

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 3

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

At Sydney on 23 August 2010

The Committee met at 9.30 a.m.

PRESENT

The Hon. J. G. Ajaka (Chair)
The Hon. L. J. Voltz (Deputy Chair)
The Hon. G. J. Donnelly
The Hon. T. J. Khan
Dr J. Kaye
The Hon. S. Moselmane
Reverend the Hon. F. J. Nile

CHAIR: I welcome everyone present today to the inquiry into the Macedonian Orthodox Church Property Trust Bill 2010. I remind those present in the public gallery that they should not attempt to participate in the hearing by way of comment or interjection during the evidence of any witness. If there is insufficient seating available the public are welcome to view this public hearing via video link in the Waratah Room, which is located on this level. The public will be directed to that room by secretariat staff.

The Macedonian Orthodox Church Property Trust Bill 2010 seeks to establish a statutory corporation to hold property for the Macedonian Orthodox Church within the dioceses of Australia and New Zealand. This bill and an earlier version, which was introduced in 1998, have attracted considerable controversy within the Australian Macedonian Orthodox community. The bill was referred to this Committee by the Legislative Council to provide an opportunity for members of the community to express their divergent views about the implications of the bill. Before commencing the taking of evidence I will make some comments about procedural matters.

Committee hearings are not intended to provide a forum for people to make adverse reflections about specific individuals or groups. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I request therefore that witnesses avoid the mention of individuals unless it is essential to address the terms of reference. The Committee is aware of ongoing litigation in New South Wales between the Diocesan and the Macedonian Orthodox Community Church St Petka Incorporated. Whilst this litigation does not preclude the Committee from hearing evidence about this matter, please note that any statements made during the Committee's hearing cannot be questioned or impeached in any court proceedings.

In accordance with the Legislative Council's broadcasting guidelines, only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee you must take responsibility for what you publish. The broadcasting guidelines are available from the secretariat. Any messages from attendees in the public gallery should be delivered through the Chamber and support staff or the Committee clerks. I remind everyone to turn off their mobile phones. I welcome our first witness, Mr Mark Leeming, SC, Barrister and Challis Lecturer in Equity at the University of Sydney to the Committee.

MARK JAMES LEEMING, Barrister, sworn and examined:

CHAIR: Would you like to make a short opening statement?

Mr LEEMING: Yes, very short. The two main things to say, and there may be a third, are that I was asked by the Committee to give technical, legal advice in relation to a bill, which is not without interest from a property lawyer and an equity lawyer like me. I provided a written submission directed mostly to questions of clarity of expression and one question about legislative power. I did that at a time when I had no involvement at all in the litigation that has been pending for many years between the Bishop and members of the church that the Chair referred to in his opening. In the last six days, since providing that opinion, I have accepted a brief to appear for most of the defendants in those proceedings. That means, however, if the Committee was hoping to receive dispassionate, independent advice from me, unfortunately, the Committee now has someone who is as partisan as they can get. However, I do not think that interferes with the role I have before the Committee today, which is to seek to give you my technical, legal views—not about the policy but just the legal aspects of this bill. I set this out in a short memorandum really directed to a legally sophisticated audience. I am in the hands of the Chair. If you would prefer me to concisely identify what my points are I can do that now. If you want to ask me questions about it I am more than happy to answer them.

CHAIR: I will ask the Committee members to ask you questions and you can incorporate that. Each group of Committee members will be given 15 minutes, starting with the Opposition.

The Hon. TREVOR KHAN: Will you concisely summarise what your position is?

Mr LEEMING: I do not have a position one way or the other on the policy of the bill.

The Hon. TREVOR KHAN: I understand that, but with regard to the legal matters?

Mr LEEMING: It is important to know that what is being created is a corporation by deed of statute. It is called a trust, but in fact it is a corporation. The fact that it is called a trust, no differently from many other corporations established to administer trusts for the advancement of religion, gives rise to threshold legal questions. We are calling it a trust but to what extent do ordinary principles of trust law apply to this new thing that has been created by the bill if it becomes an Act? The questions that I raise in particular are: Is it intended for the Attorney General to have normal supervision of the charitable trusts administered by this trust, just like any other charitable trust, or is this to be separate? Is it to have separate powers? Generally the line I have put in my document is that it is of benefit for those questions to be resolved up front and clearly in the legislation rather than letting lawyers like me make money by having an argument about it before a court—that is directed to clarity.

The unusual thing about this bill—and to be perfectly frank what engaged my interest the moment I read it after I received the invitation from the Committee—unlike any other piece of proposed legislation of which I am aware, is that it ipso facto alters the property rights in relation to four particular pieces of land: one is in New South Wales but, rather unusually, two are in Victoria and one is in South Australia. At the outset, it is an unusual thing for this Parliament to be saying: that land in Victoria and that land in South Australia ipso facto are now invested in this new legal person, this corporation that is called a trust created by this Parliament. It is even more unusual, and I have expressed views, that certainly there is an argument that it is beyond the scope of the power of this Parliament to tell the registrar of titles in Adelaide and Melbourne that they have to transfer the title of this land to this new statutory creature. At the level of policy, although it is not really what I am here to talk about, it seems to me—and I have read some of the other submissions—if the same three individuals are at the moment the legal owners of those parcels of land then there is absolutely nothing stopping them voluntarily transferring the land to the new corporation, unless there is some dispute about the title to that land. If there is a dispute then it is something the Parliament ought to be aware of if the effect of the compulsory transfer of title of these pieces of land to a new corporation is going to by deed of statute resolve that dispute. That is the essence of what I have said.

The Hon. TREVOR KHAN: Section 4 of the Act is the extraterritorial operation of the Act. I am particularly interested in the wording and the effect of subsection (3) of section 4.

Mr LEEMING: As you know, I have written something about that. The idea of subsection (3) of section 4 is, as I see it, recognising that there is a real problem ipso facto transferring title of land in Victoria and South Australia to this new New South Wales creature. The drafter has proceeded on the basis that, if the Act

cannot do it, nonetheless I will impose a personal obligation upon everyone connected with the land to force them to cause documents to be lodged at the Victorian land registry and the South Australian land registry to achieve the same results. The answer to the legal question would depend how closely connected is the land and the people connected with it to the state of New South Wales. That goes to the question of power. If there is a problem with power then normally you cannot do indirectly what you cannot do directly. I am sceptical as to whether subsection (3) adds anything. Either this Parliament can do it or it cannot. I do not think there is much upside, in terms of power, by indirectly imposing a personal obligation.

The Hon. TREVOR KHAN: Do I take it that one of your concerns is that, in a sense, the bill creates the potential for legal dispute between parties by what it seeks to do—in a background where self-evidently there has been legal dispute between parties?

Mr LEEMING: Yes, but to label it a "concern" perhaps is not the fairest description. You might think that lawyers love ambiguous legislation to go through. The view I took of the invitation to give evidence was—

The Hon. TREVOR KHAN: Sorry, you rubbed your fingers together. I take it there is a potential for costly legal disputation?

Mr LEEMING: Every piece of litigation is costly, and this bill is in the context of what we all know is a facility to have dispute. At the technical level my point is a simple one: Avoid litigation where possible. There will always be room for argument as to what words mean but one can attempt by clear drafting to make it plain beyond all argument that this new company, called a trust, can do certain things and is under certain obligations. Normally it is better to set those things out expressly.

Certainly my experience is that judges, and barristers who are paid to argue the case, often are critical of legislative drafting because attention was not given to it. In many respects that criticism is unfair, but here particularly with a creature, a company, which is labelled a trust, there are to my legal mind obvious questions of debate that could be resolved at this stage. As a citizen wanting to avoid unnecessary litigation I would encourage clear drafting at this stage rather than a debate in court and the uncertainty and cost that that is going to involve later on.

The Hon. TREVOR KHAN: You talk in terms of it being a company or some corporate entity. Beyond what is created under this bill, having created this corporate entity called a trust, what other legal instruments would then govern the operation of that corporate body?

Mr LEEMING: The starting point would be the Act. The Act contemplates by-laws, so by-laws would be made.

The Hon. TREVOR KHAN: This is under proposed section 8 in part 2 of the bill?

Mr LEEMING: Yes, indeed. A question that is not entirely free from doubt, and if it matters I may want to come back to you on this—

The Hon. TREVOR KHAN: It may matter.

Mr LEEMING: The question is whether the Corporations Act applies. Every corporation in New South Wales save for a very small number—I think the special purpose vehicle for the James Hardie legislation is one and unincorporated associations that choose to incorporate is another; those unusual corporations are excluded from the scope of the Commonwealth Corporations Act under something called rollback—section 5F. Most of the time corporations in this country are all subject to the Corporations Act, which means the Australian Securities and Investments Commission has a role, which means there are rights and duties there. I think the intention of this is that the Corporations Act is not to apply and I confess I have not formed a final view about whether that is effective in this case or not.

The Hon. TREVOR KHAN: If that is clouded in some doubt is that another area where the potential for legal disputation between various parties is created because of the lack of clarity of the bill?

Mr LEEMING: Yes, but I would not want to over-exaggerate it. For example, one common dispute one has with corporations is that some members complain about "oppressive"—which is a term in law—conduct, and they can sue and it is an answer to some complaints against them. The given therefore is a factual

complaint. The additional legal complexity that arises from a question mark over whether the Corporations Act applies is: is the short answer to any complaint about oppression that it does not apply—a Corporations Act oppression suit cannot be brought in relation to this company. The reason I would not want the Committee to over-exaggerate this aspect is that the premise for an oppression suit is that there is a dispute to start off with, so you are just slightly expanding the dispute but there already is a dispute.

CHAIR: I refer to something you said earlier and I want to be sure I understand it. Had the bill mentioned one property only as opposed to four properties—if it mentioned one New South Wales property and omitted the one South Australian and two Victorian properties—what different effect would that have had in relation to your reasoning for what you stated today?

Mr LEEMING: Thank you for the question. I should have made it clear. If the bill were confined in its operation to the single New South Wales property all of my concerns about validity would disappear. The concerns are confined to its operation on Victorian and South Australian properties.

CHAIR: If that was the case and it was limited to New South Wales, would it prevent the current registered proprietors of a property in Victoria, who I assume would be the trustees, being able to transfer their property to this new entity, with full consent, and without any difficulty whatsoever?

Mr LEEMING: They would certainly be able to do so. I have read most of the submissions that have been supplied to the Committee and one of them identifies some claim in relation to one of the Victorian properties. In other words, someone else says they have a right in relation to the property. I do not know anything about that right. It might support a caveat, for example. That would give rise to a problem. Putting to one side pre-existing issues like that, there is no difficulty at all.

CHAIR: Again, putting aside that situation where someone claims they have a right and want to prevent it and could just as easily lodge a caveat in Victoria as they could in New South Wales, the registration procedures and all of the documentation and transfers would have to occur in Victoria, simply noting the new registered proprietor via a transfer being this entity we have created in New South Wales. Am I correct in that regard?

Mr LEEMING: Absolutely.

CHAIR: Leaving aside that issue, how does that rectify other concerns you have raised or are you saying there is no other concern once this occurs—apart from the interstate conflict of laws?

Mr LEEMING: I raise questions of clear drafting and I raise questions of power. If you get rid of South Australia and Victoria there are no questions of power. It is then just a question of language and whether the Parliament ought clearly say this overrides, say, the Charitable Trusts Act, or whether you want to leave that as an argument to be batted to and forth in the usual way before the courts.

Dr JOHN KAYE: Do you have a view either way about whether it should be clarified that this legislation does override the Charitable Trusts Act?

Mr LEEMING: Yes, and it is against my own self-interest. I happen to think idealistically that it is better for there to be fewer disputes in courts because it may well be that the courts get it wrong and the true intention of those propounding the bill is not what the courts think it is. As we know, often that happens and sometimes there are even retrospective amendments. The short answer to your question is I think you should have clear expression if clear expression commands a majority of the Chamber. I am also conscious, and it is something close to my heart, that when one is drafting contractual documents sometimes there is necessary ambiguity in the words because that is the best deal you can do. That is just an inevitable part of commercial transactions and the life of these Chambers is also full of compromise too.

Reverend the Hon. FRED NILE: Just to clarify that point, it could be easily rectified by a simple amendment to the bill moved in the Chamber?

Mr LEEMING: I am not an expert on procedure, but I would have thought so. In other words, if it is possible to—

Dr JOHN KAYE: Delete those three properties.

Reverend the Hon. FRED NILE: No, I am not asking that question, I am asking about the Charitable Trusts Act.

Mr LEEMING: Yes. You could say that the Charitable Trusts Act applies to the trust established by this bill. It is as simple as that. These suggestions all fall out of an abundance of caution to nip in the bud legal arguments, but you could say these listed sections of the Trustee Act apply to the trust created by this bill. You could make it absolutely clear that it could get advice and you could make it absolutely clear how it is to manage its investments, to take two of the things I mentioned.

The Hon. SHAOQUETT MOSELMANE: In relation to rectifying the bill to deal only with New South Wales matters you indicated that the Victorian properties' owners could accept transfer to the New South Wales trust under this bill, but would there still be procedural and other State legal issues in terms of conflict of laws and conflict between the procedures in New South Wales and Victoria, if other legal issues arise?

Mr LEEMING: I am not sure I understand the question.

The Hon. SHAOQUETT MOSELMANE: If down the track someone challenged the matter in Victoria and this bill had been introduced in New South Wales, what consequences would it have for the people initiating that action? Would there be any consequences? Would they have any legal rights under Victorian law?

Mr LEEMING: Suppose there were not a statutory corporation but instead a company limited by guarantee and established under the Corporations Act called the Macedonian Orthodox Church Trust or something like that. The Commonwealth Corporations Act permits the creation of a legal person and the legal owners of property in Victoria can, prima facie, deal with their property and transfer it to the new person. Of course, if there is a dispute between the legal owners of property in Victoria and some other people, then that will have to be resolved, you might think, before it happens. The reason I introduced the example of a private law corporation is that if the bill does not itself vest property into it and proceeds on the basis that normal private law conveyances will be used to vest property in it there is no difficulty that I can see. If there is a pre-existing conflict between the legal owner and someone who claims they are the legal owner, or someone says this should not be used for a particular purpose, you might think that would have to be resolved in the first place anyway. The bill does not impose any additional hurdles.

The Hon. SHAOQUETT MOSELMANE: My point is about the formation of the trust in New South Wales and then giving that trust power over those properties in other States. If there was any challenge on those properties in other States, would people then have to initiate their action under Victorian laws or New South Wales laws? Do they have to come to New South Wales to initiate action?

Mr LEEMING: I take your point. There is a rule in what is called the Mozambique case, which says that as a matter of very strong discretion title to land is something that is determined by a court in the place where the land is. It would be unusual for the Supreme Court of New South Wales to be adjudicating on the title of land in South Australia. Because of something called the cross-vesting legislation, South Australia's Parliament has said New South Wales can adjudicate its disputes—and it is reciprocal—but there is also a facility in that legislation to transfer a proceeding in New South Wales back to South Australia where the witnesses are and the land is and where it is appropriate for it to be determined. If there were a dispute in relation to land outside New South Wales, normally a court outside New South Wales would adjudicate that, and that is independent of this bill. I take your point: There could be scope for some tricky choice of law/conflicts of law questions arising from a South Australian or Victorian court trying to work out what this legislation means but I do not think they would be qualitatively different from the sorts of questions you would have in New South Wales.

The Hon. SHAOQUETT MOSELMANE: You have raised in your submission a number of points about the ambiguity, complexity, lack of clarity and efficacy of the bill. Are you telling us basically that the bill is so defective that it cannot proceed in this way?

Mr LEEMING: No.

The Hon. SHAOQUETT MOSELMANE: You are not telling us that?

Mr LEEMING: No.

The Hon. SHAOQUETT MOSELMANE: You have outlined about eight pages of argument telling us about the shortfalls in the bill?

Mr LEEMING: Yes.

The Hon. SHAOQUETT MOSELMANE: So how can this bill be successful and not be so defective, yet you have given us eight pages where you make arguments and outline deficiencies?

Mr LEEMING: First of all, I have not spent any time dealing with the provisions that I think are uncontroversial. I have focused only on the things that have difficulties with expression or are a question of power. Most of those eight pages are directed to three parcels of land—the effect this bill, if enacted, has on this Victorian/South Australian land, and I think there is a real problem there. I do not see any difficulty, though, with enacting so long as—I think the Solicitor General has to sign off on legislation before it is enacted?

The Hon. SHAOQUETT MOSELMANE: It has to go to the Parliament.

Mr LEEMING: Assuming it gets through the Chamber, lawyers have another look at it. In my view there will be a doubt on the validity of three paragraphs of subsection 2 of section 17. The rest of it, I do not have any difficulty with validity. I do not have a view about policy and I have expressed some views about drafting improvements or things for the Chamber to bear in mind to make sure that the language that is there captures what is truly intended.

The Hon. GREG DONNELLY: Did we pass on the questions on notice to the witness?

CHAIR: No.

The Hon. GREG DONNELLY: We have some questions that have been prepared to help us engage some discussion on the matter. You suggest that the bill should clarify how the general law of trusts would apply to the corporation established by the bill rather than having such question resolved via litigation. Could you elaborate on that and share your view about how that could be done?

Mr LEEMING: About what the difficulty is or what the solution is?

The Hon. GREG DONNELLY: Let us start off with the difficulty and then the solution, if that is okay?

Mr LEEMING: Here is what I think a court would say this bill, if enacted, creates. There is a corporation, which is a trustee of multiple trusts. Although there are multiple trusts, each having separate obligations, the trustee is given special treatment—in a way it is no different from most other statutory trusts associated with religion—to blend all the assets together and deal with them. So that is the legal creature made. The question then is, well almost all of the principal functions are charitable trusts. To what extent is the Attorney General involved in supervising the trusts because the point of a charitable trust is there are no beneficiaries who can make sure the trust property is properly administered so the Attorney General has a very important and major role.

To some extent this bill, if enacted, supplants the ordinary role of an Attorney General. If I establish a charitable trust and I get something wrong and suddenly the charitable purpose for which the money or property is devoted to no longer becomes viable, then I have to go to the Attorney General of the Supreme Court of New South Wales to say, "That won't work. Please, here's the next best thing." Now this bill expressly says, "No, that doesn't not have to happen", and there are other precedents for that in other religious statutory trusts. So there is an example of where, I think probably by necessary implication, the bill does roll back the role of the Attorney General, but it is better not to leave these things for implication.

The Hon. GREG DONNELLY: Have you seen anything set out to achieve that in the past in terms of dealing in this sort of area in a piece of legislation?

Mr LEEMING: Yes. I say immediately that I am no expert in all of the various bits and pieces—I am not belittling when I say that—of legislation to create these trusts, but it is very, very similar to what is already provided in the Greek Orthodox Archdiocese of Australia Consolidated Trust of 1994, and I can well understand

the Attorney or the Government takes the view that the same degree of supervision is not necessary for organised religion. That is a policy choice and that is absolutely fine. My point is, okay, accepting that to that extent normal Attorney General supervision is not going to be available, what other normal provisions of trust law apply or do not apply? You can see already this is the sort of debate you could have.

The question that I would like to know—and I think this is entirely up for grabs on the basis of this legislation—is: To what extent is there supervisory control of investments by the trustee? Every private trustee is under an obligation to diversify their investments for perfectly sensible reasons and the Attorney General has a role with most charitable trusts in ensuring that all your eggs are not in one basket. Is it the intention of the Chamber for the Attorney General to have that role or not have that role? At the moment I think that is a very debatable question and it seems to me to be a very important question. What the answer is I do not have a view and that depends upon policy choice, and the solution, I say, is to identify these things. It can be done as simply as by reference to provisions that already exist in legislation and say whether or not these provisions apply. Of course, if you have a list of things saying these provisions do apply, then what is not on the list, a court will construe as not being applicable.

The Hon. LYNDA VOLTZ: I wanted to get some clarification. The properties in Victoria and South Australia are all churches, is that correct?

Mr LEEMING: On the face of the bill and when I prepared the memorandum I did not even know who owned them. You will be told by people who do know that I believe the legal owners are the three men identified in section 17 (1) and (3).

The Hon. TREVOR KHAN: But we take that by implication from the bill?

Mr LEEMING: Yes.

The Hon. LYNDA VOLTZ: I am just concerned about the connection when you are talking about the title and the transfer of the title ex-territorially. From my reading of the bill, when you have a church that is seated in Melbourne and the head of the church will be situated in Melbourne, and how you argue there is this New South Wales connection, does it present a problem where you have churches in Victoria, the title for some traditional reason may be held by people in New South Wales, the head of the church is in Melbourne, of how legally you will get around an argument that there is a connection to New South Wales?

Mr LEEMING: I agree.

The Hon. LYNDA VOLTZ: I am a bit flummoxed by that.

Mr LEEMING: You will be told by people who know, but there is reason to believe, I think, that all three of the men who hold title to these properties in Victoria predominantly live in Victoria and what one has is New South Wales legislation saying to these people in Victoria about Victorian land—

The Hon. LYNDA VOLTZ: So we have land held in title in Victoria, we have churches, which I assume the local community in Victoria use—you would not expect New South Wales people to go to?

Mr LEEMING: Yes.

The Hon. LYNDA VOLTZ: And you have the head of the church within the country located in Victoria. That clarifies that for me. In terms of making an amendment to the Act about the charitable trust, I assume that gets us around the problems with the Corporations Act or do you also need something within the legislation which says that the Corporations Act does not apply to these trusts and do an exemptions such as you have done with the James Hardie Trust and those kinds of things?

Mr LEEMING: I am not trying to be difficult but I think there are two answers. One is I do not say that there is a problem with whether or not the Corporations Act applies. I do say, though, that it would be desirable to know one way or the other rather than to leave it to the lawyers to work it out. I think what you say, Deputy Chair, is right, but I know from other experience that the Corporations Act is a terribly, terribly, complicated thing. I think it may be sufficient to do what you have said but I do not think I could give you a final concluded view here and now on that.

