australian Diocese of the Macedonian Orthodox Church has always paid its dues and levies to the Australian Diocese at all times in a prompt manner.

We abide by the spiritual and religious teachings of the Macedonian Orthodox Church and our Parish Priest the Very Reverend Father Stanko Jovanovski who does an outstanding job as the spiritual leader of our parish. However, under the Constitution of the Macedonian Community of WA Inc our Parish Priest does not have any unilateral power to make any decisions in relation to matters pertaining to our assets and therefore cannot make representations on behalf of our Community and our Church in this regard and he is fully aware of this.

We therefore request that any future correspondence which relates to management, administration and finances in relation to the Macedonian Orthodox Church of St Nikola be directed (be it in writing, or in person) to:

The President,

C/- The Macedonian Community of WA Inc,

PO Box 12, NORTH PERTH WA 6906

Mob 0417 744 117 or Tel 93452255 W

This will enable the Full Committee of the Macedonian Community of WA Inc to may make an informed decision in due course and reply in a prompt manner.

After having given due consideration to your request for our Church and our Community to support the MOC Property Trust Bill 2010, the Full Committee of the Macedonian Community of WA Inc has come to the conclusion that we cannot support these proposals which are before the NSW and Victorian Parliaments. If there are Macedonian Orthodox Churches who wish to offer their properties into such trusts then we believe it is their prerogative however, any attempts to cajole or coerce Communities and Churches to support these proposals against their will is something we strongly oppose.

Your Grace, with all due respect, we firmly believe that enough community resources have been idly wasted on protracted legal disputes between fellow Macedonians in Australia. The time for reconciling any differences is now and proceeding with these Trusts will only serve to deepen the divisions we sadly have in Australia rather than mending the wounds and holding out a brotherly and conciliatory hand to each other to enable us to overcome these difficulties.

Yours Faithfully,



Sotir Novachkov

President

Macedonian Community of WA Inc

Mob 0417 744 117 or Tel 93452255 W



МАКЕДОНСКА ПРАВОСЛАВНА ЦРКВА
MACEDONIAN ORTHODOX CHURCH

МАКЕДОНСКА ПРАВОСЛАВНА ЦРКВА ЕПАРХИЈА ЗА АВСТРАЛИЈА И НОВ ЗЕЛАНД
MACEDONIAN ORTHODOX CHURCH DIOCESE OF AUSTRALIA & NEW ZEALAND

ПРАВОСЛАВЕН МИТРОПОЛИТ
ORTHODOX METROPOLITAN
No. 49

03 83900033

BY FACSIMILE TRANSMISSION and BY EMAIL

Fax No: + 08 9345 3035

Email: admin@macedoniawa.com.au

No. of Pages: 3

21 June 2010

Mr Sotir Novachkov
President
The Macedonian Community of WA Inc.
Macedonian Orthodox Church of St Nikola
PO Box 12,
NORTH PERTH WA 6906

Dear Sotir,

Greetings and God Bless.

I refer to your letter to me dated 19 June 2010, and your telephone discussions with Fr Ljupco Karevski of earlier today, from which I gather that there has been some misunderstanding within your Committee as to the implications and the effect of the *Macedonian Orthodox Church Property Trust Bill 2010* ("Bill"), which is currently before the NSW Parliament. It also appears that there is misunderstanding as to the support that was sought from your Community.

I have been informed that you were satisfied and appreciative of the further explanation and assurances that Fr Ljupco Karevski provided to you regarding the effects of the Bill, that it only proposes to give legal identity of the Macedonian Orthodox Church Diocese of Australia and New Zealand ("Diocese") and does not affect any property other than the four Diocesan properties listed in the Bill.

My letter of 13 June 2010 at some length explained the introduction of the Bill and its intentions and implications, and I am now writing this additional letter, in good faith, to provide the further assurances that the Bill does not affect any of the properties held by your Community.

