

Submission  
No 431

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

**Organisation:** McConnell Jaffray Lawyers on behalf of Macdonian Orthodox  
Community Church St Petka Incorporated

**Date Received:** 12 August 2010

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**Date received:** 12/08/2010

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**SUBMISSIONS MADE ON BEHALF OF MACEDONIAN  
ORTHODOX COMMUNITY CHURCH ST. PETKA INCORPORATED**

**RE**

**MACEDONIAN ORTHODOX CHURCH PROPERTY TRUST BILL  
2010**

**PRINCIPAL REASON WHY THE BILL MUST NOT BE PASSED**

**An act of parliament may be appropriate, and it may be that such legislation could satisfactorily resolve long running disputes in the Macedonian community concerning the ownership and control of community and church property.**

**Legislation that provides a satisfactory solution for the community and the church can only be arrived at after consultation with all interested parties.**

**The Labor Government has previously advised that it will not promote any legislation without the agreement of both sides of the dispute. The coalition (in Opposition) has indicated a similar attitude.**

**If this bill is passed, it is unrealistic to believe that other legislation acceptable to the community, as well as the hierarchical church, will be considered by the parliament.**

**Passing this bill will take away the opportunity to pass acceptable legislation.**

**OBJECTS OF THE BILL**

The objects of the Bill are stated to:

- **Constitute a statutory corporation to hold land on behalf of the MOC; and to**

- Facilitate administration of the diocese to own/hold the church's property,
- Enhance security for lenders,
- Enable cross co-lateralization of the church's securities,
- Assist the church in its organisational and administrative affairs,
- Facilitate proposed borrowings on the security of the Church's property,
- Be of specific benefit to members of the Australian Macedonian community and their families.

The clear intent of the proposed legislation is to enable the transfer of Australian owned community property to a foreign institution, namely the MOC, and then facilitates the mortgaging of that property. A theme of mortgaging and financing church property runs through the legislation. Mortgaging church property is contrary to Orthodox principles.

## **TRANSFER OF AUSTRALIAN PROPERTY TO MACEDONIAN CONTROL**

The bill, if enacted into legislation, seeks to have the effect of transferring ownership of properties acquired by local Macedonian Orthodox communities to a corporation controlled by the Macedonian Orthodox Church of Skopje, Macedonia.

The Macedonian Orthodox Church is a foreign institution organised and controlled wholly within the Republic of Macedonia.

The Macedonian Orthodox Church (**the MOC**) has not paid any money towards the acquisition of any property in Australia.

All property of the Macedonian communities in Australia, certainly in NSW, has been acquired by the money and labour of the local

communities. The property is used, not only for churches but also by cultural organisations such as dancing groups, soccer clubs, old people and pensioner groups, chess clubs and facilities for card playing and artistic pursuits.

The local Macedonian Orthodox communities do not want their lands taken away from them, and placed under the control of a foreign institution. The local Macedonian Orthodox communities see themselves as Australian, with the ability to control, through democratically established associations, their lands and property on which they built their churches and cultural facilities.

There has been no community consultation about the Macedonian Orthodox Church Property Trust Bill 2010 (**the Bill**), contrary to what is inferred in the second reading speech.

Fred Nile announced in June 2009 that his intention, in introducing a bill, was to “resolve this long drawn-out and distressing legal battle and bring about reconciliation” in a reference to the legal proceedings commenced by the Bishop and a dismissed priest, against the Macedonian Orthodox Community Church St Petka Incorporated, in respect of land at Rockdale and elsewhere in the St George area.

The second reading speech by Fred Nile on 10 June 2010 does not refer to that litigation, despite the fact that the litigation has been in progress for 13 years, had 19 contested hearings, been 6 times to the NSW Court of Appeal, the High Court of Australia twice, cost the community substantial legal fees and caused it to have a church to which the bishop has refused to appoint a priest for seven years, except the priest who the community dismissed and will not have back.

## **NO REQUIREMENT FOR THIS BILL**

The only property in NSW that vests automatically in the MOC under the Bill, is that which is already in the name of the Bishop and his colleagues, hardly a reason for the legislation, unless there is another reason, namely to acquire other property presently owned by community organisations.

The MOC is not engaged in significant religious, charitable and educational activities in Australia. To the extent that such activities are undertaken, they are undertaken by the community organisations.

It is misleading to say that the MOC has accumulated significant landholdings – parish churches (there are no parishes in the MOC outside Macedonia, there are church communities), church halls (all owned by the community associations), manses (not aware that any exist), other residential properties (none other than those owned by the community associations such as at Rockdale), picnic grounds (not aware that any exist)

## **SPIRITUAL MATTERS**

It is important to note that the community has always worshipped according to the faith taught and practised by the MOC and been willing to accept the spiritual jurisdiction of the bishop.