The Hon. LYNDA VOLTZ: Because there would be different provisions, would there not? If the Corporations Act were to apply to this trust they would be required to be—

The Hon. TREVOR KHAN: But it is not a trust.

Mr LEEMING: It is a corporation.

The Hon. LYNDA VOLTZ: No, it is a corporation, but whether it is going to be covered by the Corporations Act creates differences to who can actually be administering it. Would they need to fulfil ASIC requirements for who could be a head of a corporation?

Mr LEEMING: Yes, that is why I think—and I apologise that I do not have a concluded view about it.

The Hon. LYNDA VOLTZ: I know; it is company law.

Mr LEEMING: It is certainly intended that the Corporations Act not apply and I think that intention probably is effective.

The Hon. LYNDA VOLTZ: But if you spelt out within the legislation that the Corporations Act is not meant to apply to this trust that is really a corporation, does that get us around the problem?

Mr LEEMING: Yes, it does.

The Hon. LYNDA VOLTZ: That is the point I was getting to?

Mr LEEMING: I agree. I am not quite sure how big a problem it is, but there is no doubt that if you say, "This is a declaration under 5F of the Corporations Act, the Corporations Act does not apply to anything in relation to this company", then there is no problem.

The Hon. LYNDA VOLTZ: And that gets back to your original argument that it is best to have clarity within the legislation from the start rather than, as we often see with legislation, there is a problem later on and we have to go back and amend the Act?

Mr LEEMING: Yes. It is a counsel perfection, I accept that.

Reverend the Hon. FRED NILE: Thank you for coming to give us your legal advice. You mentioned earlier that you have been given a brief to be involved in one of the churches now?

Mr LEEMING: For the defendants, all the defendants save the Attorney General in the pending proceedings in the Supreme Court; that is to do with St Petka, the church in Rockdale.

Reverend the Hon. FRED NILE: And you will be representing who?

Mr LEEMING: My junior hopefully is doing her best now. Today is day 16 before Justice Brereton. You are quite right, my job in the court is to do the best I can for the defendants in those proceedings, yes, so I have lost completely the independence that I had when I was invited to give evidence and gave the memorandum that I did. I apologise for that.

Reverend the Hon. FRED NILE: I appreciate that. One of the motivations I had in trying to get this bill finalised was, if possible, to reduce or avoid all this litigation that has been going on, which I understand has cost them millions of dollars in legal fees. Would you agree that we should work very hard to try to get a solution if we can with legislation?

Mr LEEMING: I agree that there have been enormous costs on all sides and every judge and I think every barrister who looks at it is appalled at the money that is being spent on lawyers between Christians who are litigating with each other when there are so many better things to be done with that money. Whether the best solution is statute—just Parliament saying, "Here is the solution"—or whether it is better to let this very slow and costly litigation process go through, I think is a debatable question and I am probably placed in a difficult position to give you a dispassionate view.

The Hon. SHAOQUETT MOSELMANE: Are you saying we should not have had this bill proposed?

CHAIR: Mr Leeming, before you answer that, I apologise to you and the Committee members. We have a problem in that the sound is not getting through to the Waratah Room, where we have a large number of people. I understand we need to reboot the system. I ask you to give us a few moments while we reboot the system.

CHAIR: Before the hearing recommences, I advise that as there is interference with the sound recording caused by mobile phones, please ensure all mobile phones are switched off, not just on "Silent". The sound recording in the Waratah Room is now working, and I welcome all those persons in the Waratah Room. I apologise that there is seating for only 50 persons in this room, but I will visit the Waratah Room in the morning tea break and speak to the people there. Hopefully the system will continue to work. The crossbenchers may now ask questions.

Reverend the Hon. FRED NILE: Parliamentary Counsel, who are the technical people who draft legislation, obviously used legislation for other church bodies, denominations, as the basis for this. In your experience this bill may be different, but it is similar to those other bills. Some matters that you have raised showed that you are curious as to why one matter is included and another is left out. Apparently, that is how it was done in the past with Catholic trust bills, Uniting trust bills, et cetera. I understand this bill follows the same principles. Do you agree?

Mr LEEMING: Yes and no. The more recent legislation dealing with statutory trusts for religious purposes, except for one matter, closely follows this bill. The older Anglican-Roman Catholic legislation is separate. Modern legislation, broadly speaking, is quite similar to this legislation. The exception is these four properties, and I am not aware of any precedent for that.

Reverend the Hon. FRED NILE: Obviously the original bill covered all properties and then some property authorities disagreed. It was thought that the best way for the bill to proceed was to focus on the ones who voluntarily agreed to come under the authority of the bill, and not to have any attempt to force other parishes unwillingly to be part of it. That is the unique aspect of this legislation, whereas other bills would be totally inclusive of all churches in the State or country. Earlier you used the word "compulsorily", although you may not have put much weight on it.

Mr LEEMING: Yes.

Reverend the Hon. FRED NILE: Do you understand that these four parishes have indicated that they voluntarily wish to come under this legislation?

Mr LEEMING: I do not have any understanding as to the factual background that underlies it. I have known from what was on the face of the second reading speech of the bill when I wrote the opinion. Since then I have seen the submissions that were supplied. There are some matters of fact in those submissions, whether they are right or wrong I really do not know.

Reverend the Hon. FRED NILE: But there are submissions from the four parishes agreeing to submit to being included within the bill?

Mr LEEMING: Yes.

Reverend the Hon. FRED NILE: The Committee has those submissions.

Mr LEEMING: Yes, but I am conscious that some other people say that they have interests in the property. I do not know whether they are right or wrong. I know that there is a dispute about that on the face of the submissions.

Reverend the Hon. FRED NILE: Do you agree that this Committee, in considering the bill, now faces two options: one is to recommend that the bill proceed only with the New South Wales property and exclude the properties in South Australia and Victoria; the second is whether we should pursue, for simplicity, the four parishes that agree to be under one bill through the New South Wales Parliament?

Mr LEEMING: I think that is the key choice to be made, if I were in the shoes of this Committee. That is the big question. The rest is clarification. The point you raised goes right to power, and that is the ultimate question. I see legal difficulties with that course.

Reverend the Hon. FRED NILE: The disadvantage would be that other parishes would be isolated. We would have to have legislation in Victoria and South Australia on the same basis as the New South Wales legislation.

Mr LEEMING: That is the same point that I tried to answer, inarticulately I think, to the Hon. Shaoquett Moselmane. Unless there is some pre-existing dispute with the legal owners of the land in South Australia and Victoria I do not see anything stopping them saying, "The New South Wales Parliament has created this statutory corporation to hold land, it is for exactly the same purposes that I already hold the land, so I am going to take advantage of the Victorian regime of title and transfer my title to this corporation." I do not see anything stopping that from happening. That would be the conventional way in which it is done. The key legal difficulties that I see are that, rather than taking advantage of what Victorian and South Australian legislation already permits happen in order to transfer land to someone else, this State is telling those owners that they have to do it, and it is telling the Victorian and South Australian public servants who run the land title registers that they have to process the transaction. That is unusual in my experience.

Reverend the Hon. FRED NILE: It is not unusual if there are written submissions from the three parishes saying, "This is what we want. We support this legislation"?

Mr LEEMING: Most members of this Committee have seen more legislation of this sort than I am ever going to.

The Hon. TREVOR KHAN: You are very kind, but I doubt it.

Mr LEEMING: I have never seen it. In the James Hardie special purpose legislation, where there were particular sites but closely associated with New South Wales that were the subject of remediation, and most were in New South Wales, particular sites were named to be transferred into a charitable company limited by guarantee, for tax reasons, that was administering a charitable trust. That is the closest analogue I can think of, and that was unusual too.

Reverend the Hon. FRED NILE: If Parliament required a legal document from those four parishes, a document that had legal status stating, "We wish to be covered by this legislation", there would be no problem with us continuing with the bill?

Mr LEEMING: I said in answer to the Chair that if you delete section 17 (2) (b) (c) and (d) all of those difficulties go away. There is another way of curing it, and that is to make paragraphs 17 (2) (b) (c) and (d), the subject of the operation of the legislation on those paragraphs, contingent upon legislation in South Australia and Victoria, which is very conventional in mutual recognition legislation, cross-vesting legislation, all forms of coherent State-based legislation.

Dr JOHN KAYE: When you say "contingent", you mean contingent on equivalent legislation being passed in those jurisdictions to require the transfer?

Mr LEEMING: Yes.

CHAIR: That is one alternative, as opposed to simply not mentioning them in the bill.

Mr LEEMING: That is so. That is my point in the second sentence of paragraph (8) of my advice. But to grapple directly with the question, accepting as I do that the owners of the land are prepared to transfer them, and they support this legislation, the question I ask is: Why not just sign a memorandum of transfer and lodge it in the usual way in the Victorian land titles office, and ditto for South Australia? There may be stamp duty questions, but I suspect this is more than that.

Reverend the Hon. FRED NILE: That would be the next stage, until the legislation is passed there would be nowhere for them to transfer it to?

Mr LEEMING: That is true.

Reverend the Hon. FRED NILE: That is the second stage. The first stage is to get the bill passed and then do what you proposed?

Mr LEEMING: I must have been unclear. If the bill does not affect the transfer, it merely creates the company to hold property, there is absolutely nothing standing in the way of the owners of property in South Australia and Victoria saying, "We want to transfer this land to this company created by the New South Wales statute".

CHAIR: Put simply, remove reference to the three properties to Victoria, one in South Australia, a bill is created and if Victoria wants to they can effect a transfer in the normal course?

Mr LEEMING: That is more simple than I put it, thank you.

The Hon. SHAOQUETT MOSELMANE: It has to continue under the corporations law.

Mr LEEMING: I return to the answer I gave to the Deputy Chair in the break. I have thought about it again. I am almost certain that there is no question of the Commonwealth Corporations Act being applicable to this company.

Dr JOHN KAYE: Are you saying it is or it is not?

Mr LEEMING: It is not applicable. One can put it to one side. I am conscious that it is a very technical area, and that is something I had not considered before 40 minutes ago. I am almost certain that is not something that the Committee should worry about. It is certainly not something I raised in the document. I could confirm that if it would assist the Committee.

The Hon. TREVOR KHAN: Please do.

Mr LEEMING: Okay.

Reverend the Hon. FRED NILE: To repeat my earlier question, if we go ahead with the names of those parishes in the bill and then require those parishes to provide legal documents they are happy for their names to be included in the bill and Parliament could continue with the passage of the legislation?

Mr LEEMING: Parliament can continue. The question is whether it will be effective. Suppose you made—

Reverend the Hon. FRED NILE: No, you still do the legal transfer. I am trying to avoid trying to get other bills passed through South Australia and Victoria, with all the problems we are having with this one.

Mr LEEMING: There are two things to say. If you reframed section 17 to make the vesting of title to Victorian and South Australian property into this new statutory corporation contingent upon a signed declaration lodged with Parliament, or somewhere in New South Wales, saying, "We want this to happen", you improve the connection with New South Wales. I think you improve the prospects. I can see better arguments for supporting validity of it. But, either there is a dispute about whether these three men are entitled to transfer property to the new statutory corporation or they are not. If there is no dispute, obviously this controversial section—insofar as it applies to South Australia and Victoria—then we are arguing about something that does not exist.

If there is a dispute, I can see someone racing to the Victorian Supreme Court and saying that they should not be permitted to send that piece of paper to the New South Wales Parliament because it will have these effects. If there is a dispute, I am not sure that that drafting technique will cure the problem.

The Hon. SHAOQUETT MOSELMANE: In relation to naming the properties in the bill, if in the meantime there was a change of heart for the properties to be listed under the corporation, what would be the consequences of that?

Mr LEEMING: You say "change of heart". What is required, I think, is for three men to sign a memorandum of transfer.

The Hon. SHAOQUETT MOSELMANE: If they say no, that is it? It will not have any effect on the bill?

Mr LEEMING: Then it would not happen. It may be there is no dispute about these at all, so you do not need it. But if there is a dispute and someone actually says, "No, you can't transfer this land", then my limited—for the last six days—involvement in these disputes suggests courts may be resorted to. I could see someone racing up to a court and saying, "They should not be permitted to do it".

Dr JOHN KAYE: To clarify, Mr Leeming, if the Parliament deleted section 17 (2) of this legislation, that is, got rid of naming any property, and once the trust or entity known as a trust, but more likely to be a corporation, is created then the proprietors of the four properties named there—no matter where they are; whether they are in Victoria, South Australia or anywhere in Australia—go to that entity and say, "We want to vest our title in you", that is as good as the intent of section 17 (2).

The Hon. TREVOR KHAN: It is available under section 19.

Dr JOHN KAYE: As has been pointed out by Trevor Khan, it is available under section 19, but that is as good as having them named under section 17 (2). There would be no difference. Once that vesting had occurred there would be no difference whether or not they were named in this legislation, is that correct?

Mr LEEMING: Yes. You have made a very good point. We have been talking about section 17 (2) because there are the four properties identified. But section 17 (2) is, of course, without limitation to subsection (1). The work is done by subsection (1), which takes everything and transfers it into this new corporation. The concerns that I have expressed apply to whether in relation to properties outside New South Wales—of which I know there are three; there may be more, I do not know—that is something within the legislative competence of this Parliament.

Dr JOHN KAYE: Once that transfer had occurred and there was a subsequent dispute that dispute would not be over the validity of this legislation; that dispute would be between a legal entity established in New South Wales and whoever was involved in the dispute. It would not be about the vesting of the land. It would take out the risk associated with extraterritorial identity. I will start again. There would be no dispute over the extraterritorial identity of the trust or the corporation at that point if there were a dispute?

Mr LEEMING: It is not my role to be difficult but I do not think I can agree with that completely. I think of the word "vice". I do not mean that in any pejorative way, but the difficulty I see is in relation to any land outside of New South Wales owned by people in law who are not, as I understand, residents of New South Wales being transferred by dint of this local statute to a New South Wales company.

Dr JOHN KAYE: I am sorry; I expressed myself poorly. Suppose we delete section 17 (2)—in fact, we delete section 17 of the Act.

Reverend the Hon. FRED NILE: We may have to keep section 17 (3).

Dr JOHN KAYE: Leaving aside issues relating to section 17 (3), if we delete section 17 (1) and (2) and then a number of properties exercise their right under section 19 to vest themselves—

Mr LEEMING: I have no difficulty with that.

Dr JOHN KAYE: Once you do that and there is a dispute the dispute is not about the validity of the legislation; the dispute would be between a legal entity known as a trust but more accurately a corporation, which is incorporated in New South Wales under the statutes of New South Wales law. But there is nothing unusual, particular or dangerous about there being a dispute in a Victorian, South Australian or any other State or Territory court between that entity and people in those States?

Mr LEEMING: I completely agree. I apologise: I misunderstood your question the first time.

Dr JOHN KAYE: No, I apologise. My first attempt was entirely abortive. I think I have worded it better now. So you agree with the proposition—one of the remedies is to get rid of section 17?

Mr LEEMING: Yes. What I have been saying in answer to Reverend the Hon. Fred Nile is—we were talking about producing a piece of paper and lodging it with the Parliament or the registrar of titles—section 19 already contemplates that voluntary transfer of title. I have no difficulty with that.

Reverend the Hon. FRED NILE: Could I clarify that? The reason for section 19 was that a number of parishes are considering being involved in the legislation but have not made that decision. Four have but, from what I have been advised, there may be others. Section 19 was included so that down the track, maybe in 6 or 12 months' time, another parish may say, "Now that we have seen the legislation we are happy to apply for a transfer."

The Hon. TREVOR KHAN: If they are in agreement, section 19 will do it. Section 19 may have been drafted in contemplation of something in the future but it will provide a vehicle to do that which is now anticipated.

Dr JOHN KAYE: Section 19 purely requires the unanimous consent to the transfer and then allows that transfer to occur?

Mr LEEMING: Yes.

Dr JOHN KAYE: Provided the metropolitan agrees to it?

Mr LEEMING: Yes.

CHAIR: Both parties have to agree under section 19.

Mr LEEMING: Yes.

The Hon. TREVOR KHAN: And they will.

CHAIR: Mr Leeming, thank you for your attendance today. Your assistance has been incredibly helpful to the Committee. There may be further questions that Committee members will send to you on notice. The secretariat will be in touch with you in relation to those questions. The Committee has resolved that you have 21 days to respond to those questions and send them back. Again, thank you for your assistance.

(The witness withdrew)

PAUL HOY, Senior Counsel, Gadens Lawyers, and

BILJANA APOSTOLOVA-ANTUNOVIC, Partner, Gadens Lawyers, sworn and examined:

CHAIR: Thank you for appearing before us today. Would you state your job title and whether you appear on your own behalf or on behalf of an organisation?

Mr HOY: I am Special Counsel with Gadens Lawyers. I appear on behalf of His Eminence and the Macedonian Orthodox Church.

Ms APOSTOLOVA-ANTUNOVIC: I appear on behalf of the Macedonian Orthodox Church and His Eminence Bishop Petar Karevski. I am a partner at Gadens Lawyers, Melbourne.

CHAIR: Do either or both of you wish to make an opening statement?

Mr HOY: We would both.

CHAIR: I will let you determine who goes first.

Ms APOSTOLOVA-ANTUNOVIC: I will be very brief. May I at the outset state briefly how privileged I am to appear before this Committee. I do not take this privilege lightly. I am Macedonian by birth. I arrived in this country 12 years ago as a very hopeful student in economics. Now I am very pleased to be able to represent the Bishop and the Macedonian Orthodox Church, my church, in what is a very important endeavour. Because we represent the church I would like to first pass on the thanks and the gratitude of Bishop Karevski, his clergy and the congregations that they represent for the involvement of this Parliament and this enquiry in what is a very important bill for them. I also pass on special gratitude to Reverend Nile for assisting in what has been a very difficult passage.

What we would like to say in our opening statement is that we have very carefully considered all the submissions that were lodged with this Committee and we are very encouraged by them. Our strong view is that they support the argument of the church. They strengthen the rationale for why this bill is good for the church. The proposition of the bill is simple: It is to create a corporation that, when established, can legitimately hold property throughout the country, throughout the Diocese of Australia and New Zealand. The bill is not intended to apply to properties other than church properties. There appears to us from the submissions to be much confusion about the rights to property, who has interest in properties and what will be the effect of the trustee once incorporated under this bill. We would like to emphasise at the outset that the New South Wales Government submission made it very clear that it is the intention of this Government to assist the churches in the enactment of legislation of this kind, but subject to receiving the support of the church community. Having regard to the breadth of the submissions that we received, one may very well ask: What is the church community in this instance? I will pass now to Mr Hoy.

Mr HOY: Before answering that question I would like to indicate that the reason my firm has asked me to be present today and to support the church is because for the past 20 years I have acted for churches and institutions dealing with legislation of this nature. I have been in practice now for 46 years and I would be more than happy to bring that experience to this Committee. In that practice I have been instrumental in negotiating and supporting legislation that has been passed by various parliaments.

CHAIR: If I could stop you, Mr Hoy, we have to reboot the system for those in the Waratah Room.

Mr HOY: My experience is not only on the legislative side, meaning of an advisory nature, to bring forward enactments, but it is also in opposition to them. I have been involved in property transactions and financial transactions on both sides where I have had to borrow on behalf of the institution that is represented by such a corporation and I have had to lend. So I have had to exercise due diligence. I wanted to bring that to your attention. Going back to Biljana's question, I believe that the issue that perhaps you are looking at today is that which was put clearly by the late Mr J. W. Shaw when he in 2000 wrote to the Orthodox communities in this State and indicated that it was then government policy, which I believe is still the case, that churches—

CHAIR: I ask anyone who has a mobile phone on to please switch it off, as it interferes with the recording system.

Mr HOY: It was in the interests of the Government that provision was made for these respected communities to transact their business and really get on with their business, that is, looking after their congregations. In that letter he set out four criteria and I think that there is no doubt that His Eminence and the priests of the Macedonian Church do satisfy the requirements of those four basic criteria.

The church is well-established, time honoured and ancient. It has practises and procedures which I doubt would be in doubt today: they are well entrenched. We have a constitution that is not a recent constitution; it has developed over time, it is a living constitution that calls for the establishment of Dioceses. Dioceses are no more than separate, discrete churches of an ultimate religion. Here we have one Diocese and that has been established by a statute. The statute makes it very clear that the institution is hierarchical. It is led by a Bishop. A Bishop demands and, I think, commands the attention of his congregation. He has been given some fearful powers including: the establishment of parishes, the nomination of priests and the commissioning, the ordination of priests. All of this adds to a total community but it is definable. It is capable of identification. What we have here is a very clear church, a very clear Diocese. We have His Eminence here. There are 21 priests and each priest represents a parish community. What that means is that those priests have dedicated their life to serving the people who are in that parish.

So to answer the question: What is the community that the Government says in its submission it seeks the support of to enable this enactment to proceed? It is the combination of the Macedonian Orthodox parish churches which have been referred to in the written submission and which are represented here today by their pastors. There is opposition to this, that is clear. The opposition is, well I have to say, fragmented. It refers to a lack of consultation. Consultation is important in any institution or organisation. I draw your attention to the diocesan statute that calls for consultation. Every transaction that is entered into is as a consequence of a consultative practice by that church. So here, before we even get to the issue of property, of its ownership, how it is to be owned, there has been a consultative process.

I think there is a certain amount of inspiration in the statute. What that statute says is that it is the Bishop who has to look after his congregation. He is responsible for the spiritual delivery of the message of the church. The constitution says that it is not up to him 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.

