

Submission  
No 436

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

**Name:** Mr Peter Breen

**Date Received:** 27 August 2010

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**PETER BREEN**  
SOLICITOR & BARRISTER

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25 August 2010

Ms Beverly Duffy  
Director  
General Purpose Standing Committee No 3  
Parliament House  
Macquarie Street  
Sydney NSW 2000

MBE Business Service Centre  
164/78 William Street  
East Sydney NSW 2011  
Tel: 02 9360 0832  
Fax: 02 9331 3122  
Mob: 0419 985 145  
Email: pbreen60@gmail.com

Dear Ms Duffy

**General Purpose Standing Committee No 3**  
**Inquiry into the Macedonian Orthodox Church Property Trust Bill 2010**

Thank you for the opportunity to expand upon my brief remarks at this week's inquiry into the Macedonian Orthodox Church Property Trust Bill 2010.

As a member of the Legislative Council in 2006, I travelled to Skopje in the Republic of Macedonia where I met Igor Aleksandrov and Michael Radin for the purpose of attempting to negotiate a settlement of legal proceedings between the Macedonian Orthodox Church in Macedonia and the Association of Macedonian Communities in Australia. At that stage, the association had spent in excess of \$5 million in various legal proceedings which had been on foot for 10 years since Bishop Petar was posted to Australia in 1996. I met with Archbishop Stefan, the senior Macedonian cleric in Skopje at the time, in the presence of Bishop Petar. They would not permit Mr Aleksandrov and Mr Radin to attend the meeting. The discussions were cordial and I made the following oral submissions at the request of Mr Aleksandrov and Mr Radin:

1. None of the parties were served by the legal proceedings.
2. The costs were prohibitive and the parties' resources were limited.
3. Other Christian churches in Australia such as the Catholic Church have autonomy over their assets which are owned by local trusts.

4. Due regard and financial support was given to parent churches overseas by local members of other Christian churches.
5. There was no dispute about spiritual or theological matters except to the extent of any prospective merger between Macedonian Orthodox and Serbian Orthodox churches.
6. The Macedonian Orthodox Church community in Australia was established by the hard work and financial acumen since 1956 of Australian Macedonians who wanted to protect local church assets from political and financial uncertainties in Macedonia.
7. A compromise could be reached between the churches in Skopje and Australia to permit control of local assets along the lines established by the Macedonian diaspora in the United States, Canada and various parts of Western Europe.

I have not acted in any of the legal proceedings between the churches in Macedonia and Australia and I was not briefed to make any formal offer of settlement during my discussions in Skopje in 2006. However, I did ask Archbishop Stefan and Bishop Petar if there was any compromise offer I could make to the church community in Australia, and none was forthcoming. I do not recall now whether I mentioned at the meeting in Skopje that the Australian Constitution includes a freedom of religion provision, but I held the opinion at the time – and still do – that any legislation that seeks to appropriate the assets of the Macedonian Orthodox Church community in Australia to a body under the effective control of the parent church in Macedonia would breach s.116 of the Constitution which provides:

The Commonwealth shall not make any law for establishing any 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.

While it is true that the section has never been successfully invoked to strike down a law, it has been the subject of important decisions which clarified the way in which the provision applies. In the *Jehovah's Witnesses Case* (1943) the Commonwealth was prevented from appropriating the Jehovah's Witnesses Kingdom Hall for defence purposes during the Second World War. Scientology was found to be a religion for the reasons listed in the *Church of the New Faith v Commissioner for Pay-Roll Tax* (1983). And the *Defence of Government Schools (DOGS) Case* (1981) established that the section would be breached by the favouring of one church over another.

The Committee will be aware that the proposed legislation under consideration mandates in various clauses certain formal requirements for the transfer of property held by citizens and other legal entities in New South Wales to a statutory corporation to be known as the Macedonian Orthodox Church Property Trust. In other words, the bill before the committee seeks to appropriate the property of the Macedonian Orthodox Church in Australia for the benefit of a statutory corporation under the control and direction of the Macedonian Orthodox Church in Macedonia. The bill ignores the fact that members of the Australian church who acquired the property either in their own right or the right of Australian statutory corporations have rights under the Australian Constitution including the right to free exercise of religion.

Brennan CJ in the *Stolen Generations Case* (1997) said that to attract invalidity under s. 116, a law must have the purpose of achieving an object which the provision forbids. The object of the bill before the committee is to appropriate the property of the Australian church which is legislative action of the kind contemplated by Brennan that interferes with the free exercise of religion. The Macedonian community in Australia consists of a large number of citizens who have contributed funds to the establishment of places of worship in Australia and other church related property. These citizens enjoy the right to freedom of religion – especially the right to free exercise of religion – and appropriating their church property has the effect of interfering with their religious ceremonies and customs contrary to the Constitution.

Toohy J made the observation in the *Stolen Generations Case* (1997) that s.116 is specifically directed to the making of law and not the administration of law and on this basis the bill before the committee appears to fall squarely within the ambit of the constitutional provision. His Honour concluded that the purpose of the legislation in question may properly be taken into account in determining whether it is a law of the prohibited character. Where the purpose of the legislation is to mandate the procedure for citizens of the Commonwealth to transfer property from one church entity to another, it is my submission that such a law invites consideration by the High Court to resolve the question whether the religious freedom provision has been breached.

I make this submission in the knowledge that similar legislation introduced into the Parliament in 1998 as a government bill was withdrawn because no consensus could be found with the Macedonian community in Australia as to the reach of the bill. Australians of Macedonian origin who lobbied me when I was a member of the Legislative Council were particularly concerned that Australian church property should be owned and managed in Australia for fear that the property might otherwise become embroiled in Balkan politics and finances. The bill before the committee offends a majority of the Macedonian Orthodox Church community in Australia and it should be withdrawn until a consensus is reached with those citizens whose funds contributed to the acquisition and maintenance of the Australian church property.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Breen', with a stylized flourish at the end.

PETER BREEN