I confirm that in the preparation of the Bill, particular attention was given to the drafting of the vesting and transfer provisions to ensure that it does not affect any property wherever situate in Australia other than the four Diocesan properties listed in section 17 of the Bill. You are well aware of the constant community attack that myself, my Deputy Bishop and Fr Gulev suffer as a result of holding these properties in our personal names, notwithstanding that this is pursuant to a trust appointment and that certificates of title are not able to record our trustee capacity. The Bill effects automatic vesting only of these four Diocesan properties, and no others.

very Rev. J. Simion

No other property is affected by the Bill. On my specific instructions, the Bill does not contain any mandatory transfer of property nor is any person compelled to transfer property to the statutory trust. The Bill however provides a procedure in clause 19 for any person who holds property on trust for the Diocese and wishes to transfer it to the Diocese, to provide consent to such transfer which will be effected only if the consent of the Metropolitan is also given. This reflects the reality of any conveyance where the consent of both parties to the transfer is required. In this regard, there are a number of Church communities in the Diocese with significant landholdings that have already resolved to transfer all their properties to a property statutory trust when established, and the Bill accommodates for this.

Notwithstanding that the Bill does not affect any property other than the four Diocesan properties, I confirm to you, the Macedonian Orthodox Church of St Nikola and the Macedonian Community of WA Inc. that the Diocese does not have any intention nor is it possible under the Bill to compel or force a transfer to the proposed statutory trust of any of the properties in your ownership. Moreover, and as a general comment, the Bill does not empower the statutory trust to compel, coerce or otherwise request any other person to transfer any of its property to the statutory trust. The statutory trust may accept property which any person that is holding on behalf of the Diocese voluntarily wishes to transfer to it, however the Metropolitan also needs to consent to such transfer.

I understand from your letter that you are accepting of the fact that there are some Churches that may wish to offer their properties into the statutory trust and it is their prerogative, however no Community or Church can be coerced into such transfer. The Church is in complete agreement with this statement and this is absolutely what the Bill is set to achieve.

On the basis of the above, you would have noticed that the letter of support that was requested from the Macedonian Orthodox Church of St Nikola (a copy attached) in fact clearly states that your Committee understands that none of your properties is affected by the Bill but that the Bill only effects transfer to the statutory trust of the Diocesan properties held by myself, my Deputy Bishop and Fr Gulev as trustees.

Finally, and for completeness, I confirm that as mentioned in my letter of 1 June 2010, the Victorian trust bill has been withdrawn from the Victorian Parliament for the reasons explained in that letter, and the Bill is the only proposed legislation for the Diocese that is currently under consideration.

I trust that my explanation in this letter will assist in your consideration of this important issue for the Church and that, as a part of the Diocese, you will support the Church in this important endeavor while resting assured that no properties of your Church, the Community or any other related body will or can be affected by the Bill.

With God's blessings,

Signed for and with authorization of
Bishop Petar Karevski
Administrator of the Macedonian Orthodox Church
Diocese of Australia and New Zealand
by Deputy Bishop Jovica Simonovski

Very Rev. J. Simonovski

Annexure E - Further letters of support from individual parishioners

Enclosed are 90 letters of support from parishioners of the Macedonian Orthodox Church from the following Churches:

1. St Dimitrij of Solun, Wollongong, New South Wales;
2. St Clement of Ohrid, Canberra, Australian Capital Territory.

To the members of the NSW Parliament,

Macedonian Orthodox Church Property Trust Bill 2010

I, _____, currently residing at _____
_____ am a believer of the Macedonian
Orthodox Church. I regularly attend and support my parish church "Saint
Dimitrija of Solun" in Wollongong.

I am writing this letter to state my support for the Macedonian Orthodox
Church Property Trust Bill 2010, being considered in the NSW
Parliament. I realise the importance of this Bill for future generations of
the Macedonian Orthodox community, and more generally the Australian
community. This Bill will permit better organisation of the Macedonian
Orthodox Church in Australia, which at the moment is crucial if its
mission and charitable roles are to grow.

Yours truly,