Coming back to the disputes, I have read with care so many of the submissions. They refer to lack of consultation. I cannot see the other references to them. I cannot see whether they claim to be part of the church. What I do know is that time-honoured successful churches are true to their constitutions and objectives. It is important that they remain so. What is also true is that you are either a supporter or you are not, and if you are not a supporter of the church you are not a member of the church community. Bishop Petar has informed me he has a fearful duty if a person is not a part of the church community, he is in apostate; he is opposed. He has forsaken the church. I just wanted to raise that because I cannot understand so much of the opposition. I know that the Committee does not want me to let it have my views; I am here to be available to answer any queries.

CHAIR: I want you to be specific to the terms of reference, which relate to the bill.

The Hon. LYNDA VOLTZ: Will you clarify if the Bishop is appointed by an election from local priests? How is the Bishop appointed?

The Hon. TREVOR KHAN: Do you want to go there? There is a concept of separation of church and State and I do not really want to get involved in the internal machinations of any church. We are here to consider a bill and whether it effects a proper result, and not indulge in an inspection of any church.

The Hon. LYNDA VOLTZ: Point of order: My question will clarify an issue that was raised in Mr Hoy's opening statement. It is not unreasonable when a witness has spoken about the role of the church and its structure for me to seek clarification. I am asking how a Bishop is appointed.

CHAIR: I allow the question. I remind everyone that we want to limit issues to those that are relevant to the bill.

Mr HOY: The Bishop is elected in accordance with the constitution of the church. So he is a formal appointee, the supreme officer of the church within the diocese of Australia.

The Hon. LYNDA VOLTZ: So it is an election?

Mr HOY: Yes.

The Hon. LYNDA VOLTZ: I asked Mr Leeming about properties in Victoria where the church has its seat. Why would those properties be included in the New South Wales legislation? Why is clause 17 included in the bill?

Mr HOY: That is mentioned in our submission. The church is nationwide. The church desires that it has one statutory corporation to own all of its properties so that it can efficiently and economically deal with them. Does that answer the question?

The Hon. LYNDA VOLTZ: Yes.

Mr HOY: If there were several corporations it would mean that a banker would want to know who owns what. If there were several corporations all of them would have to own the one property and then on what basis? So it makes it extremely difficult.

The Hon. LYNDA VOLTZ: I understand that but why if the church is seated in Melbourne does it have New South Wales legislation? Are there more properties in New South Wales?

Mr HOY: The response is that it is spiritual. The seat of a church is where the Bishop presides and in this instance the Bishop presides in Melbourne.

CHAIR: I do not understand that.

The Hon. LYNDA VOLTZ: If the Bishop presides in Melbourne why have New South Wales legislation rather than Victorian legislation?

Ms APOSTOLOVA-ANTUNOVIC: An opportunity arose for this Parliament to consider the bill and it was progressed. One thing that I would like to add is that there is precedent in the legislation for other churches. We have raised this issue in our submission. Those churches that have one diocese for the whole of the territory of Australia have one Act of Parliament and that covers whole of their diocese and their properties. Those churches that have two or more will have legislation passed in the respective States.

Mr HOY: They are separate dioceses.

Reverend the Hon. FRED NILE: Did you say that you were responding to a request from former Attorney General Mr Shaw?

Mr HOY: No. I said to answer the question of who the church community is it was Mr Shaw in a letter to all of the orthodox Bishops in 2000 which is appended to the Government submission in the papers today.

Reverend the Hon. FRED NILE: Offering to assist you in having legislation?

Mr HOY: Offering to assist all Christian Orthodox communities and specifically the Macedonian Orthodox Church.

Reverend the Hon. FRED NILE: And that is why he then introduced the original bill into the Assembly?

CHAIR: Order! We will proceed to questions.

The Hon. SHAOQUETT MOSELMANE: Your submission gave us a background of the church but I would like to address the efficacy of the bill. Will you provide comments on the validity and efficacy of this bill? What is your position on the proposed bill?

Mr HOY: I am a supporter of the bill. I have acted for other churches which have requested and have received enactment of very similar bills. I acted for the Coptic Orthodox Church in the diocese of the southern

part of Australia. The Victorian Parliament created a similar statutory corporation in 2006. I have since acted for that church and that statutory corporation in all of their transactions. So, save for the matters which Mr Leeming mentioned and the amendments which were suggested by Dr Kaye, I believe that this bill, if so amended, would be very effective.

The Hon. SHAOQUETT MOSELMANE: What is your response to what Mr Leeming said this morning? Do you have any suggestions to improve the inefficiencies of the bill?

Mr HOY: With those amendments.

The Hon. SHAOQUETT MOSELMANE: Which amendments?

Mr HOY: The amendments that were suggested.

Dr JOHN KAYE: The suggestion is that we delete section 17 of the legislation.

Mr HOY: Yes. That is all I wish to say.

Ms APOSTOLOVA-ANTUNOVIC: We want to acknowledge the jurisdictional issue and the constitutional issue. There is a question to be asked about efficacy where the Act of the New South Wales Parliament requires its registrar general or equivalents in other States to do or undertake particular action.

The Hon. TREVOR KHAN: Would you please repeat that?

Ms APOSTOLOVA-ANTUNOVIC: What we want to make clear is that we acknowledge and understand the jurisdictional and constitutional issues. There was a timing issue with the introduction of this bill. We had some limited discussions with the Department of Justice before the bill was referred to this Committee. The indications were that we would work with the relevant draftsmen and the Department of Justice to improve those deficiencies.

The events on 24 June developed differently, so the bill is now referred to this Committee for inquiry. We did not have an opportunity to work further on the improvements and drafting improvements. We acknowledge the problem with this Parliament directing the Registrar General or equivalent in other States to undertake a particular action, particularly section 19, which is extended to not only South Australian and Victorian but also other registrars general.

Dr JOHN KAYE: I think you meant section 17 not 19.

Ms APOSTOLOVA-ANTUNOVIC: Section 19 is the one that lists all the—

Dr JOHN KAYE: No, that is section 17.

Ms APOSTOLOVA-ANTUNOVIC: I am really referring to section 21, which lists all registrars general. In our view the combined effect of that part is that it affects vesting and there is some confusion as to what would be the effect of future property transfers and whether they are also deemed to be vested. So section 21 lists all the registrars general almost like a saving provision to capture all other States and Territories where property transfers may occur in the future. We acknowledge the controversy and the confusion and we agree that there is a much simpler way to deal with this.

There were two suggestions or two alternatives provided: to only leave the New South Wales property in section 17—that is the Liverpool church—and remove references to South Australian and Victorian land, which then completely removes the issue of vesting of extraterritorial property under this bill. Alternatively, to completely remove references to vesting and establish the trust—that is, the trustee or the corporation—and then let the parties proceed with transfers in the ordinary manner, and that is the intention of section 19—vesting if all other trustees consent. Reverend Nile addressed this issue in his second reading speech when he said you need consent from both parties, and that is what normally in a transfer you require—both of them to agree. So we are completely agreeable and support either of those options, whichever is simpler to be effected.

The Hon. SHAOQUETT MOSELMANE: What consequences does the bill have, if any, on the current legal action that is before the court at the moment? Does it have any consequences on the current proceedings?

Mr HOY: We have to say that we are not familiar with those proceedings other than that the church is a plaintiff in it. We cannot say what effect it will have, but my surmise would be it would have no effect.

Ms APOSTOLOVA-ANTUNOVIC: I just wanted to clarify that we are informed that that proceeding relates to the Rockdale Church, which is not included in this legislation. It is not intended by inadvertent operation to be included; it is separate and absolutely not related to this bill. Whatever the outcome of those proceedings are, and if there is a wish for that property, however it is decided, to by any chance become property of the trust in future that is a question for the future and there is no inadvertent operation of statutory law by which that property may rest with the trust.

Reverend the Hon. FRED NILE: Thank you very much for coming in and for your submission and all the work you have been doing to help us get to this point. I am sorry that in some ways perhaps this inquiry pre-empted your making those further changes to the bill. Obviously, there will be some amendments following this inquiry. I am sure the Committee will, in its discussions, take your views into account with those amendments. I think the objective is to get a bill on which there is general agreement so we can proceed with the legislation. That would then put your church in the same position as all the other churches or denominations in New South Wales. You mentioned that section 19 allows provision for churches that may wish to transfer their property to this legislation. Have you had any feedback as to how many parishes are sympathetic to the legislation? I know we have just mentioned those four.

Ms APOSTOLOVA-ANTUNOVIC: Thank you for that question, because it was asked before and I wish to clarify the position in relation to the four that are included and the additional interest expressed for further transfers. Those properties that are currently included or listed in section 17 are diocesan properties. They are held by three individual trustees, being the Bishop, the deputy Bishop and one other cleric, by appointment of the diocesan ruling committee. There is a declaration of trust which states that they hold on behalf of the church, the diocese, until such time that the bill is passed, and once it is enacted they must immediately transfer those properties to the bill. That is very different from four other church communities that are listed in an annexure, and I can point to the relevant annexure, that have agreed once the bill is enacted to transfer their properties.

So, in effect, we have eight church communities as a starting point that are prepared to transfer. Because of the difficulties in drafting, and thought was given as to how we list those additional properties, it was thought simpler to just focus on the diocesan properties and then the others to come via a transfer. To answer your question, Reverend Nile, it is four church communities that have already resolved and they are just waiting to sign transfers. That would include the church or monastery and additional residential properties that they may hold as a piece of investment.

Reverend the Hon. FRED NILE: I gather that some of the concern over the legislation by groups that are raising opposition to it is because some of the parishes have developed a lot of other property—it might be community halls, community centres and so on. If you could explain that sometimes there is a tension between the role of the Bishop and his ecclesiastical authority in appointing priests to a church and then the community may, in fact, own other properties. Can you just explain as to whether the legislation is intended to take some of those other properties without perhaps the cooperation of the owners of those properties?

Ms APOSTOLOVA-ANTUNOVIC: Thank you for that question. I think that that is the essence of this bill. It is what makes this bill fundamentally different from the 1998 legislation. The 1998 legislation was modelled on what other churches did and that is to automatically vest all property held in trust for the church. Even then there was the legal question of whether particular parish halls own trusts for the church or not, but too much uncertainty and significant opposition from the community. When we came back 12 years later with this new bill the very clear instructions of the Bishop were that we cannot allow having legislation that will pose any doubts in the minds of the church communities and others that are opponents as to whether they will retain their rights to property, and thus the difficulties in developing a new precedent in terms of part 3 in this bill, where there is some automatic vesting but then a process which says for all others everyone needs to consent.

So, the short answer is that this bill can only affect with the amendments either only the Liverpool property or no property at all until such time that there is a transfer, and the transfer must be with the consent of

both parties to the transfer. This bill cannot affect the properties of those church communities that are with the church in communion with the church and fully support the Macedonian Orthodox Church, and we have a list of all those church communities that have wholeheartedly supported this bill. You would have noticed that the forms of the support letters vary. Those that have already resolved say, "We support and we are happy to give our property to the trust"; the rest that need time to consider this but also to consider whether they wish to retain locally the control and ownership of the property, they say, "We support this bill but subject to our understanding that this bill does not affect our property, will not automatically vest this property, and we are not forced or obliged or mandatorily requested to transfer it."

So it does not affect even the properties of those that are with the church let alone those that are not with the church, have declared themselves not in communion outside of the church and, unfortunately, most of the submissions that were lodged in opposition were from those that are separate from the church. We just fail to understand how it is ever possible on the legalities of this bill for them to be affected.

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 the 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 named priests.

Ms APOSTOLOVA-ANTUNOVIC: I will take the question on notice to respond on the technical aspects. But otherwise, generally, what we will say is that there is a declaration of trust, which says you are a temporary trustee and you hold for these purposes and you hold until such time that you transfer it to a trust established under an Act of Parliament once it is established. So my preliminary thoughts are that once that transfer is effected they will have served their duty or whatever the trust was established for, and also by transferring into this trust we have to remember the trustee of this trust is the same entity that appointed them to act as trustees, the Diocesan Ruling Committee, which also performs the function of the Diocesan Committee of Trustees. So I think we can leave out the whole of section 17.

Dr JOHN KAYE: To some extent subsection (3) is irrelevant because of the nature of the existing arrangements?

Mr HOY: Correct.

Dr JOHN KAYE: I have just been advised by somebody who knows a little bit more about the law than I do that that might not be so, but we will come back to that in a second. 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?

Ms APOSTOLOVA-ANTUNOVIC: I believe that the reference to private international law comes into play because of the reference to it in section 4, the extraterritorial operation of the Act, and in particular subsection (2) of that section. So I wonder if we are deleting section 17 or with the proposed amendment that there will be a question as to how much of section 4 will remain in the Act. But we will take on notice that question on private international law.

Dr JOHN KAYE: You will get back to us with your view of how this can be drafted to do that?

Ms APOSTOLOVA-ANTUNOVIC: Yes.

Dr JOHN KAYE: There is the issue of company law, the Corporations Act and the Charitable Trusts Act of New South Wales and how this legislation interacts with those. It was suggested by Mr Leeming that the Parliament might like to consider clarifying the way in which those two pieces of legislation interact with the corporation known as a trust. Do you have a view on how you would like that to proceed?

Ms APOSTOLOVA-ANTUNOVIC: Yes. Senior Counsel obviously addresses that in his submission in the category of issues where he raises many other sections where he says the operation or the effect might be doubtful without clarification as to how other legislation may apply. The charitable trusts issue is one of them, the Charitable Trusts Act, and also the Trustee Act. The Charitable Trusts Act was raised in the context of the variation of trusts clause because the Charitable Trusts Act will have a very detailed procedure for cy-pres applications and other variations.

What I would like to refer the Committee to is subsection (3) of section 4 of the Charitable Trusts Act 1993, which provides that that Act does not apply to the exclusion of any other legislation relating to charitable trusts. So what we would like to think is that it is implied in that legislation that that Act does not apply to the exclusion of other legislation, be it an Act that establishes a statutory trust or otherwise. So the variation of trusts provision—I have made a list of sections that appear, and on my list I have at least 10 church Acts which have the section in exactly the same form, and I think it would help the Committee if I write rather than read out the numbers of the sections, unless you want me to, and the variations clause is in exactly the same format as in all other Acts; the most recent one being the Christian Israelite Church Property Trust Act 2007, passed by this Parliament. None of those Acts have a saving provision which says which one overrides, and I think that should be considered.

In relation to the Trustee Act 1925, we do not consider the reference to the Trustees Companies Act 1964 as being of any relevance because that only applies to licensed trustee companies under the relevant provisions in the Corporations Act. So with the Trustee Act it is a similar issue. The Trustee Act applies to all trustees; "trustee" is defined to include a trustee company, and a "trustee company" is defined to include a company or a trustee formed under an Act of the Parliament in this State. So it applies to a trustee company of this nature and the way that it operates is at times to say: This section applies regardless of anything to the contrary in the instrument of trust, or otherwise leaves it open, or at times it says: Unless there is something to the contrary in the trust instrument this is how the section will operate. So it addresses all the issues as to power of investment et cetera that counsel raises.

We have the same comments about the validation of the breaches of trust. Again, we have a list of Acts that have the section in exactly the same format. The indemnity issue, again we have the indemnity to trustees that senior counsel thought was a bit unusual to be given to trustees appearing in every other church trust legislation. So we thought that the second part of the submission was something that just required looking closely at those other Acts and considering their operation. The first part of that submission I think we can resolve by legislative drafting.

Dr JOHN KAYE: Can I ask one very brief question? Can you provide written advice to the Committee about what would happen if we were to delete section 17, or at least subsections (1) and (2), or possibly (3) as well, with respect to the payment of transfer duties? In particular proposed section 25 of the bill: "Duties under the *Duties Act 1997* ...", which is a New South Wales Act, says there are no duties liable under conveyance of these properties?

Ms APOSTOLOVA-ANTUNOVIC: We would like that section 25 to be retained because there is another section that says—

Dr JOHN KAYE: That was not my question. My question was what does it mean for those properties that would then voluntarily join the trust and be conveyed to the trust?

CHAIR: In particular from other States?

Ms APOSTOLOVA-ANTUNOVIC: The intention of section 25 was to apply to those future property transfers as opposed to section 22 (3), which applies to the vesting of property, and exempt them from duty, obviously under the New South Wales Duties Act. Section 25 is modelled on the recent amendment to the Greek Church Act where it was realised that it is for efficacy. What happened is with all future property transfers there needed to be a submission lodged with the Office of State Revenue every time there was a transfer and it was a procedural difficulty because there was already an agreement that the Office of State Revenue would provide that exemption. So we would like, and what we would be suggesting, is that section remains because it is only referenced to future property transfers.

The Hon. TREVOR KHAN: I hear what you say as to this being modelled on all recent legislation but the Committee is being asked to look at a particular piece of legislation. Essentially, I think you know where the flavour is—

Ms APOSTOLOVA-ANTUNOVIC: I understand that.

The Hon. TREVOR KHAN: We are there in heart but we have to get there in the technicalities. So if you go to clause 5 of the bill under part 2 dealing with what is described as "Constitution and functions of

Trust", if we take what Mr Leeming says onboard, particularly starting at part 4 on page 2 of his submission, even though we are talking about the constitution of a trust we are actually talking about a corporation of sorts?

Ms APOSTOLOVA-ANTUNOVIC: Absolutely, yes.

The Hon. TREVOR KHAN: What worries me throughout this is that we use terms of trust law when we are not dealing with a trust. I find it confusing in the extreme in that regard being just an old country lawyer. If you were to come back and look at this, are you able to suggest changes in the wording that strip out as much as reasonably possible the references to a trust when in fact that is not what we are referring to? Is that possible?

Ms APOSTOLOVA-ANTUNOVIC: I will let Paul Hoy also add his input but what we will say to that is this corporation is formed for the sole purpose of it being a trustee.

The Hon. TREVOR KHAN: But is that right?

Mr HOY: I reflected on exactly the same question more than once over the weekend: Why have they called these legislations trusts? All I can say is convention. We could certainly suggest that the convention be broken; whether that would be accepted I do not know. I understand there is no indication as to why it has been the case but it has been adopted in states.

The Hon. TREVOR KHAN: I am not so worried about the use of the term "trust" but, for instance, you go on and use the term "trustee" when that is quite wrong. What we could describe as the board of the trust would be acting under a fiduciary duty but they will not be acting as trustees because the corporate entity is going to hold these properties and they are going to hold them in their name, not as trustee for something else. That seems to me the effect of this.

Mr HOY: The corporate entity will hold title to the properties.

CHAIR: As the registered proprietor?

Mr HOY: That is correct.

Ms APOSTOLOVA-ANTUNOVIC: As any other trustee is the registered proprietor—

The Hon. TREVOR KHAN: That is right.

Ms APOSTOLOVA-ANTUNOVIC: —and there is an instrument of trust that says: However, when you appear as a registered proprietor you do so, I assume, to a particular instrument of trust on behalf of a person, beneficiaries or purposes which are equal trusts. So this bill makes it very clear that the purpose is to establish an entity.

Mr HOY: It is a corporation.

CHAIR: Returning to something you just said, are you saying apart from this bill, if it were enacted, another instrument exists that says this corporation holds the property on trust for X?

Mr HOY: Could I answer that?

CHAIR: Please.

Mr HOY: I have been reflecting on that also. What is requested is that Parliament will bring into existence a statutory corporation called a trust. No trust will exist at that point unless there is trust property. For a trust to exist you need a trustee, you need trust property and you need the promise that is imposed upon the trustee. Once those three things exist you have got a trust. What is proposed here is that the Parliament will create the statutory corporation and then either by action or vesting in relation to the Liverpool property, or by action of transfer in relation to other properties that the authorities of the church determine are to become trust property, so the trust comes into existence when there is trust property and there is a promise that the trustee must hold it in accordance with the terms.

The Hon. SHAOQUETT MOSELMANE: Where does the corporation come in?

Mr HOY: The corporation is created when the Act is enacted—

The Hon. TREVOR KHAN: Sorry to cut across but so we are quite clear, this bill creates a corporate entity that can act as a trustee?

Mr HOY: Correct.

The Hon. TREVOR KHAN: Or it creates a corporate entity that can hold in its own right the property, full stop. If it is to hold it as trustee there needs to be a trust instrument in existence that then, in a sense, takes on board the corporate entity for the purposes of that corporate entity then holding the property on trust—yes?

Mr HOY: Yes. The bill creates the constitution of the corporation and it indicates that it has a purpose as nominated in the preamble.

The Hon. TREVOR KHAN: That would be similar to the old—I am sorry to cut across but because we keep using the term "trust"; I would like to avoid that—memoranda and articles of association in the days when I went to university?

Mr HOY: Correct.

The Hon. TREVOR KHAN: The memoranda and articles of association set out the constitution of the corporation by which the corporation then acted?

Mr HOY: Yes.

The Hon. TREVOR KHAN: That did not create a trust; that created the objects, the operation of the company?

Mr HOY: What Parliament is also saying is that once this corporation comes into existence it has a purpose and its purpose is to act for the church. So it narrows down its capability and, read together with the other provisions acting for the purpose of the church, means there is a link back to the statute and there is a link back to the constitution.

The Hon. TREVOR KHAN: I understand that entirely but if I take that as being what you are saying—that is, we are looking at the constitution of a corporate body as creating its purpose, its goodwill, its intention to act reasonably, responsibly and for the benefit of the church. If that be what it is, there is no trust instrument there; there is simply a constitution of a corporate body? Is that not right?

Ms APOSTOLOVA-ANTUNOVIC: Which sets out its functions and the first of them in clause 7 (1) (a) is to purchase property and otherwise deal with it as trustee for the purposes of the church.

The Hon. TREVOR KHAN: I know that is what it says but that is one of the problems. This bill is infected with the concept of trust law when what you have actually got is a company law thing being created here. It is so confusing for this poor, dumb country lawyer.

