

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

**Organisation:** NSW Government

**Date Received:** 3 August 2010

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**NSW GOVERNMENT SUBMISSION TO THE LEGISLATIVE  
COUNCIL GENERAL PURPOSE STANDING COMMITTEE NO. 3  
INQUIRY INTO THE MACEDONIAN ORTHODOX CHURCH  
PROPERTY TRUST BILL 2010**

***Background to Church legislation in NSW***

There are approximately 29 different church property trust Acts in NSW for approximately 23 different churches. These Acts generally establish a statutory trust in the name of the organisation, with the power to perform all things necessary in dealing with trust property to carry out the proper management of the trust. The trust is usually constituted as a body corporate to overcome the inconvenience of transferring church property to new trustees each time a trustee dies or retires. The Acts do not confer State recognition that the body is a church or has religious purposes.

Church property trust legislation has a long history and the earliest such Act still in effect appears to be the *Anglican Church Trust Property Act 1917*.

***Legal Proceedings***

The Bishop of the Macedonian Church (also known as the Metropolitan) and parishioners of the Macedonian Orthodox Church at Rockdale have been involved in extensive litigation in the Supreme Court, Court of Appeal and High Court since 1997. The dispute relates to who owns and controls a parish church and other property in the Rockdale area.

These proceedings are listed for hearing in the Supreme Court commencing on 2 August 2010 for 4 weeks.

***Macedonian Orthodox Church Property Trust Bill 1998***

The Government introduced the Macedonian Orthodox Church Property Trust Bill into Parliament in 1998, however, this legislation was not progressed when the Government became aware of a lack of consensus within the Church as to the content of the legislation.

That Bill would have divested any property held in trust for the Church by a corporation or person from that corporation or person and vested it in the Macedonian Orthodox Church Property Trust established by the Bill.

The then Attorney General, the Honourable Jeff Shaw MLC, wrote to the solicitors for the parties involved in the legal proceedings (attachment A) advising that the Government's preferred position was that there should be general consensus within the Macedonian Church community on the basic terms of the proposed property trust legislation and that if internal agreement and a proposal for legislation is not forthcoming from the Church, the government would prefer to

delay taking steps to deal further with the Bill until the litigation before the Supreme Court was resolved.

### ***The Macedonian Orthodox Church Property Trust Bill 2010***

The Macedonian Orthodox Church Property Trust Bill 2010:

- establishes the Macedonian Orthodox Church Property Trust ('the Trust') as a corporation;
- provides that the Trust is to consist of the Bishop, the Deputy Bishop, the Diocesan Secretary, the deputy president of the Diocesan Assembly and six other members appointed by the Bishop;
- sets out the functions of the Trust, including purchasing, holding and dealing with property as trustee for, or for the purposes of, the Church;
- vests all property and rights held by the Bishop, Father Simonovski and Father Gulev on trust for the Church in the Trust – including four specifically detailed properties (one in New South Wales, two in Victoria and one in South Australia)
- provides that any gifts or trust of property to the Bishop or to any other person on behalf of the Church, or to the Church made after the commencement of the Bill are gifts or trusts in favour of the Trust;
- provides that property held on trust for the Church vests in the Trust if each of the current trustees holding the property, and the Bishop, consent in writing;
- sets out a procedure where the Bishop can consent to a transfer of property if the consent of a current trustee cannot be obtained because that person has died, is absent or under any other disability;
- requires Registrars-General of the various States and Territories to record conveyances of land to reflect the vesting of property; and
- provides that duty under the *Duties Act 1997* (NSW) is not chargeable in respect of such conveyances.

### ***Church community***

Church property trust legislation would generally only be supported by the Government if it has the general support of the church community.

The Government will await consultation on the legislation by the Committee before finalising its position. However, its general position remains that expressed by Attorney General Shaw in his letter of 4 January 2000.

The 1998 Bill vested all property held for the Church in the Trust. The current Bill, however, only vests property already in the name of the Bishop, Father Simonovski and Father Gulev in the Trust. It allows other property, held by others for the Church, to vest in the Trust only if those other trustees consent. The Bill does not therefore appear to affect the current legal proceedings about the disputed Rockdale property.

### ***Other Legal Policy Issues with Bill***

The Bill raises a number of other legal/policy issues:

### 1. NSW Registrar-General - Land

Section 21 of the Bill requires the NSW Registrar-General to record conveyances of land. This appears to be unnecessary as section 46C of the *Real Property Act 1900* already gives the Registrar General the power to make necessary recordings in the Register to give effect to a vesting by operation of statute. Section 21 of the Bill may create uncertainty and confusion as it is not clear whether it requires the Registrar General to record a transfer if the proper forms, or the relevant fee, required by section 46C of the *Real Property Act* are not submitted.