## **DEFECTS IN THE BILL**

### *Definition of Church*

As defined, this is not a legal entity. The Diocese may be registered as a business name but it is not an incorporated association, company or other corporate entity. The only legal entity referred to in the definition, is the MOC which is a “legal person” under Macedonian law. Under Australian law, the MOC will be treated as a foreign legal person.

### *Definition of Diocesan Statute*

The authorisation and certification by the Archbishopric Church and Lay Assembly of the Macedonian Orthodox Church, said to be on 24 February 1996, is in doubt. In the NSW Supreme Court in November 2008, the MOC refused to produce minutes evidencing that authorisation when doubt had been cast on

whether any meeting of the assembly granting authority, had taken place. The Supreme Court held that the Diocesan Statute was valid.

### Extraterritorial operation of the Act

Similar Victorian legislation is before the Legislative Assembly of Victoria and on the Notice Paper No 171 on Tuesday 22 June 2010. If passed into law the bill would have the effect of transferring the Victorian property described in section 17 of the NSW bill, into a Victorian corporate trustee.

The Victorian bill may have been withdrawn. The Victorian Attorney General's office advised that the Victorian bill was not proceeded with last year when the Victorian Attorney General discovered that the land to be transferred to the Victorian corporate trustee was subject to a mortgage and to claims in court proceedings, a situation that was unacceptable to the Victorian Attorney.

### **THE TRUST**

The trust proposed by the Bill is totally controlled by the Metropolitan (the Bishop) with no community representation. The Bishop is in the hierarchy of the MOC and subject to its rules without any reference to Australian laws.

The rules of the MOC may permit or require the Bishop to sell properties in Australia and remit the proceeds to Macedonia or anywhere else for that matter. In fact, the MOC rules could be amended at any time in Macedonia without reference to Australia or the local Australian Macedonian Orthodox communities with consequences adverse to the Australian communities.

### **PROCEDURE AND BY-LAWS OF THE TRUST**

Again, these aspects of the proposed legislation are totally controlled by the Bishop, with no fetter to his power.

## **FUNCTIONS OF THE TRUST**

The proposed legislation includes a power in ss7 (1)(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.” In other words, the proposed legislation gives the Metropolitan the widest power to do what ever he wants to do, with no apparent limitations.

## **LACK OF CONTROLS**

There is a complete lack of any control in the manner in which the trust will be administered. Those controlling the trust will not be subject to any regulatory requirements, auditing procedures or corporate governance regulations to which existing incorporated associations are subject.

The looseness and lack of accountability under Australian laws is an acceptable feature of this legislation.

## **UNINTENDED GIFTS COMING UNDER THE TRUST**

Gifts and acquisitions of property intended to be held by local Macedonian Orthodox communities may become part of the trust assets if unintended words are used or care not exercised by those making the gifts or acquiring property. See ss18, 19 and 20.

## **CLAIMS AND LIABILITIES OF THE TRUST**

Bishop Petar has been, and is involved, in numerous court proceedings. The effect of s 23 of the Bill is to relieve the Bishop of liabilities that have been accumulated by him in the course of the proceedings involving land vesting in the Trust. For instance, the Victorian land vesting in the Trust was the subject of a court judgment and costs on 1 May 2009 against the Bishop, the Deputy Bishop and Tone Gulev. These liabilities could become liabilities of the Trust, freeing the Bishop, the Deputy Bishop and Tone Gulev from such liabilities.



## POSSIBLE CONSTITUTIONAL INVALIDITY

The object of the Bill, as set out in the first paragraph of the Explanatory note is: “to constitute a statutory corporation to hold property on behalf of the Macedonian Orthodox Church”. This seems that the Macedonian Orthodox Church in Macedonia is the beneficiary of the Trust.

There appears to be some doubt about the validity of State legislation that conflicts with the effect of Commonwealth legislation dealing with the acquisition of Australian property by a *foreign charitable institution* (the MOC). This doubt arises from the Foreign Acquisition Takeovers Act 1975 and Regulations made under that Act.

If the *foreign charitable institution* does not operate in Australia primarily for the benefit of persons ordinarily resident in Australia, the acquisition of land as a result of the automatic vesting pursuant to the legislation proposed by the Bill, would be invalid under Section 109 of the Australian Constitution.

This unresolved issue of validity is another reason why the Bill cannot be supported.

12 August 2010