Mr HOY: It is confusing but it is the intention of the Parliament. The Parliament says it will facilitate—

The Hon. TREVOR KHAN: Can I just interrupt you there and say that nothing is the intention of the Parliament at this stage. We have had a second reading speech on a bill. This inquiry has been established for the purposes of working out whether the bill in its current form is efficacious. I must tell you that this confusion—and I am only speaking for myself—of trust terms, of equitable concepts within a corporate law area potentially creates an area of litigation that should be avoided in this bill. Quite frankly, on what we know as a matter of general knowledge, to introduce a confusing legal entity into a church environment that has been littered with litigation is acting irresponsibly on our part.

Mr HOY: I understand, and I have been asked to come to speak to my experience of acting for institutions like this and against them. I have acted for the insurance company that insures them and insures their

liability and indemnity issues. I understand the confusion that you have mentioned. What I do say is that it works.

CHAIR: Let us go back a step. Let us forget for a moment that there is other legislation out there that has been developed and passed over the years simply because that has been how it is done.

The Hon. TREVOR KHAN: I think that is where I started.

CHAIR: Exactly right. Leaving that aside for a 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?

Ms APOSTOLOVA-ANTUNOVIC: We agree with that. It is an important issue and if the Committee agrees we can address it in a further submission when we deal with the other questions.

CHAIR: Can you take that as a question on notice?

Ms APOSTOLOVA-ANTUNOVIC: We will. The notion of trust or the statement that this entity, this new corporation, will hold as trustee gives, if nothing else, comfort to the church community that this is for the church as trustee. I wanted to make that comment but we do appreciate and understand your comments on the legality side.

Reverend the Hon. FRED NILE: That is the point I was going to make. This is the convention and historically it is a bit like God and mammon. Churches do not want to be called corporations. They are not emphasising that financial aspect but they are a trust. In all the years I have been involved every church has had trusts even though they are constituted as corporations. The terminology is very important.

Mr HOY: I make the point that this is driven by the whole nature of church, particularly Christian churches, which says that properties brought into existence for the purposes of the church have to remain for those purposes.

The Hon. TREVOR KHAN: I can think of a number of other religions where that is probably the case as well. Can I ask you also to look at clause 19 and contemplate whether under clause 19(1) that method of transfer into the trust is the only circumstance where you contemplate property being transferred into this new entity? Is there, for instance, a possibility that property could be transferred into the entity pursuant to some sort of order of the Supreme Court, or is there some other contemplation?

CHAIR: We are happy for you to take that on notice.

Mr HOY: Yes, we will certainly do that.

Reverend the Hon. FRED NILE: Can I put a question on notice?

CHAIR: Certainly.

Reverend the Hon. FRED NILE: We have covered a number of potential amendments to the legislation. Could I ask you so 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?

Ms APOSTOLOVA-ANTUNOVIC: Yes, thank you, Reverend Nile.

CHAIR: I thank you both for your assistance to this Committee. It has been most valuable. You have taken some questions on notice and Committee members of the secretariat may have further questions, which

they will send to you. The secretariat will be in touch with regard to those. The Committee has resolved that answers to questions on notice should be returned within 21 days.

Mr HOY: At the end of the day will there be an indication of what follows from today?

CHAIR: The secretariat will be in touch with you. We hold a deliberative meeting at the end and we have not pre-determined what will happen.

(The witnesses withdrew)

(Short adjournment)

CHAIR: I will not go through all of the earlier opening statement because most of you were present but I will mention two things. Committee hearings are not intended to provide a forum for people to make adverse reflections about specific individuals or groups. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of individuals unless it is essential to address the terms of reference. The Committee is aware of ongoing litigation in New South Wales involving the Diocese of the Macedonian Orthodox Church St Petka Incorporated. While this litigation does not preclude the Committee from hearing evidence about this matter, please note that any statements made during the Committee's hearing cannot be questioned or impeached in any court proceedings.

KEITH STEVENS McCONNELL, Partner, McConnell Jaffray Lawyers, sworn and examined:

Mr McCONNELL: The law firm McConnell Jaffray acts for the Macedonian Orthodox Community Church St Petka Incorporated.

CHAIR: Would you like to make an opening statement?

Mr McCONNELL: I will be very brief, Mr Chairman. The thrust of my opening statement, as I set out in the submissions, is that before any bill can be pursued through the Houses of the New South Wales Parliament there must be complete consultation and agreement between the parties who have an interest in that bill when it becomes an Act and that particularly refers to the various community organisations. Previously, as you are aware and as other people will be aware, there was an attempt to pass similar legislation through this Parliament in 1998.

That attempt was again without the consultation of the various community groups and that bill was allowed to lapse when Parliament ceased to sit that particular sitting and that bill was allowed to lapse because it then became known to the members that there had not been full consultation with all community groups. My first point is that there must be full consultation and to the extent that I represent the Macedonian Orthodox Community Church St Petka Incorporated, there has been no consultation between the Bishop on behalf of the Macedonian Orthodox Church who would be the beneficiaries of the trust that is being established by this proposed legislation.

The second point that I would make in opposition to this bill is that there may be an opportunity at some time perhaps for a bill to be introduced into Parliament which may be acceptable. If this bill is passed in any form it will take away that opportunity. Litigation in which our firm has been involved commenced in 1997. We became involved in 1999 and from about that date we had early discussions with the Government of the day and at that stage it was the late Jeff Shaw.

His advice to us was that there would be no bill supported by the Government—and I think that has been echoed by the Opposition—until there was full consultation with the community and agreement between all parties as to what should be the terms of the bill. If this bill is to be passed in an unsatisfactory form, the opportunity to have an acceptable bill will be lost forever. I cannot see this Parliament passing two bills in relation to what is essentially the same subject matter.

The Hon. TREVOR KHAN: They do it all the time. We do it over and over again.

The Hon. LYNDA VOLTZ: Point of order, Chair.

CHAIR: Please continue, Mr McConnell.

Mr McCONNELL: I will not repeat what is in my submissions, but there is one particular matter I would like to point out—and it is the last one that I made in the submission—that is the bill, if passed, may give rise to some constitutional issues. It seemed to me on a quick reading of the proposed legislation that if passed and implemented it will give rise to a transfer of property to a foreign charitable institution, which would be invalid under the foreign takeovers legislation and I think that should be avoided at all costs.

I am available to answer any questions that you might have but, as I indicated to the Chairman before I gave evidence, I would ask you to respect the legal professional privilege that I would normally be accorded in relation to the matters that are presently before the court. I know the power of this Committee is to ask me any question and I am bound to answer any question. I would like that legal professional privilege to be respected.

CHAIR: Mr McConnell, if you feel that such a question is being asked and you wish to raise that again with me, please do so.

Mr McCONNELL: Thank you.

Reverend the Hon. FRED NILE: Thank you very much for coming as a witness before our inquiry. As you know originally there was a bill which did not specify particular properties and that may have concerned

then some of the parishes and whether they would be taken up by this bill. In the final version that is now before the Parliament and which this Committee is considering, as you know clause 17 now specifically only mentions four properties and excludes the property that you are concerned about, the one you represent at Rockdale?

Mr McCONNELL: Yes.

Reverend the Hon. FRED NILE: Does that remove some of the fear that you have as it only specifically refers to those four properties now?

Mr McCONNELL: No. It increases the fear I have because it means that a bill could be passed in relation to those four specific properties and I think then there would be no chance of this Parliament ever passing a bill which might be acceptable to the community. If this bill relates only to four properties, one of which I believe is in New South Wales, two in Victoria and one in South Australia, which I think has its own problems, there is no need to pass this bill. Those properties are already controlled by the Bishop. He can set up any private trust likes if he does not like owning those properties in his own name. It is not necessary for there to be an Act of Parliament.

Reverend the Hon. FRED NILE: Clause 19 of the bill provides for parishes that wish, subject to the bill being passed, to willingly accept a transfer of their property under the authority of this bill and that is the reason why it was felt it was necessary to have a bill because at a future point, voluntarily, some parishes may wish to exercise their right to come under the Bishop's trustee authority. Do you feel that is a reasonable proposition to be in the bill?

Mr McCONNELL: No, I do not because that means coming under the authority of a foreign entity. You must accept that the Bishop is part of the hierarchical authority of the Macedonian Orthodox Church. He is bound to comply with the rules of that foreign organisation and I do not think it wise for this Parliament to pass legislation which cedes authority to a foreign entity in relation to the control of property that is in Australia for the use of Australian citizens.

The Hon. TREVOR KHAN: Would you apply that with regards to a bill dealing with the Catholic Church because that is the logical extension?

Mr McCONNELL: Yes, I would; personally I would.

The Hon. TREVOR KHAN: Personally, or as the legal representative?

Mr McCONNELL: All I can speak is as the legal representative of a local community organisation.

The Hon. TREVOR KHAN: So you are not speaking personally?

Mr McCONNELL: No—I can say that that community organisation has instructed me that it wants to control its property. It certainly will accept the spiritual jurisdiction of the Macedonian Orthodox Church but it will not accept administrative governance, the ownership of its property and finances, by a foreign entity.

The Hon. TREVOR KHAN: Sure. The last question was only in response to your comment—

Mr McCONNELL: Well, it is a hypothetical question.

The Hon. TREVOR KHAN: I was asking on what basis you were making the assertion?

Mr McCONNELL: I have no instructions in relation to the community for whom I represent in relation to the Catholic Church.

Reverend the Hon. FRED NILE: Just to clarify that point. I have knowledge of some other orthodox churches. They would be in exactly the same situation as the Macedonian Orthodox Church. The Bishops are appointed by a body overseas, not by people here in Australia?

Mr McCONNELL: Yes.

Reverend the Hon. FRED NILE: That is the pattern of most of the orthodox churches until, I imagine, some future day when they may be more independent, but they are usually related back to the founding church, whether it is the Coptic Church in Egypt or the Macedonian Church in Macedonia? That has been the normal procedure.

Mr McCONNELL: But the Macedonian community at Rockdale or the broader St George area, when they established their community organisation, did so with the intention of controlling the ownership and being the owners of the property. They, as I said, accepted the spiritual jurisdiction of the Macedonian Orthodox Church but the very reason for setting up first the unincorporated association and then in 1992 incorporating that association under the legislation of this State, was that it recorded their wish to be the owners of their property. Obviously, that is one of the reasons that there are disputes at the moment. The disputes are not limited to New South Wales.

Reverend the Hon. FRED NILE: Would that parish be happy if there was some provision in the bill which exempted specifically that property from any implications that arise from this bill?

Mr McCONNELL: First of all, it is not a parish. The Macedonian Orthodox Church does not have parishes outside Macedonia. The Macedonian Orthodox Church constitution has parishes within Macedonia and it specifically says properties outside Macedonia are referred to as "church communities"; they are not parishes. To the extent that something flows from whatever an organisation is that is a parish, the name "parish" has all sorts of different meanings, but it is not correct use the word "parish" in relation to churches of the Macedonian Orthodox Church in Australia.

Reverend the Hon. FRED NILE: In your opinion, leaving aside the word "parish"—

Mr McCONNELL: The English translation of that document says that.

Reverend the Hon. FRED NILE: I go back to my question: If we specifically exempted the community organisation at Rockdale from any implications in this bill, would that satisfy that group?

Mr McCONNELL: I do not wish to be argumentative Reverend Nile, but the organisation I represent would like there not to be a bill, so that if there was a bill it could be passed with the full cooperation of the community in an acceptable form. It is not satisfactory to my community to have this bill passed in some other form, which then would preclude the opportunity in the future of having a proper bill.

Dr JOHN KAYE: Mr McConnell, thank you for your comprehensive submission. In respect of the definition of the church as not a legal entity, and subsequently the church being effectively an overseas organisation, are you aware that the bill defines the church to mean "the Macedonian Orthodox Church, Diocese of Australia and New Zealand with its seat in Melbourne, being an integral part of the Macedonian Orthodox Church"? The bill specifically refers to the "Diocese of Australia". Does that change your view?

Mr McCONNELL: The diocese of Australia is part of the hierarchical structure of the Macedonian Orthodox Church. The diocese itself is not, as I understand it, a legal entity unless it is incorporated as an incorporated association. I do not know that that is the case.

Dr JOHN KAYE: Are you talking legally or spiritually when you say that it is under the control of the Macedonian Orthodox Church?

Mr McCONNELL: Are you referring to the diocese?

Dr JOHN KAYE: Yes. Are you saying the diocese is legally under the control or spiritually under the control?

Mr McCONNELL: It is in fact under control, because the head of the diocese is the diocesan Bishop and all the people on the diocesan ruling committee are his appointees. In fact he controls the diocese, he is the head of the diocese.

Dr JOHN KAYE: He is here in Australia?

Mr McCONNELL: Sometimes. I believe he is in Australia for no more than two months a year.

Dr JOHN KAYE: He is an Australian Bishop, in the sense that he heads an Australian diocese?

Mr McCONNELL: Yes, that is temporarily so.

The Hon. TREVOR KHAN: Temporary for all of us.

Mr McCONNELL: Yes, I accept that. He is temporary in the sense that there is some confusion as to whether he is the administrator of the Australian diocese or the Bishop of the Australian diocese. There may be nothing legally that flows from that except perhaps spiritually, but in an Orthodox Church, as I understand it, it is not possible to be a Bishop of more than one diocese. Bishop Petar Karevski is or was the Bishop of a diocese in Macedonia at the same time he was at the diocese in Australia. He is now either the administrator in Macedonia and a Bishop here or the administrator here and a Bishop in Macedonia.

Dr JOHN KAYE: My point is, if an instruction were issued from Skopje that said to do X, and the diocese in Australia said, "No, we are not going to do that", that might create a spiritual crisis. Leaving that aside, because that is not the jurisdiction of this Parliament at all, what would be the legal situation? Would it be that an instruction could be executed from the church in Skopje that would have legal effect over the church or over the diocese in Melbourne? Or would that office be legally independent? That is really the only thing this Committee should consider, whether there are overseas influences, which are spiritual or in other forms, that are not really relevant to us. What is relevant here is the legal situation.

Mr McCONNELL: I do not know of the legal connection between the Macedonian Orthodox Church, which I understand in Macedonia is a legal entity, and the diocese here, which is not a legal entity. In a sense it is like a branch. If you looked at the corporations law and the way branches operate you would see the diocese as being a branch. It is part of the Macedonian Orthodox Church. It does not have any separate legal status.

Dr JOHN KAYE: Secondly, you say there has been no community consultation with respect to this bill. I presume you are at talking about no consultation with the organisation that you represent?

Mr McCONNELL: That is correct.

Dr JOHN KAYE: When you say that there has been no consultation with the organisation, does that mean that members of your organisation were not consulted individually? Or was it that the official representatives of the community church were not consulted?

Mr McCONNELL: In both cases. I had one meeting with Reverend Nile.

Dr JOHN KAYE: When did you have that meeting with Reverend Nile?

Mr McCONNELL: A year ago.

Dr JOHN KAYE: At that meeting with Reverend Nile did he present a copy of the bill to you?

Mr McCONNELL: I had obtained a copy of the bill before that.

Dr JOHN KAYE: Were you at that meeting in your capacity as the representative?

Mr McCONNELL: Yes, I wrote to Reverend Nile about it after I had obtained a copy of the bill. I sought instructions from my client to raise the issue. At that stage there had been no consultation.

Dr JOHN KAYE: How did you obtain that copy of the bill? Was it sent to you?

Mr McCONNELL: I either obtained a copy on the Internet or I wrote to Reverend Nile, and I think he sent me a copy.

Reverend the Hon. FRED NILE: A copy was sent to all the churches, all the parishes.

Dr JOHN KAYE: I am not trying to be hostile; I am trying to get to the bottom of your statement that there was no consultation. I come to this completely neutrally. A year before the bill went to Parliament you had

a copy of it. You either got it from the Internet or it was sent to you by someone. As the legal representative of one of the organisations involved in the dispute you had a copy of that bill?

Mr McCONNELL: As I recall, it was first raised in Parliament as a motion. I am not sure.

Dr JOHN KAYE: It would have been a notice of motion, yes.

Mr McCONNELL: Yes, and from that someone alerted me to it—I am not sure who. I then made inquiries and got a copy of it. I wrote to Reverend Nile and asked for a copy.

Dr JOHN KAYE: I ask you to take this question on notice. Was the organisation that you represent today, St Petka's, at any time sent a copy of the draft legislation? At any time was St Petka's sent a formal invitation from Reverend Nile to consult?

Mr McCONNELL: My answer to both questions is no, not to my knowledge.

Dr JOHN KAYE: Could you check with your clients and send the reply to the Committee?

Mr McCONNELL: Yes.

CHAIR: Firstly, I understand the argument is on the issue of consultation, whether it was raised at the time the bill was first introduced into Parliament. Do you accept that currently there is a Committee hearing, the public has been afforded an opportunity, like yourself and those you represent, to forward submissions and the hearing is continuing? Do you still say that now there is no consultation in relation to the bill?

Mr McCONNELL: Obviously this process is part of it, and I accept that. But there has been no effort, so far as I am aware, on the part of those promoting the bill—and I exclude Reverend Nile—to engage in any meaningful discussion with members of the community. I am obviously talking about the church hierarchy. This bill is being promoted by the church hierarchy, and it affects the community's property. The consultation would have to come between the church hierarchy and the church community. To my knowledge that has not happened at all. Certainly this is a process, but it is a matter that affects people's property so you would expect there to be some approach about it.

CHAIR: Secondly, the bill being considered—and for the purpose of my question assume that clause 17, which relates to the four properties, will no longer be part of the bill—is a very different bill from that first proposed in 1999 by the late Attorney General, Jeff Shaw. Do you agree with that? Or, do you still see it as very similar?

Mr McCONNELL: No. They are similar in one way, which is a problem that cannot be cured; that is, the control of the trust corporation is in the hands of the hierarchy. That is a fundamental flaw in this legislation, and the same fundamental flaw was in the previous legislation. That same fundamental flaw is in the legislation that was promoted by the church hierarchy to the Victorian Parliament, which, I understand, is to lapse.

The Hon. TREVOR KHAN: I take it that you have had the opportunity to look at some submissions to the inquiry?

Mr McCONNELL: Yes, but not all.

The Hon. TREVOR KHAN: Have you looked at the submission prepared by Mark Leeming, SC?

Mr McCONNELL: I quickly glanced at it. Excuse me, I should be able to say, "Yes, I have read them all and I have read them closely". Currently I am in the fourth week of hearing a court case and am working 15 or 16 hours a day on that and I do not have time to do everything that I perhaps should do.

The Hon. TREVOR KHAN: Mr Leeming was asked to appear before the Committee to give assistance in relation to legal matters arising under the bill. What he did of his own volition was to provide a submission outlining what he saw as deficiencies or defects in the bill. Some of them are consistent with matters you have raised, some are not. Would you agree that Mark Leeming, SC, is reasonably up on it when it comes to these types of issues?

Mr McCONNELL: Mark Leeming is a very able barrister.

The Hon. TREVOR KHAN: He is up on it?

Mr McCONNELL: He is. He is a very able barrister, I can tell you that.

The Hon. TREVOR KHAN: To that extent, we can probably rely on what he says?

Mr McCONNELL: If he says something, it is something that should be respected.

The Hon. TREVOR KHAN: I do not believe any of us argued when he appeared before us. Speaking in a conversational sense, I believe you have a win in terms of the issues of extraterritoriality. That is certainly an issue that Mr Leeming raised and it seems compelling. But Mr Leeming's view was that as a bill—subject to issues of drafting and section 17—contrary to what I may have said in other forums, the bill is not fatally flawed in relation to achieving the creation of a corporate body. Would you agree with that?

Mr McCONNELL: I am sure it can achieve a corporate body. It can do that.

The Hon. TREVOR KHAN: Would you agree with us as a Parliament that one of the difficulties we have, and I have personally, is that we do not want to become involved at all in the internal machinations of any church. Would you agree with that proposition?

Mr McCONNELL: Yes, I would, and I would support you in that.

The Hon. TREVOR KHAN: In essence, in your submission you invite this Parliament to intrude into the operation of a religious body by imposing certain preconditions of governance upon that religious body. Do you understand that is one of the points in your submission?

Mr McCONNELL: Yes, and for that reason the bill should be rejected.

The Hon. TREVOR KHAN: If that be the case, the Parliament should not in any circumstance assist a religious body in providing a legal framework for its operation? That would follow from your last answer, would it not?

Mr McCONNELL: If there was full community consultation, there may be a way of doing it. But the governance issues in this current bill, which should be rejected, flow out of the hierarchical structure of the Macedonian Orthodox Church.

The Hon. TREVOR KHAN: The hierarchical structure of a church, I suggest, with some few exceptions, is a very common form of governance of any church. Indeed, we do not even have to stay with the Christian churches. Almost every faith on the planet operates under a hierarchical structure.

Mr McCONNELL: Some churches operate under a hierarchical structure, others do not.

The Hon. TREVOR KHAN: Is that your fair dinkum answer?

Mr McCONNELL: Some churches do not.

The Hon. TREVOR KHAN: Some?

Mr McCONNELL: The ones that are hierarchical that I know are the Anglican, the Roman Catholic and the Orthodox churches. All the Protestant churches are what I would call flat churches. They do not have the hierarchical structure. I do not know anything about the Jewish religion, Muslim or Islam. I do not know what structure is there. There is a very great debate about the benefits of hierarchical structure.

Dr JOHN KAYE: I would be more comfortable, Chair, if we were not debating the machinations of the church.

The Hon. TREVOR KHAN: If we remove section 17 from the bill, as the Chair suggested, and we then describe section 19 as the operative section of the bill, how would section 19 impact upon the community that you represent?

Mr McCONNELL: As I said before—and I apologise for being boring and repeating it—the Rockdale community does not want this bill passed because it wants to have an opportunity to consider properly a bill that might be acceptable.