The requirement on the NSW Registrar-General to record conveyances set out in section 21 of the Bill could be omitted. This would be consistent with other church property trust legislation.

### 2. Territorial limits on the legislative powers of the State

Section 17 of the Bill purports to vest real property in Victoria and in South Australia in the Trust and section 21 purports to require the Registrars-General in other States and Territories to record conveyances of land to reflect the vesting of property under the Act.

These sections raise the question of whether they might be found to be invalid on the ground of extra-territoriality and as an '...impermissible intrusion into the legislative concerns that property belong to the Parliament of another State' (*Mobil Oil Australia Pty Ltd v Victoria* [2002] HCA 27, 106 per Kirby J). It would then be a case of whether the invalid provisions of the Bill could be excised from it and section 4(3) of the Bill appears to be directed to allowing this excision.

Other church property trust legislation does not appear to contain similar provisions, although the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994* does define property to include property located outside New South Wales. The *Methodist Church of Australia in Samoa Property Trust Act 1998* also provides in section 3 that 'It is the intention of Parliament that the provisions of this Act relating to property, including the vesting of property in the Trust, should apply, as far as possible, to property situated outside New South Wales.'

### 3. Stamp Duty

Section 25 of the Bill waives stamp duty on conveyances. It may be more accurate to replace the word 'conveyance' in that section with the phrase 'dutiable transaction'.

### 4. Reference to Macedonia

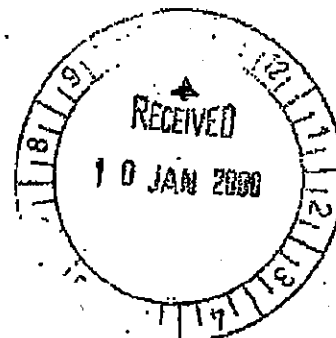
It is understood that it is Australian Government policy to always use the full provisional name 'the former Yugoslav Republic of Macedonia' rather than the name 'Macedonia'.

The Church is defined in section 3 of the Bill by referring to it being a part of the 'Macedonian Orthodox Church with its seat in Skopje, Macedonia'. This reference to 'Macedonia' should be amended to refer 'the former Yugoslav Republic of Macedonia' or to omit 'Macedonia' altogether and simply refer to 'Skopje'.



- 4 JAN 2000

Mr Keith McConnell  
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SYDNEY NSW 2000



Dear Mr McConnell

In recent weeks, staff from my Office and officers of my Department have met with both yourself and your clients and with Bishop Petar, his solicitor and other members of the Macedonian Orthodox Church.

As you are aware, the history of the Macedonian Orthodox Church Property Trust Bill is complex and I do not propose commenting on the matter.

However, it is valuable to note the origins of the proposal to have property trust legislation for the orthodox churches.

On 29 February 1988, the Premier wrote to representatives of the various orthodox churches and offered the Government's assistance to pass property trust legislation which would incorporate the trustees of the relevant church's property. A copy of the letter which was sent to the Macedonian Orthodox Church is attached for your information.

The main goal of the property trust legislation was to assist churches of all denominations to better arrange their financial affairs. The legislation was not intended to interfere with the internal rules and operations of churches nor to provide a dispute resolution mechanism for when problems arose within a church.

Certain criteria were developed, and are still applied today, that are to be considered by the Government prior to sponsoring church property trust legislation. These criteria are:

1. whether the Church is a religion within the meaning of that term in the judgment of Mason ACJ and Brennan J in the *Scientology* case;
2. whether the Church has sufficient membership to warrant legislation being passed;
3. the extent and nature of its religious, charitable and educational activities;

4. whether the extent and form of the property holdings of the Church are such as to make legislation a benefit to the Church.

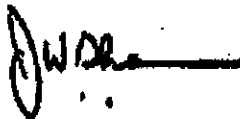
On 14 December 1988, following a change of Government, the new Attorney General, Mr John Dowd, met with the leaders of the orthodox churches to discuss property trust legislation. A copy of the Attorney's speech notes from that occasion are attached.

Since that time, property trust legislation has been enacted for various churches following the receipt of the relevant request from a church.

In the current matter, it is the Government's preferred position that there should be general consensus within the Macedonian Church community on the basic terms of the proposed property trust legislation and that this should form the basis of a submission to the Government. Whilst the proposed legislation would need to generally accord with the model that has been used to date with other property trust legislation, it is important to note that the Government does attempt to accommodate a church's unique circumstances when providing drafting instructions to Parliamentary Counsel.

If internal agreement and a proposal for legislation is not forthcoming from the Church, the Government would prefer to delay taking steps to deal further with the Bill until the current litigation before the Supreme Court is resolved.

Yours faithfully



J W Shaw QC, MLC  
ATTORNEY GENERAL