The Hon. TREVOR KHAN: With respect, beyond that overall cover, if this bill is passed minus section 17, and perhaps some other small matters, so that the operative section is section 19—that is, there has to be a voluntary transfer of property to a corporate entity, however named but we will be described as "the trust"—how does that impact upon your church community?

Mr McCONNELL: I apologise for not having the detail at my fingertips. If there is provision in the bill, the totality of the bill at the moment, which gives the hierarchical authorities the opportunity of calling for a transfer of properties said to be held in trust for the Macedonian Orthodox Church, that gives rise to debates about what is held in trust for the Macedonian Orthodox Church.

The Hon. TREVOR KHAN: Do you have a copy of the bill? I assume it has to be in part 3 of the bill. Are you able to point to the clause of the bill that gives you particular concern?

Mr McCONNELL: Clause 18 gives me concern and clause 19 gives me concern.

The Hon. TREVOR KHAN: Can you tell us why clauses 18 and 19 give you concern?

Mr McCONNELL: Clause 18 gives me concern because it applies to gifts which may unintentionally be caught by the Act.

The Hon. TREVOR KHAN: A gift involves a voluntary transfer. That is the very nature of a gift. Your community will not be voluntarily transferring, from what you say?

Mr McCONNELL: No, that is correct.

Dr JOHN KAYE: How do you mean "inadvertently captured"?

CHAIR: Mr McConnell, I remind you that you can take these questions on notice.

Mr McCONNELL: Can I take this particular question on notice about the broader implications to the sections that our organisation would not like?

CHAIR: We will now move to Government members' questions.

The Hon. LYNDA VOLTZ: In relation to an earlier question about consultation on the bill, if the community had been consulted during the drafting of the bill, could the community have found a resolution that may have been acceptable rather than having a draft bill presented to them? Was that the real concern with the community?

Mr McCONNELL: Yes.

The Hon. LYNDA VOLTZ: They are presented with a drafted bill as opposed to being part of the process of assisting in drafting the bill. Is that possibly where the breakdown in consultation has occurred?

Mr McCONNELL: Yes. Back in 1999 when we were first asked to act for the Rockdale association we suggested that a bill might be a good way to solve the problems. So I am not against the idea of having a bill. But to get an acceptable bill is not so easy. It is easy to get a bill that would be appropriate for one piece of property that is owned by one community organisation but it is more difficult to bring a whole lot of different bits of property in under the same bill. There are different community organisations that own property and they feel a local identity with that property. That is not to say that in one way or another through the use of different tiers in a bill you cannot get the right result. I have always believed that a bill might be an acceptable way but it is not acceptable the way it has been done at the moment.

The Hon. LYNDA VOLTZ: Say, for example, a community organisation has a church, a community hall and a child-care facility that is owned by the local community. At the moment they are all being wrapped up in one-size-fits-all, whereas their purposes may need to be differently administered under the bill. Is that the type of concern they may have?

Mr McCONNELL: Yes, but, to use a loose term, there is a mingling of all the different branches of their operations. There is the church, the child-care centre and the hall. The hall has different uses and they have activities beyond the actual physical structure of the church and the hall. They support soccer clubs and cultural organisations. The hall is used for a variety of activities, even including once where there was a census being taken by the Macedonian government and they used the hall for that. So it is not just a church, it is a community organisation and part of its operations is to have the church.

The Hon. LYNDA VOLTZ: I take you back to section 19. As part of that vesting of the property, each of the current trustees must consent. If we worked on the assumption that there was an ability for trustees to consent to the church itself as a separate property, if we dealt only with the churches for a start rather than any community assets, is that an appropriate way to get agreement to transfer properties?

Mr McCONNELL: No, the community would not agree to separating the property on which the church was built from the other properties and transferring that property because they want to feel the ownership of that church property. As I have said before, they accept the spiritual jurisdiction of the Macedonian Orthodox Church and that is the way they worship. But they want to feel ownership of that property. They left Macedonia to come out here, they established their communities here and they wanted to have the church. One of the first things, I was told, and before that time they had been worshipping in other churches, they wanted to have their own church. It was the Macedonians in the St George area that wanted that.

The Hon. LYNDA VOLTZ: It is more about having a bill that that allows some control at the local level?

Mr McCONNELL: Total control over the property.

The Hon. LYNDA VOLTZ: If the St George community had been involved in the formation of the bill, they would want a bill that allowed some sort of control at the local level over the properties?

Mr McCONNELL: Yes, that is critical.

The Hon. GREG DONNELLY: In relation to the position of the clients you represent, the community, and the Macedonian church and their position in relation to property, if I understand correctly what you are saying, it essentially is an irreconcilable difference in terms of the mindset about the issue of property. The way in which you have presented the position of your community on a couple of occasions, if I have understood correctly what you have been saying, is that they will not agree to this position. They will not accept the position of the transfer of property. Is that a fair description of the difference?

Mr McCONNELL: They will not accept the transfer of property to an organisation that is controlled by the hierarchical church.

The Hon. GREG DONNELLY: Is it fair to say that is a fundamental principal position? To use a phrase, it is not negotiable? Is that your position?

Mr McCONNELL: They are the instructions that I have at the moment, but I do not think anything is in a sense not negotiable. There are always ways of achieving the proper end. The local community want control of its property and they do not want that control taken away from them by an organisation which is controlled by the hierarchical church.

The Hon. GREG DONNELLY: So that is about as clear as you can make your position. I think Reverend the Hon. Fred Nile earlier referred to this point. If the particular community you represent is clearly not covered by this, that is, there is no capacity to transfer this property across in any sort of arbitrary or other way, it is not satisfactory, you said, because that would potentially jeopardise the settlement of an agreed position into the future. But if it is moved from this bill as an issue I do not understand how that would prejudice

your community in terms of the future. It certainly does not prejudice your community in terms of the property issue.

Mr McCONNELL: It prejudices the community because one opportunity that they have to resolve their present difficulties may be to have legislation.

CHAIR: Would you repeat that?

Mr McCONNELL: One of the ways in which the community can resolve the difficulties in which it finds itself at the moment is to have appropriate legislation—that is always a possibility. The passing of this legislation will prevent that opportunity.

The Hon. TREVOR KHAN: You know that is not right. You are a lawyer.

The Hon. LYNDA VOLTZ: Point of order.

CHAIR: Please continue, Mr McConnell.

Mr McCONNELL: Does that not answer the question?

The Hon. GREG DONNELLY: You have provided an answer but in my mind I do not see them as being mutually exclusive. If we are trying to deal with a piece of legislation and it is proceeding along a particular track and, with respect to your client, your community, if it will not be impacted by that legislation and that is made clear in some fashion in the bill, if necessary, but to satisfy the concerns of people it is made clear, I am struggling to understand how the community is prejudiced by the bill passing through the Parliament.

Mr McCONNELL: Only in the way I say. I cannot speak for other communities.

The Hon. GREG DONNELLY: No, you cannot. I refer to consultation. In answer to Dr John Kaye you referred to discussions in the office of Reverend the Hon. Fred Nile. Are you aware of any other discussions that may have taken place by legal representatives of the Macedonian Orthodox Church and perhaps any members of the community that you represent?

Mr McCONNELL: No, only at that meeting there were members from one other Sydney church and a Newcastle church.

The Hon. GREG DONNELLY: In the office of Reverend the Hon. Fred Nile?

Mr McCONNELL: Yes, that is right.

The Hon. GREG DONNELLY: And there have been no other discussions?

Mr McCONNELL: Not to my knowledge, no.

Mr ANDREW CONSTANCE: To your knowledge have there been any attempts by legal representatives of the Macedonian Orthodox Church to approach you?

Mr McCONNELL: No, none at all. In order to be completely full in my answer I should say that the only other consultation that I have had in relation to legislation has been with the Victorian Attorney-General's department in relation to the bill that was being promoted there. I had some discussions there and I was informed that they were not happy with what had taken place in relation to the promotion of that bill in Victoria, and they were not going to proceed with it.

The Hon. SHAOQUETT MOSELMANE: In your opening statement you said that there must be consultation and agreement.

Mr McCONNELL: Yes.

The Hon. SHAOQUETT MOSELMANE: The process of consultation has been raised a number of times. I hark back in my role as a councillor where consultation in local government is to send out notices and

information to neighbouring people and to advertise in the paper for responses within 21 days. We say that there is an application before the council and a process for people to put in a submission. Is that the type of consultation that you speak of? What type of consultation do you ask this Committee or this Parliament to take into consideration? Will you elaborate on the consultation process that you are seeking?

Mr McCONNELL: The consultation process that I would envisage would involve the church community sitting down with the hierarchical side of the church and discuss what it is it wants to do; sort this out properly rather than doing it, in effect, with respect, by stealth.

The Hon. SHAOQUETT MOSELMANE: The failure of consultation is not on the part of Parliament?

Mr McCONNELL: No. Consistent with what the late Jeff Shaw said in his correspondence and discussions that I had was that the Parliament would not proceed with legislation until there had been full consultation between the parties. It was not separate parties dealing with the Government but it is was between the parties to come to an agreement as to what should happen and then go to Parliament and say, "This is a bill that we would like you to consider". That is a way to do it but then that means the parties, both sides, have an opportunity to promote their ideas as to how the bill should operate then go to Parliament with an agreed position and say, "Consider this bill". That is what I would have had in mind.

The Hon. SHAOQUETT MOSELMANE: At the moment both parties have been in legal battle for the past 10 years or so.

Mr McCONNELL: That is right.

The Hon. SHAOQUETT MOSELMANE: Is there an expectation to resolve the issues after sitting around a table?

Mr McCONNELL: I never give up hope. This bill was, in a sense, sprung on the communities by surprise and I do not think that is laudable.

The Hon. SHAOQUETT MOSELMANE: I refer to control by a foreign charitable institution to which you referred. What is your fear for the community of the archdiocese having trusteeship of the properties in Australia? What is your fear if there is no compulsion on any party to be part of this law being created?

Mr McCONNELL: My fear in relation to the bill is that it might be a nullity.

The Hon. SHAOQUETT MOSELMANE: How?

Mr McCONNELL: Because it will on its passing into law automatically vest Australian property into a trust which is controlled by a foreign charitable institution and that would be unenforceable, illegal, invalid under the Commonwealth law. And to the extent that that Commonwealth law is inconsistent with this State law the Commonwealth law prevails.

The Hon. SHAOQUETT MOSELMANE: With respect, the position is to create a trust in New South Wales and under that trust to transfer properties, with consultation or agreement with the parties.

Mr McCONNELL: Yes, but the trust in New South Wales is controlled by a foreign charitable institution—there is no question about that. I might say one other thing that I did not put in my submission. What is behind this legislation bothers me. Throughout the discussion and throughout the second reading speech there is talk about "this bill is going to assist the mortgaging and the financing of church properties". That is a thread that runs through this legislation and in the second reading speech on its introduction. The advice that I get is that under orthodox church law you cannot mortgage a church. If a church is consecrated it is given to God. Once it is given to God you cannot mortgage it.

Dr JOHN KAYE: It is a matter for the church, not us.

Mr McCONNELL: That is right. There are probably plenty of people sitting behind me who know much better than I do but it does bother me that this Parliament would consider passing laws that have such a fundamental problem in them.

Dr JOHN KAYE: This legislation does not compel any community to be involved in it. There is nothing compelling about this legislation. It is simply an opportunity for those communities who wish to vest their property in the trust to do so. Is it your concern that there will be undue pressure on the community you represent, St Petka, to be involved in that trust, to trust their land in that trust? If so, what will be the nature of that pressure?

Mr McCONNELL: Yes, thank you for asking that question because it is a very real concern. The concern involves being under the spiritual jurisdiction of the Macedonian Orthodox Church, and operating a church you need to have a priest. The priest must be appointed by the authority of the Bishop. The pressure comes onto these communities through that authority being misused. It is open to the Bishop to discipline a priest as a means of enforcing some other position. Unfortunately, in this church there are too many defrockings, and most of those defrockings are for disciplinary reasons, not breaches of liturgical practices.

Dr JOHN KAYE: Do you suggest that a priest for one of these communities could be held hostage, with the threat of defrocking, unless that priest uses their authority within the congregation to cause participation in the trust?

Mr McCONNELL: If it were the Bishop's wish that the property should be transferred to the trust he could easily say—he has the power to say—to the priest, "I will withdraw your services from that church and will not reappoint you to that church unless that organisation transfers its property to the trust."

Dr JOHN KAYE: But your organisations are democratic: they make their own decisions—not the priests?

Mr McCONNELL: But they cannot get a priest without the Bishop's authority. This church at Rockdale has not had a priest for seven years. For seven years they have been without pastoral care. For seven years they have suffered.

Reverend the Hon. FRED NILE: You are critical of the lack of consultation. When your Macedonian community and the Bishop are in legal dispute in the Supreme Court do you agree that would make consultation difficult? Would it affect the ability to consult?

Mr McCONNELL: No, it does not, because we have discussions with the other side all the time. We are always trying to settle. I cannot tell you how many times I have tried to settle this dispute.

The Hon. TREVOR KHAN: That is what lawyers always say of the other side. Everyone is trying to settle and they never get there.

Reverend the Hon. FRED NILE: Do you agree there have been discussions regarding the court case?

Mr McCONNELL: Yes. There have been discussions in that respect, and that does not mean there cannot be discussions that would extend to the bill.

Reverend the Hon. FRED NILE: You have used the words "stealth" and "surprise". The first bill was introduced by the authority of the Attorney General in the lower House and was actually passed and then left to sit in the upper House because of objections. I do not understand the surprise and stealth to which you referred. In relation to the second bill there was publicity and notices of motion with a gap of some weeks. Why did you use those words as if there has been some attempt to do something secret when every attempt has been made to make it public?

Mr McCONNELL: Well, no, the first time we came into the process as the bill was going before Parliament I was not aware that it had been passed in the lower House. I thought it had been introduced into the upper House. It only became known to our people when it was there after there had been a speech. There had been a lot of discussion that had gone on between the hierarchical church and those who were promoting the bill in Parliament. We, in fact, tried to get hold of the background correspondence under freedom of information and were met by the Government of the day saying that a lot of these documents were not available. We were about to take proceedings to the court but we had enough on our hands with the proceedings before the Supreme Court so we did not take it any further. There was no consultation there. I think when that became apparent to the Government that is when the bill was allowed to lapse.

CHAIR: Thank you for appearing. Your assistance is greatly appreciated. Further questions may have been taken by you on notice. The secretariat and Committee members may have further questions that will be sent to you. The Committee has resolved that those answers should be returned within 21 days.

(The witness withdrew)

(Luncheon adjournment)

CHAIR: Before we begin there are a couple of housekeeping matters. I will not repeat everything I said on the record earlier this morning but there are two matters that I would like to mention. Committee hearings are not intended to provide a forum for people to make adverse reflections about specific individuals or groups. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of individuals unless it is essential to address the terms of reference. The Committee is aware of ongoing litigation in New South Wales between the diocese and the Macedonian Orthodox Church St Petka Incorporated. While this litigation does not preclude the Committee from hearing evidence about this matter please note that any statements made during the Committee's hearing cannot be questioned or impeached in any court proceedings.

MICHAEL RADIN, Vice President, Association of Macedonian Communities in Australia Incorporated, affirmed and examined:

IGOR ALEKSANDROV, President, Association of Macedonian Communities in Australia Incorporated and Temporary Chief Executive Officer, Macedonian Orthodox Community of Sydney, and

CHRIS ANGELKOV, Vice President, Macedonian Community of Western Australia Incorporated, Macedonian Orthodox Church of St Nikola and member of the Diocese of the Macedonian Orthodox Church of Australia, and

PETER BREEN, Solicitor appearing as a private individual, sworn and examined:

CHAIR: Before I ask one or more of you to make an opening statement I indicate firstly that we have received submission number 435 from Mr Igor Aleksandrov of the Association of Macedonian Communities in Australia Incorporated. Unfortunately, we have not had a chance to read that submission. The submission arrived today and we were provided with a copy this morning. Accordingly, the Committee is not in a position to resolve that the submission be published. The Committee will not be able to determine the issue of publication until a later date. Accordingly, Committee members will not be able to refer to the submission in any questions. As the submission is not published it is not covered by parliamentary privilege. Accordingly, it should not be handed out to any individual or persons after you have finished giving your evidence because it will not be covered by parliamentary privilege. The Committee will make a determination on publication subsequently. Does one or more of you wish to make an opening statement?

Mr ALEKSANDROV: I have been authorised by the association to make an opening statement. I would just like to mention that in relation to parliamentary privilege I am quite happy to waive it if it makes any difference. I just want to clarify that the Association of Macedonian Communities in Australia is not a religious organisation by purpose; it is an ethnic community organisation and it is an affiliation of independent incorporated Macedonian communities Australia-wide. It is akin to the Ethnic Communities Council of New South Wales in the sense that it does not interfere in property management of each association but it establishes policy that is common to these organisations and it also advocates those policies. The majority of the associations that are members of this affiliation have also established Macedonian Orthodox churches in Australia historically dating back to the 1950s, and it is these associations that have been managing the properties and income of those churches on the basis that all spiritual matters have been left to the priests and, at times, the hierarchy when we have had one.

I also note that there was mention earlier that we are a breakaway group. There is at least one member of our association, the Macedonian Orthodox Community of Wollongong, that is still formally considered a member of the Bishop Petar diocese and they also have a priest appointed by Bishop Petar. So we do not consider ourselves a breakaway group; we are simply a group of organisations who refuse to submit to demands that have been made of us since Bishop Petar's arrival in Australia in relation to the management of properties.

In that sense I would like to get to the first point, which I think is most fundamental in relation to our opposition to the bill. The most fundamental problem with this bill is that there is an assumption that the Macedonian Orthodox Church has been historically a hierarchical organisation in relation to property management. That is simply not true. The establishment of the Macedonian Orthodox Church in its modern form started in World War II in the Republic of Macedonia, which is only one part of Macedonia, which at that time was establishing its liberation from Serbia. It was established by a grassroots movement of Macedonian Orthodox believers and Macedonian priests who were rebelling against the Serbian Orthodox Church, which at that time had jurisdiction over the Republic of Macedonia according to other Orthodox churches. Until 1958 this movement had no Bishop whatsoever.

In 1958, after negotiating with the Serbian Orthodox Church, they established an autonomous Macedonian Orthodox Church in the Republic of Macedonia under conditions that the Bishops would be authorised by the Serbian patriarch but they will be chosen by the Macedonian people and priests. The first Macedonian Orthodox Church in Australia predates that autonomous Macedonian Orthodox Church in Macedonia. It goes back to 1956. It was established in Victoria and it was established by a community that expressly wanted to be independent in relation to all property matters and in relation to who its priest is going to be.

As the autonomous church was established in Macedonia they had an arrangement of a loose affiliation whereby the local church here in Australia accepts the spiritual jurisdiction of a Bishop appointed from Macedonia, but there has never been an acceptance of the demand that the properties be controlled by the church in Macedonia or that they are held under trust for the church in Macedonia. That is something that to most of us was a new demand once Bishop Petar arrived in Australia in 1996. There has been a move to centralise the Macedonian Orthodox Church in Macedonia but it is by no means one that has been accepted by the people who established that church. I think it is very important for everybody to respect that because there may well be other Orthodox churches that are hierarchical—it may even be the norm; I cannot say that for sure. But this is the church, this is the type of structure, this is the type of religion the Macedonian people have chosen and that includes the Macedonian people who have contributed with their donations and their voluntary work to all Macedonian Orthodox churches in Australia.

CHAIR: I remind everyone that all mobile phones are to be switched off. Simply putting them on silent is not sufficient. Mr Aleksandrov, please continue.

Mr ALEKSANDROV: I will also mention one of the political contexts of this dispute, because this is essentially a political issue. The divide between the two factions in Australia is not a religious one; it does not have much to do with theology—at least not with liturgical matters. It is a political one. It is all about power and control of properties.

CHAIR: Do you understand that the Committee is looking at provisions of a bill? The Committee members are not looking at aspects, whether it is religious, political or otherwise, between two groups or two factions. The Committee is hoping to hear from you today as to why the bill is not appropriate, does the bill have any problems, et cetera?

Mr ALEKSANDROV: What I was going to get to was that this bill as it is would allow those churches that come under it for one, the churches that do accept to come under it, it would allow the hierarchy of the Macedonian Orthodox Church in Macedonia, or even the Bishop here alone without their consent, to put the churches here under the jurisdiction of a foreign church, which would be contrary to the intentions of the people who donated to the establishment of those churches. There is nothing in the bill that would prevent the Bishop even without the approval of the church in Macedonia from entering into a deal with another church. In fact there are explicit provisions in the bill to allow him to place the property under another trust.

There is also a provision in the bill to allow him to enter into an arrangement of cooperation with another church whereby even if this trust still owns the property another religion would be using it. This has been a key concern for Macedonian Orthodox parishioners for the past 50 years: To have their independent church where the church is not going to be used for political assimilation and political oppression. Basically this bill would allow whoever holds control of this corporation, and it appears that it will be one person and basically—the Bishop—exercising absolute control in effect to take these properties under another church, either in terms of ownership or in terms of use, without the consent of the local community.

The other matter that is critical to this inquiry is this assumption that there is some support out there by parishioners of these churches that are mentioned in clause 17 of this bill. If we look at the basis on which this bill has been marketed, if I can use that term, we will find it has got nothing to do with the substance of the bill. This bill has been promoted on the basis that it is a bill about recognition of the Macedonian Orthodox Church by Australia. Recognition of the Macedonian Orthodox Church suggests that Australian parliaments do not recognise the Macedonian Orthodox Church at present; they do not recognise the churches we have been operating since the 1950s. That is what we are fighting for. That is the basis on which this bill has been marketed. We have plenty of evidence that that has been happening in the past week or two. There was a general meeting two days ago, according to information I received during lunch, where there was a statement made at a public meeting by the Bishop that this bill will amount to recognition of Macedonia. There have also been statements made to the effect that this bill will allow us to claim GST back. These sorts of things have nothing to do with the stated purpose that the proponents of this bill have submitted to the inquiry.

A further matter is that this bill has been promoted on the basis that incorporated associations and companies limited by guarantee that have been operating properties in Australia for the past 50 years are in effect private businesses that are deceiving the community so that they can take their money. They are deceiving the community into thinking they are a religion. The idea is that by adopting this legislation the Parliament is going to correct that injustice. Another misleading statement that has been made is that associations under the corporations law and directors of non-profit companies or associations cannot be held personally liable for

misappropriation. This is not true; they can be held liable for breaches of their duties. What has been stated is that in contrast under this bill the trustees will be independently liable.

CHAIR: I stop you there for a moment. None of this evidence has come before the Committee. At the end of the day the Committee members will determine this matter based on the evidence they receive. Advising us of things that have been said or asserted does not have any bearing on this Committee. This Committee is not going to make a determination based on what someone is saying out in the community; this Committee is going to be making a determination based on the submissions it receives and the evidence it receives in relation to the specific terms of reference of the bill. Your time is limited. I am happy to allow you to continue but it is really not assisting the Committee members. I strongly recommend that you focus purely on the terms of reference and the bill.

Mr ALEKSANDROV: The relevance of what I have said has got to do with whether there is any support in the community for this bill at all, and there have been submissions made to that effect to this inquiry. There have been submissions that there is some level of support out there. Our submission is that that is not really informed consent. The other relevant issue is that in the submission by the diocese there is a page of a briefing that has been given to the Holy Senate of the Macedonian Orthodox Church. According to that briefing the Senate has not been informed about the clauses that would allow the corporation to put the property under another trust or to allow the property to be used by another religion. That is a very critical matter in terms of how much this bill really is supported by the Macedonian Orthodox Church in Macedonia as well.

The final issue I will address in summary is the idea that the bill does not affect communities that are not listed under the bill is just simply not true. Even in the second reading speech there was a reference to communities that were established since the 1960s. None of these four properties have been established I think until the Bishop came here, which was in 1996. So it is clear what the intent of this bill is. The intent is to go out there once it has been passed and to say: Hey, the Parliament recognises that this is the only way you can be a legitimate church. If you want to be a legitimate church you need to come under this bill. This consent that other communities might give later to transfer their property to the new corporation is likely to be the product of coercion and misleading statements. There is a history of coercion and misleading statements having been used.

CHAIR: I stop you there. I again remind you that Committee hearings are not intended to provide a forum for people to make adverse reflections. I ask you not to do that. Committee members are well and truly capable of knowing what the issues are. I ask you to refrain from making adverse implications—and I must say that up until this day that has not occurred.

Mr ALEKSANDROV: Mr Chair, I am simply conveying what the general concern is out there in the Macedonian community. This community has been faced with these sorts of problems for the past 14 years and we feel that by passing this bill the Parliament would be basically interfering in a partisan manner in what is basically a war of attrition internally within the Macedonian community. This bill will be used by one side against the other as a claim to higher legitimacy from the Parliament. That is what our concern is. There were issues raised previously about whether there is likely to be new litigation as a result of this bill. We think there probably is because there is an assumption in the bill that there are other properties that are held in trust. We say: No, there are not. We feel that having this bill will embolden or give an incentive to one side to either commence new litigation to prove they are held in trust and then to claim that there has been a breach of trust and as a result the existing trustee should be dismissed, or to threaten legal action in which case many people who are just laymen and do not understand trust law—and most lawyers do not seem to understand it very well—are likely to be intimidated and sign over their properties without informed consent.

CHAIR: I do not want to deny any of the other witnesses the right to make an opening statement if they want to, but we are limited for time.

Mr ANGELKOV: I will be brief. As Vice-President of the Macedonian Community of Western Australia and representing the Macedonian Orthodox Church of St Nikola, which is a loyal member of the diocese of Australia, paying its dues and in good standing, it is very difficult for me to appear and say what I am going to say, but it has to be done. To give you some background, and other communities are very similar, our community was first formed in 1941. In 1965 we began building a community centre and church. In 1969 we opened that community centre and church. As an 11-year-old at the time I was one of the first four altar boys.

Dr JOHN KAYE: Is this in Western Australia?

Mr ANGELKOV: Yes.

Dr JOHN KAYE: Is there one Macedonian Orthodox Church in Western Australia?

Mr ANGELKOV: There are two but ours is the biggest.

Dr JOHN KAYE: And the best.

Mr ANGELKOV: Yes. Our community has at all times in the last 30 or 40 years operated as an incorporated association. We have always held general meetings and we have always followed the procedures required by the Corporations and associations laws. I find it very difficult now when we are facing a situation where the diocese and Bishop Petar are seeking an Act of Parliament to formalise the Macedonian Orthodox Church in Australia. I can see no good reason why this requires an Act of Parliament. Why it cannot be registered and incorporated within the Associations Incorporation Act is beyond me. I think the answer to that question is that the Bishop and the diocese do not want to be subjected to the checks and balances that the Associations Incorporation Act has and that everybody must adhere to—general meetings, adequate notice and all those kinds of transparent things—

CHAIR: I again remind you that this forum is not meant to provide an opportunity to make adverse comments in relation to specific individuals or organisations. It is not something the Committee needs to hear nor is going to assist you in any way.

Mr ANGELKOV: Earlier there was mention about other churches that have similar trusts et cetera. I do not know about the others but from what I know about the Catholic Church and the Anglican Church, which is not a lot, it would appear to me that in expanding areas in Australia where there are new developments and new suburbs the mother church will decide it needs a parish there to service the people and they will go and build one. Then they will hire a priest and have a subcommittee that sells cupcakes and things and helps run it. We have a situation from the ground up. Our community around Australia has historically been blue collar workers, very humble people who have put their resources together and worked on weekends and held dances, picnics and raffles to get the finances to build these clubs, associations and churches. I want to refer to clause 19, which is the one I am most worried about. Clause 19 allows the Bishop and the diocese to exert a type of pressure on individual organisations to put their church property into this trust. The clause says "voluntary" but there is more than one way to skin a cat. Earlier someone brought up—I think it was the lawyer Mr McConnell—the ability of the Bishop to appoint, defrock, transfer and remove priests. He has a very powerful position.

I refer to these letters about this bill. The first we heard of this bill was a wishy-washy letter on 1 June which said something along the lines that "After contact from various New South Wales politicians we have met with them and they've told us that we've got a great opportunity here to put a property trust through which will recognise the Macedonian Orthodox Church in Australia and will safeguard the properties of the Macedonian Orthodox Church. So much for now, we'll let you know how things go", sort of thing. On 13 June we got a circular letter saying that the Hon. Fred Nile had read the second reading of this bill and seeking our support for it.

Dr JOHN KAYE: Who was that letter from? Was it from Fred Nile or from the Bishop?

Mr ANGELKOV: No, from the Bishop and his deputy. When we refused that and said no we did not support that and sent them a letter in reply saying why we did not support that, we got another letter, this time saying, "It doesn't affect your properties, it is only these four properties", et cetera. That is not true because under clause 19 other properties can be put into that trust.

Dr JOHN KAYE: Was that letter also from the Metropolitan, not from the Reverend Fred Nile?

Mr ANGELKOV: That is right. We had another sign-here letter asking our priest to sign a letter to say that our church and its parishioners support this bill. I could not find one parishioner in our whole group that would support this bill. We are talking about a situation where the power that is vested in the Bishop together with the power in clause 19 worries us.

CHAIR: You are really not going to leave any time at all for anyone to ask you any questions.

Mr ANGELKOV: I will answer questions.

The Hon. TREVOR KHAN: Mr Angelkov, you have referred to various letters from June onwards. Are you able to provide us with copies of the letters you have referred to in your evidence?

Mr ANGELKOV: Yes, sir.

The Hon. TREVOR KHAN: That includes the first letter that indicates what the purpose of the bill is?

Mr ANGELKOV: The first one did not mention a bill. It is a wishy-washy thing.

The Hon. TREVOR KHAN: Are you able to provide us with a copy of all those letters you have referred to that you think are relevant?

Mr ANGELKOV: Yes. And the sign-here letters as well.

The Hon. TREVOR KHAN: Mr Aleksandrov, are there any other letters that you are aware of that you think are relevant to what is behind the introduction of this bill?

Mr ALEKSANDROV: Yes, there are several documents and they have been referred to in my submission. They have been quoted, so—

The Hon. TREVOR KHAN: I would prefer that we see the hard copy of the letter rather than a summation.

Mr ALEKSANDROV: I can provide that evidence.

Mr BREEN: Mr Chair, can I suggest that should also cover radio transcripts because the bill has been the subject of radio interviews?

The Hon. TREVOR KHAN: I am sure if a late submission is made you know how it would be treated and no doubt as you are here you will give advice to the others who are here to ensure the Committee is provided with appropriate evidence, but I am not going to ask for radio transcripts because I do not know of them and they have not been referred to until now. I want to refer to clause 19. I think all of you have been sitting in the audience whilst this hearing has been going on. Is that right?

The Witnesses: Yes.

The Hon. TREVOR KHAN: I think you are alive to the fact that we see some issues with the extra-territoriality of the bill. Is that right? That is, the direction to people outside the State about the property outside the State and that there is a real problem in that regard. Is that right?

Mr ALEKSANDROV: It is not one of our association's primary concerns because even if it was limited to New South Wales it would be just as problematic for us.

The Hon. TREVOR KHAN: I understand what you are saying but do you understand that that is an issue that has been traversed?

Mr ALEKSANDROV: Yes.

The Hon. TREVOR KHAN: Are you also aware that at least some of us on the Committee have an issue with regard to clause 17 of the bill, which seeks to vest property in the corporate body otherwise known as the trust?

Mr ALEKSANDROV: Yes.

The Hon. TREVOR KHAN: Let us get on to clause 19 because that seems to be where we run into our next problem. What I thought might have been a way out of it seems to be creating problems as well. Clause 19 (1) refers to relevant property held on trust for the church. I think Mr Aleksandrov referred to that in his evidence and the assertion that there is no other property that is held in trust.

Mr ALEKSANDROV: That is not exactly what we claim. We are not aware of any other property that is held in trust. We are aware of properties that we claim are not held in trust but the Bishop has previously claimed that they are. That is a question of dispute and it is also one of the questions before the courts in relation to the St Petka matter, which is also likely to be the subject of appeals.

The Hon. TREVOR KHAN: You will understand that we have to be a little bit careful about the St Petka matter. I would love to ask some questions but I am not going to. I know this will cause you concern but it should not because it is only me speaking, not the Committee. If a bill were progressed in the House that provided for a corporate entity to be created that became the receptacle for the receipt of church properties, apart from trust properties, so we overcome that, do you still see a difficulty?

Mr ALEKSANDROV: The difficulty we see is that the concept of having a statutory corporation has been promoted as something that is about recognising our legitimacy as a church. If that exists, that will be used to imply that these incorporated bodies are not real churches. If the Parliament were to entertain the idea that each of these incorporated associations can become a statutory corporation as well, which I think would be pretty difficult—

The Hon. TREVOR KHAN: Well, they are.

Mr ALEKSANDROV: No, a statutory corporation I mean, not an incorporated association under the general legislation or the Corporations Law. A statutory corporation is being promoted as something that is of a higher level of recognition by the State. The real problem here is the perception in the community of what this legislation means. In my view, any law is only as good as those implementing it understand it. If you allow this new body to be self-regulating, because it will be regulated by statute and a constitution that the Parliament has no knowledge of and no government agency will be required to approve any amendments or register the constitution, you are basically allowing self-regulation of a body where power is extremely centralised. There is no real system of checks and balances.

The Hon. TREVOR KHAN: Assuming that that is the case, you might have heard a comment I made earlier that one of my concerns in regard to some of the areas where we could go in this bill is that we may be invited to intrude into the operation of a church. I, for a variety of reasons, am concerned if we seek to intrude into the operation of the Macedonian Orthodox Church.

Mr ALEKSANDROV: But that is what this bill does in our view because it makes an assumption about the internal order of the Macedonian Orthodox Church historically. Historically the Macedonian Orthodox Church, at least in Australia, has been developed by these associations on a decentralised basis as far as property is concerned. If the Parliament passes a bill that assumes hierarchical control it is effectively imposing on us what are seen as religious tenets by some, but religious tenets that we do not accept.

The Hon. TREVOR KHAN: Even if the transfer into or to the corporate body is voluntary, that is not good enough for you?

Mr ALEKSANDROV: There is the issue of centralisation. There are two different issues. Yes, you are correct. Even if there is no transfer of other available properties to the corporation I do not see how the bill could be designed in a way where other organisations cannot seemingly voluntarily transfer property to the new corporation. There is still the issue of the lack of accountability in the design of the bill, the lack of accountability on the part of the person who basically has absolute power within this corporation.

The Hon. SHAOQUETT MOSELMANE: My question is to Mr Aleksandrov. Earlier you mentioned that the essence of this will allow the Bishop to take control of the properties and once they can control the properties then be able to transfer, sell and pass a trust to another church or another organisation?

Mr ALEKSANDROV: Yes.

The Hon. SHAOQUETT MOSELMANE: Can you point to where in the bill it gives that authority?

Mr ALEKSANDROV: The bill gives authority to this corporation to basically deal with the property as it wishes but there are specific clauses in the bill allowing—I think it is clause 19; I will refer to the bill specifically. Actually, it is not clause 19, it is the clause that refers to declaring the trust inoperable and putting the property under another trust—vesting property provisions—sorry.

Dr JOHN KAYE: I think you are talking about clause 14. This is where the trust may vary.

Mr ALEKSANDROV: The variation of trust.

Dr JOHN KAYE: Clause 14 allows the trust to vary its own—

Mr ALEKSANDROV: Clause 14 and also there is another clause in relation to having schemes of cooperation with other churches, which would effectively allow other religions to be using that property for non-Macedonian orthodox purposes.

Dr JOHN KAYE: That is clause 13.

Mr ALEKSANDROV: Okay. I am sorry, I do not know it off by heart, but I know the clauses are there.

The Hon. SHAOQUETT MOSELMANE: Has there been evidence of that here, if I may ask that question?

CHAIR: Without making adverse comments, please, Mr Aleksandrov.

Mr ALEKSANDROV: I do not need to make adverse comments. It is all publicised that in 2002 there was a deal signed between three Bishops of the Macedonian Orthodox Church, led by Bishop Petar, to put the Macedonian Orthodox Church under the jurisdiction of the Serbian patriarch and to change its name to the Ohrid Archdiocese, thereby removing the Macedonian national identity of the church. That was not ultimately ratified by the synod as a result of other Bishops coming out publicly, criticising the Bishops who were pursuing this line. The political situation in Macedonia is so volatile that this could change any time.

CHAIR: Order! Could I please stop you there? This is really going outside the terms of reference. As I have said before, bringing to our attention political aspects will not assist you in any way. We are here to specifically look at a bill. Answers to questions on how certain sections work and why you have a problem with a section of the bill will help us enormously. Please focus on that.

The Hon. SHAOQUETT MOSELMANE: I know the difficulties that Mr Aleksandrov has. We have difficulties as well. We cannot ask questions from the submission; we can only ask questions that come out from the verbal submission, which is why I asked that question and why I wanted to get to the bottom of why there is that fear and if there is that fear, who will take control of the property. I know you have answered the question.

Mr ALEKSANDROV: Could I ask permission to just say something about the submission being put in so late because it keeps on being brought up? This inquiry commenced at a time when we were preparing for the current hearing in the Supreme Court matter in the St Petka matter. This association and myself personally have been assisting the association in that matter. We have tried to help them in various ways. A lot of us have had to give evidence. The hearing has been going on all month. It has been a major inconvenience for us, the scheduling of this hearing and the deadline for submissions, so there is a very serious reason as to why we have been late with our submission.

One other thing that I should mention, and I think I brought this to the attention of the office of the Committee clerk previously, is that the people who are appearing after us from the Newcastle community and the Wollongong community are members of this affiliation. They have been happy for us to speak on their behalf but there has been some sort of confusion in terms of them being required to appear as separate witnesses but if the diocese could appear with one lawyer or two lawyers, we do not see why these associations should not have the right to choose for us to represent them, in which case we would be able to entertain some more questions.

The Hon. SHAOQUETT MOSELMANE: Well, that is up to the Chair and the Committee.

The Hon. TREVOR KHAN: It is actually up to the Committee, not the Chair.

Dr JOHN KAYE: So you want to appear on behalf of two sets of subsequent witnesses?

Mr ALEKSANDROV: They have asked for that.

CHAIR: We will deal with that when we get to those witnesses.

The Hon. SHAOQUETT MOSELMANE: You mentioned earlier as well that your organisation is not essentially a church organisation; it is more like an ethnic community council of New South Wales or a body such as that. If that is the case, how can this bill affect organisations that are outside the auspices, the control or the rule of the diocese or the church?

Mr ALEKSANDROV: The history of the Macedonian Orthodox Church in Australia is such that the properties on which these churches operate are owned by these ethnic community organisations. The priests deal with spiritual matters. The ethnic communities handle property and financial matters because there is a greater level of accountability there; there is a broad dispersion of power. That has been central to even the establishment of the Macedonian church in Macedonia. The first constitution of the Macedonian Orthodox Church as an autonomous church in Macedonia sets out different legal persons within the Macedonian Orthodox Church and these separate church communities are among the distinct legal persons who can own and operate property in their own right.

Reverend the Hon. FRED NILE: You did mention that there were two clauses that were concerning you, as well as you object to the bill in principle, obviously, from what you have said. You have said you are not happy with clauses 13 and 14. Clause 13 allows the church to cooperate with other denominations or other churches, which many churches now do. It may mean various things, without going into detail. The other one, clause 14, is that the trust may be varied. We are trying to see whether we can get this bill to become an agreeable vehicle to all people. If those two clauses were amended to be deleted, would that reduce some of your fears about the bill?

Dr JOHN KAYE: Which two clauses were you referring to?

Reverend the Hon. FRED NILE: Clauses 13 and 14.

Mr ALEKSANDROV: Can I just be a little bit more specific? The problem is not cooperation with other churches per se; the problem is the Bishop having the authority to make that decision without the consent of the community that has contributed to the establishment of these churches. We are not saying outright that as a community we never want to cooperate with any other religion. We do want to cooperate with other religions but we do not want it done in a way that is contrary to the interests of the community as the community has defined those interests for itself, and that is a problem with the whole bill.

Reverend the Hon. FRED NILE: That is the point I am making; even though you may not be against the cooperation, but to relieve your fears of the misuse of sections of this bill, if clauses 13 and 14 were amended to be deleted, would that reduce some of your fears about the bill?

Mr ALEKSANDROV: I think it may reduce the fears of some within our community; for example, it would reduce the fears of the synod or the churches that are already on the Bishop's side, so to speak, but it would not reduce the fears of the rest of the communities because of the other issues I mentioned because of the opportunity to use this bill as some sort of higher moral ground in this war of attrition that has been conducted against us for 14 years simply because what we are trying to protect is the objectives and the rights of these communities that are enshrined in their constitutions, which have been established in accordance with Australian law relating to incorporated associations and Corporations Law.

At the end of the day, even if these clauses were removed, the synod would still be able to put the churches under another church. If the political situation in Macedonia changes, which would not be any surprise because the country has changed control I don't know how many times in this century; if the political situation there changes; say, for example, there is another civil war and a part of Macedonia and the part in which this church is based allies itself to Bulgaria not to Serbia, we could have the churches here, whichever churches they maybe that are under the bill, placed under a Bulgarian or a Serbian church without the consent of the local community because there is no protection in the bill for the intentions of the communities that contributed their funds and efforts to these churches, any of them—even the Liverpool church, for example, which is listed in clause 17, and this is something I can also provide to the Committee.

Two years ago there was a public announcement, a fundraising announcement, signed by the priest, which said, "By donating to this church you will be donating to your local Macedonian orthodox community". Wouldn't this bill change the implied intention of the people who donated on that basis, thinking that they are donating towards the local community when they are really not? The church in Macedonia can decide to use it for something that has got nothing to do with the interests of the local community.

Reverend the Hon. FRED NILE: You do not accept that there is any power residing here in Australia then for the Macedonian church?

Mr ALEKSANDROV: There is no grassroots control of what happens with the properties under this bill whatsoever. There is no grassroots control; there is nobody to hold this Bishop, who will be the head of this corporation, accountable if he uses the property in a way that the community does not agree with.

Dr JOHN KAYE: Mr Angelkov, let us go to clause 19 of the bill, which you have raised objections to. Do you accept that clause 19 is a voluntary clause, that is to say it is a gateway for communities to hand over their property to the trust, company, corporation being set up by this legislation, if it were to go through, but it is voluntary; that is to say, the trustees of the land unanimously agree to hand it over?

Mr ANGELKOV: On the face of it in normal circumstances I would say yes, in normal circumstances, but in view of our understanding of the history and our experiences over the last 15 years, we are very concerned about this particular section. For example, what happens if we receive one of these, "Sign here" letters that says, "We, the Macedonian Orthodox Church Diocese of Australia, are very proud to announce that we have formed this corporation and all the real churches who care about the mother church and who love the mother church are putting their properties into here. Can you also put your property into here? We would like you to also sign to put your property into this trust." On the face of it sounds like, well, you can just tell them to get lost and you don't have to sign, but it is not that easy in this situation where you are dependent upon one person for receipt of a priest and for the continuation of that priest's tenure.

Dr JOHN KAYE: So you are saying that the voluntary nature of clause 19 is overridden by the fact that the metropolitan has control over whether you get a priest or not and could potentially use that to put undue pressure—

Mr ANGELKOV: That's correct.

Dr JOHN KAYE: —on you, on a congregation, on a community organisation and over their land?

Mr ANGELKOV: Exactly. That is what we are worried about.

Dr JOHN KAYE: Mr Aleksandrov, did you want to comment on that?

Mr ALEKSANDROV: Can I just add that two churches in Sydney, the Cabramatta and Rosebery churches—back in 2002 I was the president of the Macedonian Orthodox community of Sydney—received demands from the Bishop through his priests for us to deregister the company, which was basically his idea of us giving up ownership, and to make certain contributions to the diocese which we felt there was no substantiation for the demand and if we did not do that the priest would be withdrawn for our Easter services. We actually had to complain to the synod about that. The Archbishop originally intervened and he stopped that from happening. Once that archbishop passed away, when the new Archbishop came to power, again we were faced with similar demands and the two priests stopped holding liturgies because we did not meet those demands. They continue to hold weddings, christenings and funerals where there was—I probably should not say what I was going to say.

Dr JOHN KAYE: I often say that, by the way, but I usually say it after I have said it.

Mr ALEKSANDROV: I think the distinction between what happens at funeral services and wedding services is different, but the priests were, in effect, withdrawn from our church and we were forced to get independent priests from Macedonia, who were willing to break away from the Bishop to come to serve in our church and as a result they were declared heretics and they were defrocked.

Mr RADIN: Can I add to that? It was His Eminence's own lawyer who indicated this morning that indeed—

The Hon. TREVOR KHAN: We heard what he said.

Mr RADIN: His Eminence had fearsome powers and the evidence would suggest that he has exercised those powers fearsomely. This is probably why we see it being, with the greatest of respect, a somewhat naive view that section 19 of the bill would purely and simply encourage a voluntary scheme of transferring property. There is certainly a context behind that, which we are trying to articulate.

Dr JOHN KAYE: Thank you for that illumination. You say that the bill effectively recognises, to paraphrase what both Mr Aleksandrov and Mr Angelkov have said, the Australian and New Zealand archdiocese of the Macedonian Orthodox Church, because it sets up a statutory corporation under the control of the Bishop.

Mr ANGELKOV: No, sir, you misunderstood. We are saying that His Eminence and his side, in marketing the reasons why this bill should go through, are saying that by it going through we get recognition of the Macedonian Church in Australia. We all love to see recognition of the Macedonian Orthodox Church in Australia; we are not against Australian recognition of the Macedonian Church.

Dr JOHN KAYE: Your suggestion is that by passage of the bill Parliament would be entering into the strong debate that is occurring between the community and the church hierarchy, and tipping the balance in one particular direction.

Mr ANGELKOV: That is right.

Dr JOHN KAYE: It would be perceived to be a partisan player.

Mr ANGELKOV: That is exactly right.

Mr ALEKSANDROV: Yes, sir, that is exactly what we are worried about. We feel that after 15 years of litigation and millions of community funds going down the drain with lawyers fees, this Act at this time, when there are still cases going, is at the absolutely wrong time and has no chance of achieving the good intentions that the people behind it, or some of the sponsors, or whatever, have. I do not think it has a chance, because of the situation now and the way it is drafted.

The Hon. TREVOR KHAN: In response, now that the bill has been introduced, if the bill does not proceed will that be taken in the same way as a win for another side in this event? Are we now in an absolutely no-win situation? If the bill does not present, you in a generalised sense will say, "We have beaten the Bishop again".

Mr ALEKSANDROV: The 1998 legislation, which was essentially similar in terms of this concept of getting higher legitimacy and centralised control, was withdrawn because there was no consensus in the Macedonian community. The Government's policy was, "We are not adopting this bill until there is consensus in the Macedonian community." That position should be maintained in relation to this bill, because its central premises are substantially similar. By not passing the bill Parliament would be saying that it is not going to interfere in Macedonian Orthodox community internal matters with special legislation, or, alternatively, if Parliament does want to pass legislation to help resolve this, it needs to undertake a process to encourage the parties to negotiate a mutually acceptable piece of legislation.

That is something we would be quite happy to enter into. We have tried ourselves, and that is the reason I asked Mr Breen to come here with us. We had a delegation of our association to Macedonia in 2006. Myself, my uncle and Mr Breen were there. We asked for a meeting with the Holy Synod of the Macedonian Orthodox Church to resolve things by—

The Hon. TREVOR KHAN: Could I invite you to put submissions.

The Hon. LYNDIA VOLTZ: Point of order: I am concerned that Government members have not had an opportunity to ask all their questions. I would like the time not to run over.

CHAIR: I understand.

The Hon. TREVOR KHAN: All I am asking is, if there are specific issues with regards to the bill, it would make it better if you can put it to us?

The Hon. LYNDA VOLTZ: Point of order: Mr Chair, we need to put our questions.

Mr ANGELKOV: I can suggest one thing. I would rather it not proceed, that is totally right. But if you include something like section 19, I suggest you include a clause that says—for example with our association, if we make any decision in relation to an asset, purchase or sale, we need 75 per cent of our members to vote for that to proceed—something like that 75 per cent of the members of that association have to have a special general meeting to decide whether they want to put into this trust, at least that is some kind of safeguard that stops cronies stacking a committee and temporarily getting control and then putting it into this.

CHAIR: I will stop you there. It is not to be inferred as a criticism that the submission was put in late—but it tied the hands of this Committee because it was late. It is not only that it was late, but also the Committee members saw it today for the first time. I am aware, as you are, that extensions were given to you. Unfortunately, the submission was still late: it was put in only today. Further, you will have an opportunity to respond to questions on notice. All Committee members have an opportunity to put questions on notice to you. The secretariat will forward any questions on notice to you and you have 21 days to respond to them. You will not be granted extensions in relation to that. Finally, I thank you for appearing today. Your evidence is appreciated. The Committee will now move on to the next group of witnesses.

Mr ALEKSANDROV: Can I clarify something?

CHAIR: No.

Mr ALEKSANDROV: I just want to—

CHAIR: Order! Please do not try to take over this Committee. We will now move to the next group of witnesses. If you have something to say in relation to the next group of witnesses, please do so through the secretariat.

Mr ALEKSANDROV: No, that is not what I am saying to you. In relation to our existing representation, there is a misunderstanding as to that.

CHAIR: Order! The witnesses are excused. The next group will now come forward.

(The witnesses withdrew)

KRSTE TOPEVSKI, President, Macedonian Orthodox Community of Newcastle,

DIMITAR VANGELOV, Secretary, Macedonian Orthodox Community of Newcastle, and

JOHN FOTEFF, Member of the Macedonian Orthodox Community of Newcastle, sworn and examined:

CHAIR: In what capacity do you appear today?

Mr TOPEVSKI: As representing the Macedonian community.

Mr VANGELOV: I represent the community, and I am a pensioner.

Mr FOTEFF: I am representing the committee of the Newcastle Macedonian Orthodox Community, and I am a pensioner.

CHAIR: Do either of you wish to make an opening statement?

Mr FOTEFF: Yes. As previous speakers have said, we need to go over the same sort of things. Maybe you think it is not connected to the bill, but we believe it is. In Newcastle when we started to build the Macedonian church I was secretary and, having come to Australia when I was young, I did not know too much about how to plan the church. My father said to me, "Well, the altar has to face the sun in the east." He was not 100 per cent certain, so I wrote three letters in about three months. In the 1960s things were a bit slower than today. I did not get a reply. The hierarchy from Macedonia were not interested at all, mainly because they thought we would be asking for money. All I was asking for was whether my plan was right or wrong, but we did not get a return.

Up until the 1990s we had a priest from Macedonia. In fact, 40 years ago next week, and we are having a celebration. The church has been running tremendous. People are happy, we are happy, the priest is happy—although he has been defrocked, as Igor Aleksandrov said earlier. The people are scared, they are worried, because of what might happen. In every association we have had with the Bishop Petar it has been negative. That is why the people are worried about what might happen in the future. That is all I need to say.

Mr VANGELOV: I would like to make a comment. It was stated earlier about worrying what will happen if we do not want to join or be in the bill. I will tell you something: in 1996 or 1997 we were given a constitution written by the Bishop. He told us that that was the one that was overseas. That was given to us to sign, like everybody was the same. We read that constitution and it was nearly exactly, or most of the points were, as this bill is. We rejected that in our community. We had a general meeting and rejected it. About six months later our priest was taken away from us and we were left without a priest for about eight months.

The Hon. SHAOQUETT MOSELMANE: Which church was that?

Mr VANGELOV: The church at Newcastle. We were left without a priest for eight or nine months. So any funerals, we had to ask Adelaide or Melbourne to send us a priest. We eventually got an independent priest who was willing to come from Macedonia to serve the parishioners. Eventually he did come, and two weeks after we got a letter saying that he was defrocked. That is why this bill, if it gives authority to look after all these properties, he will do that. He will come up to us and say, "Look, if you don't sign this, the priest is gone". He will do it, because he has done it already. I leave it to you people to work it out. But that is what is going to happen.

CHAIR: Government members may ask questions.

The Hon. LYNDA VOLTZ: Do you have a priest at the moment?

Mr TOPEVSKI: Yes.

Mr VANGELOV: He was an independent priest. Eventually we got him. John got involved. We asked him if he wants to come and serve our community. He did. He has been with us for 10 years, but the Bishop does not recognise him.

The Hon. LYNDA VOLTZ: He is not a recognised priest? He has not put forward a letter to the inquiry?

Mr VANGELOV: No, he has not. But, as I said, we got a letter from the Bishop saying that our church is not a church anymore because we did not get the priest from him. So he thinks our church is not a church anymore. Eventually we had to get our own priest. There was no other way we could do it.

The Hon. LYNDA VOLTZ: Some of the other associations that have come forward have said if there had been consultation on the bill on both sides it may have been a way to reach resolution.

Mr VANGELOV: That was another thing. We never got any consultation concerning this bill. We did not get any consultation concerning the last bill. I was the one who went to the Attorney General of the day in 1998. Even then we were not consulted, neither were we consulted now. We only found out there was a bill going through when somebody mentioned it to somebody else there was a bill there. We did go and see Reverend Nile, which I was involved in, and we asked him did anybody consult the communities. Has anybody talked to anybody? This is what is going to happen all the time.

The Hon. LYNDA VOLTZ: You received no correspondence?

Mr VANGELOV: Nothing.

The Hon. LYNDA VOLTZ: Your church community approached Reverend the Hon. Fred Nile?

Mr VANGELOV: Yes, when we come up to ask Reverend Nile, Johnny and myself, we pointed out—

Mr FOTEFF: We found out because Richard Face is a very good friend of mine. When he heard the reading, he knew I was involved with the Macedonian community and the church and he asked me did we know anything about this bill and he showed it to me. That is how we found out. In a few short hours we got working on it so it did not go through. That is how we found out in Newcastle.

The Hon. GREG DONNELLY: Thank you for coming today to provide evidence to us. In response to the previous questions you spoke about the relationship with the church hierarchy as being negative. Can you elaborate? What do you mean by "negative"?

Mr FOTEFF: We were called to a meeting with the Sydney community, the Wollongong community and Newcastle in Rockdale and the Bishop was there. We had Justice Street as a mediator. We all were sitting at a table waiting for the Bishop to come.

The Hon. GREG DONNELLY: When was this?

Mr FOTEFF: About 1992, quite a while ago. Sorry, 2002.

CHAIR: Before you continue, during this mediation confidentiality agreements may have been signed. It is not up to me to advise you but I bring it to your attention if you do not want to go outside any confidential aspect.

Mr FOTEFF: We had a mediator. The mediator was waiting. We are all seated around like a roundtable here. When the Bishop came in he went into another room and asked the mediator, by message, to go into the other room. He would not sit in front of us. That is what I mean by negative.

The Hon. GREG DONNELLY: I think you were in the room when the previous witnesses, representatives of the Association of Macedonian Communities Australia Incorporated, gave evidence. Does your Newcastle organisation belong to that organisation?

Mr VANGELOV: Yes.

The Hon. GREG DONNELLY: In regard to Macedonian communities around Australia, do you know approximately what percentage belong to the peak body? Are most of them members of the peak body?

Mr FOTEFF: Yes, more than 80 to 90 per cent.

The Hon. GREG DONNELLY: Are you aware of any specific communities that are supportive of the proposal in the bill?

Mr FOTEFF: Yes, there is one in Newcastle. Within about probably 8,000 Macedonians in Newcastle—

The Hon. GREG DONNELLY: That is another Macedonian community different from yours?

Mr VANGELOV: What has happened, when our priest was defrocked when we got a new priest, when our priest was taken back from us, the Bishop saw it in his right to open another church, which was only about maybe a couple of miles from ours. They rented a small Ukrainian church and they installed the priest there. They would not serve our community. Probably about 10 families went on that site. Now at the moment, what I can gather, they are saying that Newcastle supports it. Newcastle does not. Eighty-five per cent of the Newcastle community does not support it. This is where the conflict is, and this is what happened in Sydney apparently. He has opened a couple more churches around the established churches and brought the conflict in.

The Hon. GREG DONNELLY: I believe you understand essentially what the bill is trying to achieve?

Mr VANGELOV: Yes.

The Hon. GREG DONNELLY: In terms of the process of trying to bring together the church to consolidate, is that a matter you reject out of hand or do you support it? If you do support it, what are the conditions around supporting it?

Mr VANGELOV: As everybody has said, there are a few sections in there that everybody has rejected. The only way we can support it is if there is consultation, if there are amendments, if there are clauses put in there that will safeguard our properties that our community built.

The Hon. GREG DONNELLY: Speaking for your own community, you say you can only imagine your community being able to support the proposition only on the basis that there was some mechanism in the bill to protect the right of your community to veto—

Mr FOTEFF: Yes.

Mr VANGELOV: To be involved in it.

The Hon. GREG DONNELLY: Or to be involved in it?

Mr VANGELOV: Yes.

Mr FOTEFF: The way the bill is stated at the moment, it is giving the whole power to the Bishop. We are afraid that he is going to abuse that power, which he has shown before. You heard before from the other people.

Mr VANGELOV: We have experienced it, as I said before, and a lot of the other speakers have mentioned, if he gets the power he will abuse it and he has abused it with us. It is as simple as that.

The Hon. SHAOQUETT MOSELMANE: How did he abuse it?

Mr VANGELOV: By removing our priest because we did not accept his constitution.

The Hon. SHAOQUETT MOSELMANE: He would not put another priest there?

Mr VANGELOV: He would not at all.

The Hon. SHAOQUETT MOSELMANE: Unless you do what?

Mr VANGELOV: Unless we said we supported him, simple as that, by signing that constitution that he gave us, which was nearly exactly the same as the bill and stated a few points there that he can sell the property, he can buy the property without answering to anybody.

The Hon. SHAOQUETT MOSELMANE: Is my understanding correct that as a result of your refusing to sign another church in Newcastle was created?

Mr VANGELOV: That is right.

The Hon. SHAOQUETT MOSELMANE: Mr Foteff, earlier you said that people would be scared. Apart from the issues you have raised, what is the fundamental fear you have if the Church runs the properties? If the Church runs the property as a church and provides a priest and you as parishioners go to the church and the services, what are your fears? What would be different from what you are doing now to what the Church would do if it took over?

Mr FOTEFF: My personal belief is that he will try and build a monastery somewhere and he may even sell our church. We have a hall attached to our church which holds about 400 people. We have weddings and funerals and that sort of thing there. He may even sell it if we do not go along with what he does.

The Hon. SHAOQUETT MOSELMANE: If the Bishop takes over there is nothing in the church rules that says you cannot have weddings or functions. You can still continue to function as a community using your current facilities, is that right?

Mr FOTEFF: That is true in that sense, yes. But you said earlier that he supplies the priest. Our priest has not been supplied by the Macedonian Church or the Bishop. He has come out as a defrocked priest. He has a letter being defrocked but he has been servicing the community for 10 years and we are very happy with that.

The Hon. SHAOQUETT MOSELMANE: As I understand it from your comments and those of the previous witnesses, the representatives of the Orthodox community, there is basically no way for you to accept that all those properties are to be under one umbrella and therefore under the control of the trust or the Bishop?

Mr FOTEFF: That is true because in the Newcastle district we are all under one umbrella. We have the dancing group, we have the soccer team and we have the community hall, the community centre. We are all under that one umbrella. The committee gets elected every two years. Other people might want to go in. The secretary and president are here now and I am on the committee. We run that on a voluntary basis. No-one gets paid except for the priest and the cleaner. They are the only two people who get paid.

The Hon. SHAOQUETT MOSELMANE: Your fear is that it will not be run by the community?

Mr FOTEFF: No.

The Hon. SHAOQUETT MOSELMANE: It will not be run by the elected members of the community?

Mr FOTEFF: Exactly that. We feel, like I mentioned earlier, it will be a very negative situation. We are afraid there will be other divisions amongst the people. We have got one little division now but there may be bigger ones.

Mr VANGELOV: I would like to answer when you said about being under the umbrella of the Church. There was nothing wrong with it about 15 years ago before Bishop Petar arrived. We were all together, we were all paying our dues, we all had a priest. But when he came in he wanted to be totalitarian. He wanted to grab everything, not to answer to anybody. He wanted himself to have all the control. That is when the trouble started. There was no problem before.

CHAIR: I remind you that this is not a forum for adverse comments against any individual. We will now move to the crossbenches.

Reverend the Hon. FRED NILE: As you know, there was an original bill that came from former Attorney General the late Jeff Shaw. That original bill referred to all the Macedonian church properties. Because of objections a second bill was drafted, which I helped to draft. With feedback from the various Macedonian

communities we found that four were happy with the bill. Their names are listed in the bill in clause 17. Then we heard some churches were not ready to be included in the bill but may want to be included later and we were asked to put a provision in the bill for them. That is why clause 19 was included. It was not in the previous bill. If the Committee amended the bill by finding out what is objectionable in the bill, removing those parts and, if necessary, inserting others, so that it was acceptable, the Macedonian Orthodox Church would have a bill, as do all the other churches. You are the only Church without one. We may be able to get a bill by agreement and amendments. Would it help if clause 19 was taken out?

Mr VANGELOV: I can only say this, as the previous speakers said, if we sit down and work something out between all of us, not just one person, we might be able to come up with something. But we have got to be able to sit down and put it in a form of a bill that will suit everybody, not just one person. At the moment it only suits one person.

Reverend the Hon. FRED NILE: You can help us by making suggested amendments. You may not be able to do that right now. If I put a question to you on notice for you to provide your recommend changes to this bill to make it acceptable, would you take that as a question on notice?

Mr FOTEFF: Yes.

Mr TOPEVSKI: As far as Bishop Petar is in charge, all our community lost trust in him and I do not know if there are any changes in it, any clause there or something, that trust is lost towards him for what he has done in the past so no-one trusts the future any more.

Dr JOHN KAYE: Mr Vangelov, are you the president of the committee?

Mr VANGELOV: I am the secretary.

Mr FOTEFF: I am the president.

Dr JOHN KAYE: Were you ever given any formal notification of the existence of this bill?

Mr VANGELOV: No, none at all.

Dr JOHN KAYE: Was there a letter or any communication from either Reverend the Hon. Fred Nile or the Bishop?

Mr VANGELOV: None at all. As far as he is concerned we do not exist in his eyes.

Dr JOHN KAYE: The first you heard of this legislation was via personal connection with a former State Labor member of Parliament who alerted you to its possible existence?

Mr FOTEFF: Exactly, yes, Richard Face knew I was involved with it and it just did not seem right to him for me not to know about it. He rang me up from here and asked me if I knew anything about the bill.

Mr VANGELOV: May I mention too that the last bill that was presented was exactly the same way. I spoke to John Mills, the representative for Newcastle, and asked him—he was a Speaker of the House—"How could you present a bill like this without asking us?" He said, "I was told you agreed. The Bishop told me you people agreed." Now you work that out.

Dr JOHN KAYE: Is it your opinion that this is not the right time to try to resolve the property issues via legislation?

Mr FOTEFF: Yes.

Dr JOHN KAYE: Would you prefer us to wait?

Mr FOTEFF: Yes.

Mr VANGELOV: And for proper consultation.

Dr JOHN KAYE: Are you currently in court in relation to any legal matters relating to the church?

Mr FOTEFF: Yes.

CHAIR: The question relates to your church.

Dr JOHN KAYE: Is your organisation currently in court involved in any legal matters?

Mr TOPEVSKI: No.

The Hon. TREVOR KHAN: Before I ask questions I was wondering whether the Hon. Lynda Voltz has any questions.

The Hon. LYNDA VOLTZ: Point of order.

CHAIR: I do not think it is necessary.

The Hon. LYNDA VOLTZ: Could the member refrain from making such comments and stop interjecting when other members are asking questions and I suggest that he use his own time to ask questions.

CHAIR: I uphold the point of order.

The Hon. TREVOR KHAN: Who owns your church property?

Mr FOTEFF: The people of Newcastle, the parishioners own that church. We have a constitution and we are registered under the Companies Act, which says "all property is owned by the community".

The Hon. TREVOR KHAN: What appears on the certificate of title for the property, the registered proprietors?

Mr FOTEFF: The Macedonian Orthodox community of Newcastle and district.

The Hon. TREVOR KHAN: Is that an unincorporated association?

Mr FOTEFF: No, it is incorporated.

Mr VANGELOV: It was an association in 1961, it was incorporated in 1965.

The Hon. TREVOR KHAN: So there is a constitution, there is a corporation and it owns the property. Is that right?

Mr VANGELOV: Yes.

The Hon. TREVOR KHAN: Are you compliant in all respects with the operation of that property?

Mr FOTEFF: Everything, that is right.

The Hon. TREVOR KHAN: The priest who operates at the church is not within the hierarchy of the Macedonian Orthodox Church?

Mr FOTEFF: He is a registered celebrant in Australia.

Mr VANGELOV: One point just to clarify that. Our constitution says we are allowed to employ a priest, right, and to pay him the wage that we agree to, and that is how the priest works for us. But, as I said earlier, we were paying duties to the hierarchy overseas because we were all together. We had the blessing from overseas but since we did not want to sign those papers for him he has taken away our priest. Now for the past 10 years he does not recognise us.

The Hon. TREVOR KHAN: If a bill were to pass would you agree with me that in the circumstances of where you are with have an incorporated association and a priest who is outside the hierarchy that this bill would have absolutely no impact on you?

Mr VANGELOV: But can I ask one question on that?

The Hon. TREVOR KHAN: No, I do not want you to answer a question with a question.

Mr VANGELOV: He does not recognise our priest. Now if we say we can agree to this will he recognise our priest? Will the hierarchy in Macedonia recognise our priest?

The Hon. TREVOR KHAN: I do not know. Do I take it that the effect of a bill passing would have no affect on you?

Mr VANGELOV: It will have an effect, like you and the previous speaker said. If he comes up to us and says, "Now I have half a dozen churches or communities that have signed this bill. If you do not sign this bill you will be an outsider"—

The Hon. TREVOR KHAN: But you are already.

Mr VANGELOV: It will affect everybody because people will start fighting with one another and say, "They are all right there, we are not". The propaganda will be there. You can see our point. If you get a letter from him and you do not sign it he can use that as "You are non-believers". He has done this before. He has called us non-believers. He has called all our christenings and weddings non-existent. They do not exist. In his books our weddings and christenings do not exist because he does not recognise our church.

The Hon. TREVOR KHAN: And that is a continuing fact?

Mr FOTEFF: Yes, it is.

Mr VANGELOV: It has been like this for the past 10 years.

The Hon. TREVOR KHAN: I am not being critical of either side because I do not know enough about it but my only point is that in terms of the affect of any bill you will not be any better off or no worse off than you are currently. Is that right?

Mr VANGELOV: But it will divide our community.

Mr FOTEFF: We will be worse off. Like Jim just said, it will divide our community. Some people will want to go with the priest that we have and other people might want to go with the Bishop.

Mr VANGELOV: You are putting a wedge.

Mr FOTEFF: You are putting in a wedge and it is going to create a lot of animosity.

Mr VANGELOV: You see there is only one Macedonian community—all of us are Macedonians. If you try to put a wedge through it then you are going to have people, you know, right, you cannot do that.

CHAIR: I am specifically asking you to comment on your church and community. Please forget anyone else outside as they can speak for themselves. Are you already in a dreadful situation in that you have to operate on your own, you have to employ your own priest, you say that priest has been defrocked and that you are not accepted. If this bill is passed you would have to consent to a transfer of your property, which I take it you would not. How would your community be worse off when you are already at that stage that you describe?

Mr FOTEFF: The fear amongst the people, like I said, is what is going to happen in the future. The future under this Bishop does not look very rosy at all for communities in Australia. That is all we can say here.

Mr VANGELOV: This is happening all the time now. If we decide we do not want to stay with him—we are not with him now anyway—and he says to some of our older parishioners like Johnny or his wife or

someone else, "You are not a Christian anymore because you do not belong to me," do you know how much fear that would be put in some people?

The Hon. TREVOR KHAN: Absolutely.

Mr VANGELOV: And that is what he is working on. This is why he tells us our church is not a church any more.

CHAIR: You say he is already doing that. What is the difference?

Mr VANGELOV: He does it. He will make a comment about what the priest said to him.

Mr FOTEFF: We were at a funeral and the priest came over to me and I said, "I'll see you tomorrow in church". He said, "No, you won't see me tomorrow in there because that's a devil's church now".

Mr VANGELOV: That is the fear he is putting to people.

Dr JOHN KAYE: That was not your usual priest?

Mr FOTEFF: No, it was the one we had before, the one that was not going to take on the service the next day. This was on a Saturday. I shook hands with him and I said, "I'll see you tomorrow in church," and he said, "No, you won't see me there, that's a devil's church now".

The Hon. GREG DONNELLY: In relation to ongoing consultation that may assist in resolving this issue, this issue has not just arisen; it has some history and longevity. What is your view about the nature of the consultation that could bring this closer together? You referred to a mediation going back almost two decades, so this matter has a real long history to it. The consultation to date, whatever form it has taken, has not brought the parties closer. I am wondering what sort of consultation is possible to bring the parties together.

CHAIR: Are you talking in relation to the bill.

The Hon. GREG DONNELLY: Yes.

CHAIR: We are talking specifically in relation to the bill and nothing else.

Mr VANGELOV: As I said before, and I think other speakers have mentioned it, we are willing to sit down and talk about it. We are willing to sit down and debate the bill with them but the problem is the bishop does not want to do that. He has proven up to now that he does not want to consult with anybody.

The Hon. GREG DONNELLY: It is more than that because what is behind at least your thinking is that you are harbouring some concern that you may lose control of the property that you currently administer. Does that lay behind a major part of your concerns?

Mr FOTEFF: That is it exactly.

Mr VANGELOV: Of course it does. As John said, we built these churches in Australia. We looked after them. Nobody has helped us from overseas, nobody has given us any money. We have not received anything from over there. The people have put in money from their own pockets. I have a constitution that says they have put up their houses to borrow money.

Mr FOTEFF: We did.

Mr VANGELOV: And then all of a sudden we get this hierarchy coming up over us that says, "We will take control of all of this, don't worry about you. We will put our own priest as a president." That does not work, and that is what is happening at the moment and it has happened in Victoria. A couple of churches have the priest as the president. Don't worry about the other people. Don't worry about the workers. When I spoke to the bishop years ago I said, "We have dancing halls, we have young children come to dance down there, learn to dance, Macedonian school so they can get the heritage." He said, "Churches are different. You don't need them". Of course we need them. That is our heritage. That is what we need. That is the way I feel about it anyway.

Reverend the Hon. FRED NILE: You have been critical of the Bishop. As you know, in all churches in Australia there are people who are not happy with their Bishop, archbishop or cardinal. They are not perfect. They all have their faults but usually when the Bishop has been appointed—

CHAIR: I think that is outside the terms of reference.

Mr VANGELOV: I would like to answer it.

CHAIR: I disallow that question.

The Hon. LYNDA VOLTZ: In relation to consultation, if the bill were sent out to all Macedonian communities with an opportunity for them to submit any amendments they think could make the bill more workable, is that the kind of process that would give us a clear view of the intentions of the communities and would it satisfy them that their views were being covered?

Mr VANGELOV: That would help. It will be a bridge. It always helps if two parties put their views, not just one party. We have never put our views. We were never asked to put our views.

CHAIR: But you have today.

Mr VANGELOV: We have today.

Dr JOHN KAYE: It is also fair to say that you do not want a vehicle which can be used to put pressure on you to lose control over your own lands?

Mr FOTEFF: Exactly.

Dr JOHN KAYE: And you do not want a vehicle that can put pressure on other equivalent Macedonian Orthodox Church communities to lose control over their land?

Mr FOTEFF: Exactly.

Dr JOHN KAYE: And that is an irreducible position for you?

Mr FOTEFF: Yes.

The Hon. LYNDA VOLTZ: But, like most concerns from communities, there may be suggestions that the community itself can make to improve the legislation that will answer those concerns and that you may be given the opportunity to submit those.

The Hon. SHAOQUETT MOSELMANE: What time frame are you looking at if this Committee and the Parliament allows time to go out for further consultation? Three months, two months?

Mr VANGELOV: It would be longer than that, I suppose. The longer the better.

CHAIR: Order! I ask the public not to make any comments from the back please.

Mr VANGELOV: The longer the better. You cannot prepare things like that straightaway; you have got to consult with everybody. You have got to consult with the community.

CHAIR: Thank you very much. Your evidence was most helpful today. It is always good for us to get the views of another community. It is also good not to always have lawyers appear before us so we get the views of other community members. The Committee may have more questions which the secretariat will send to you on notice. You have 21 days to respond to those questions. The secretariat will be in touch with you in regard to that. Thank you very much for your time and assistance.

(The witnesses withdrew)

LJUPCO STEFANOVSKI, Representative of Macedonian Orthodox Community of the City of Greater Wollongong St Dimitrija Solunski and President of Overseeing Committee, and

ILO KARAMACOSKI, Secretary, Macedonian Orthodox Community of the City of Greater Wollongong St Dimitrija Solunski, sworn and examined:

CHAIR: Do either of you wish to make an opening statement?

Mr STEFANOVSKI: Thank you for giving me the opportunity to speak on behalf of our community. Firstly, I would like to make a statement that I am not a lawyer so please be patient with me. I will try and do my best. I will go through the notes that we have discussed as a committee and with the full approval of the committee. From what I have seen today I think I am reasonably prepared as a parishioner. Originally I was not going to be able to make it here today because of my shift work schedule, et cetera, but I found one of my colleagues who was kind enough to give me the opportunity to swap with him today. I am glad I am here. Once again, I thank you for giving me the opportunity to voice our concerns and to give evidence on this very important matter, the Macedonian Orthodox Church Property Trust Bill 2010.

I think it is important that I spend at least two minutes telling you who I am and what I am and what actually brought me here before you people in this beautiful place, State Parliament House. It is honestly a privilege to be in these premises and I am only saddened that it is to reject something. As a community and being involved with the Macedonian church we are always looking for recognition and a way that we can unite rather than divide as we have been for centuries.

I am married—I have been married to this lovely lady for 32 years and I have worked just as long because she makes me work. I have two young men. I am very lucky that they have turned out to be great kids—Adam and Daniel. Going further, as far as my involvement in the community is concerned, I am probably an addict when it comes to working and helping the community. I am not only involved with my community but I am also involved with the overall community in the Illawarra. Through the P and Cs of Shellharbour Primary School, Warilla, et cetera, I get involved in soccer clubs and I think I am very passionate about being involved and being part of a community, and I think you people are as well otherwise you would not be spending all this time. You are obviously trying to do the right thing for the community.

Having said that, there are hundreds and hundreds and perhaps even thousands of people in the Macedonian community who are also dedicated and putting in a lot of effort, working on a voluntary basis, trying to do the right thing. Our community has been established for well over 40 years. It consists of a church that caters for the people who love to practice their religion, like myself. It also consists of a group of people who love playing soccer—their sport—and we have built a sporting complex for them. We also have a function centre that caters for young teenagers and also adults that love to dance. We have a group of people who love to play chess, so we cater for them. Overall, we are a good package. I think most of us are in the same boat; some of us might be religious, some might not be. But at the end of the day we are a package of different combinations and love that makes us who we are. I think I have said enough of what I wanted to explain about myself and our community and what we do. We have officially sent to this Committee, I believe, an official objection—

CHAIR: You are referring to your submission number 23?

Mr STEFANOVSKI: Yes. We have, at such a short notice, managed to put together, through consultation and meetings and community forums explaining the actual bill to people, approximately 700 letters, if I am correct, and also signatures that we have brought forward to our local MP. Sadly, we probably could have got thousands if you gave us the opportunity, but it is extremely hard to reach our community, which is approximately 25,000-strong, perhaps even more, in the Illawarra in just a short four weeks since we were first aware that there was a bill that was going through Parliament. It was after the second reading by the Hon. Fred Nile that we realised that something is actually happening on our behalf. Once we realised that such a bill was going through we were very interested: we wanted to see how it would affect us.

As I said, we got onto one of our local members of Parliament. We managed to get onto the website and we managed to have a look at the actual bill. We sat down as a committee, as we should according to our constitution, and we discussed it. We decided to present ourselves a little bit better so we approached one of our solicitors to have a look at this and put forward a reasonable case that would point out the points in the bill that

are going to be definitely harmful to our organisation that has been existing successfully with no problems for the last 40 years.

Having said all that, on behalf of our organisation and further looking at the actual bill in the last week, we would like to bring four points on which we could perhaps have a discussion after I read those four points and that will give you a good idea why we oppose this bill. Having been given this opportunity today, again we thank you. Firstly, we are concerned that we are not sure that the so-called Metropolitan Bishop in the bill is actually a Bishop at this stage or if he is just an administrator in Australia, as we have noticed in some letters and church calendars et cetera that we see in front of us on a regular basis that to the best of our knowledge he does not have a permanent presence of living as a resident in Australia and certainly not in New South Wales. He seems to spend most of his time living overseas and if he is seen he is in Melbourne. We are asking how is that beneficial to any Macedonian community organisation in New South Wales or Australia, apart from Victoria of course?

We also wish to know what great input and contribution trustees have made for the Macedonian Orthodox community to be placed as trustees on public and community properties throughout Australia, as the consultation has been nil from the administrator and only after the second reading, as I said, from the Hon. Fred Nile. We believe that was too little and too late for our liking. We are also concerned as to why the proposed bill is to be enacted in New South Wales when there is only one property listed in New South Wales, two in Victoria and one in South Australia. We are concerned that surely there could be some potential for conflict in imposing legislation—and, oddly enough, that was discussed earlier on—in New South Wales that impacts on other States without similar legislation being enacted in this State.

Thirdly, we are also concerned that a particular and possibly misleading letter might have been sent with information to members of the New South Wales Parliament dated 18 June 2010. As others mentioned before, they obviously received that letter. I have the letter here with me if you want it as evidence. It states that the parishioners of this church have been informed and are committed and also are in support of this bill.

CHAIR: This is a letter you are saying was sent to the Parliament?

Mr STEFANOVSKI: I have it. I do not know if the members received it or not. You might be able to confirm if that is true. The letter was presented to us at our meeting.

CHAIR: If you have the letter can you produce it to us?

Mr STEFANOVSKI: Yes, I have it.

Reverend the Hon. FRED NILE: It refers to your church?

Mr STEFANOVSKI: Yes. Can I just read the fourth point? One of the greatest concerns is that, if you have some understanding of Macedonian history, and I am sure you do after today and perhaps even with all the things that are happening throughout the world, we may lose all our community assets and properties in Australia if the trustees of this bill were to align themselves with the Serbian Orthodox Church. For this reason alone we believe that no Macedonian public and community property should be in the names of any individual person as a trustee. The Macedonian community properties have been built with donations from the hardworking Macedonian community members and parishioners and not by a few trustees.

We certainly do not have trustees on the title deeds of our community organisation. That is because the property and all assets belong and are used for the benefit of the community according to the constitution of the Macedonian Orthodox Community of the City of Greater Wollongong St Dimitrij Solunski. Having said that, on behalf of our community I would like to thank you again for giving us this opportunity to voice our genuine concern on behalf of all concerned parishioners and community members of the Macedonian community of the Illawarra region. As I mentioned before, we are the largest community in the Illawarra and the Macedonian language is the second largest spoken language after English—I do not know whether that was beneficial to anybody but I thought it was important that you knew that. I plead with the directors on behalf of my community and the members of this Committee to please have this Macedonian Orthodox Church Property Trust Bill voted against as we strongly object to having it passed. I thank you for giving us the opportunity to put our case forward. Do you want that letter, sir?

CHAIR: Yes, thank you.

Document tabled.

Reverend the Hon. FRED NILE: Thank you for attending this hearing and giving your information, which we appreciate very much. Just to clarify your understanding of the bill—and I gather from what you have said that you do understand it—clause 17 of the bill states that the bill only refers to four Macedonian churches: two in Victoria, one in South Australia and one in New South Wales, and it does not refer to Wollongong at all.

Mr STEFANOVSKI: No, it does not.

Reverend the Hon. FRED NILE: Do you understand that this bill is not trying to take over Wollongong?

Mr STEFANOVSKI: I do understand that.

Reverend the Hon. FRED NILE: Clause 19 was included because a number of Macedonian communities said, "We are not ready to be included in the bill but we may be in the future so please put an open door in the bill." Are you happy for clause 19—where only future churches can join voluntarily—to remain in the bill?

Mr STEFANOVSKI: We reject the whole bill completely, and let me explain why. First of all I would like to spend two minutes about the clause you have mentioned. It would be great if we had the opportunity to talk in this manner and put forward our thoughts. I have never ever seen anything being achieved without having a group of people putting something together. To be subject to a bill at the last moment as ordinary workers it is extremely difficult for us and hard to come up with a proposal in such a short time that would cater for the community. In the last 14 years I can give you evidence of any time you wanted that we have set down as a community throughout New South Wales and Australia to try and formulate a system, a constitution that would accommodate everybody. We did that on three occasions when we almost had a perfect constitution that would cater for everybody. It was not us as community members that rejected that constitution. It was actually the administrator that was not happy with that because it certainly did not give him the full power to do as he likes under the hierarchy system.

To be honest with everyone here I cannot possibly, after being involved for so many years, wait for such a constitution where we can unite the Macedonian community is at the spiritual level, at the sporting level and at the community level—that is probably the dream of most of the people here, as well as the majority of the community members out there. But it needs to be done under structure where people are liable for their actions, just like we are every 12 months having to produce a financial report that has been audited by people that are recognised by ASIC—auditors that have qualifications—that can find faults in the things we have been doing in the last 12 months.

I know you tried to do the right thing but it would certainly have helped if we had that bill in front of us to discuss it as community members so we can have a look at the pros and cons of that bill. Unfortunately under the circumstances not only in 1998 when we found out a bill was to be put forward in Parliament and to be passed, this is exactly the same case again. Three weeks prior to—after your second reading we found out that once again we have a situation where there was absolutely no consultation. It was after that that we started receiving letters telling us that such a bill will be in front of members of Parliament to be discussed and actually voted on. I am not too sure if I have answered your question correctly. Would you like to ask me again if I have missed something?

Reverend the Hon. FRED NILE: You mentioned—and the way your community works is quite good—that you have the church, the spiritual part, but you also have soccer clubs, sporting centres and wedding centres. Is it possible to devise the bill so it only refers the Bishop and the spiritual authority over priests to the church itself and excludes all these other properties, which are not of interest to me and hopefully even to the Bishop? Is it possible to somehow separate so that we are only discussing the church itself, where the church services are held, and not all the other properties that many of the communities have developed over the years?

Mr STEFANOVSKI: I think that would be impossible because I have a great love for my faith in Christ but at the same time I love watching soccer and I love having a beer once a month—that is all I am allowed to have.

Reverend the Hon. FRED NILE: I do not mean to close them down but they just do not come under the bill?

Mr STEFANOVSKI: At the end of the day you have to understand that it is the church to Christ that unites our community and to pass that on to a hierarchy system that we have no control over would be extremely detrimental to dividing the community even further. Why can we not have it all? Why can we not sit down and formulate a constitution where we can all work together? Why do we need to have a corporation at the end of the day with a hierarchy system that I as an individual have no say what happens to any property throughout Australia? I would love the day when I can click on a button and see how our community in Perth is functioning, whether they are profiting, whether they are not profiting, whether they need any help, whether they do not need any help. If we talk on a spiritual basis, what if we perhaps decided to donate \$1,000 to the Liberal or Labor parties or even the Greens, can you imagine us being able to function under the system? It would be impossible. You have to admit that some of us love the Labor Party; others love the Liberal Party—that is what we are all about. Some of us belong to unions and others do not. At the end of the day we as community members enjoy this freedom of free speech and the ability to do whatever we feel is right within the rules and regulations of this country.

I know there is a way. I know that the mother church in Macedonia would love us to find a way where we can work together and flourish as a community, and continue to flourish as we have done. I will allow my secretary to perhaps put forward part of the discussion that I think you people will find interesting because he just came back from the Republic of Macedonia and he had the opportunity to meet with the head of the church. I can assure you his thoughts on what is happening here are totally different to what we have been advised and told that is actually happening in this country, Australia, that we live in with all the freedom that is slowly wanting to be taken away from us. I will say enough for now if that is okay.

Dr JOHN KAYE: Thank you for your evidence today. We have heard from other equivalent communities of their great fear with clause 19 of the bill. Clause 19 is the opt-in clause, other than the four that are named in clause 17, where other communities can opt into the corporate arrangements. It has been put to those communities that that is a voluntary clause. They have responded largely by saying that they would come under undue pressure to opt into the property trust. Is that your opinion? Do you think if this legislation went through with clause 19 in it as it is currently written that your community would come under undue pressure?

Mr STEFANOVSKI: I do not want to prejudice anybody. I want to be able to speak from my experience and I want to be clear on one thing: We have never, ever walked away and been put in a position where we were faced when we had to deal with the so-called priest that was not recognised by the mother church et cetera. That was done simply because we were willing to do everything it took under all circumstances, under all kinds of pressure, to be able to accommodate that situation.

There was an incident approximately 10 years ago—correct me if I am wrong here—where the Bishop decided that he was going to move the current priest that we had for five years in Wollongong to Melbourne. His order was not: Let's sit down and talk about having another priest replace him. It was an order: From this day you are losing that priest and that is final. At the end of the day we did everything we could, we begged to sit down with that so-called Bishop-administrator to try and find a way of not being put in a position where we would end up as Newcastle or other Macedonian communities have fallen into. As our friends from Newcastle said, it is a horrible feeling when you are christening your children and someone tells you that your children are not really christened because the priest is not recognised and is part of the devil et cetera. It makes it extremely hard for us to cater for our religious members of our community to want to be part of our church.

The effects are very powerful and it is a domino effect where we have another Macedonian church in our area that would quite happily be able to take away our parishioners and put us in a situation where we can no longer cater for our soccer club or our dancing group as we have. This year we accommodated over 70 kids to be able to go overseas and we paid their fees and fares, and that would not be possible as a community under the circumstances. But to answer your question a little bit better, we are under a very difficult situation by wanting to do anything that would upset the so-called administrator. Under those circumstances when we sat down to discuss a priest to cover our church because he decided to send our current priest to Victoria, it was not about religion, it was never a discussion about God and Christ; it was all about money. He wanted money and I am quite happy to advise anybody of the situation because I have two other witnesses from my community—I do not believe in doing anything by myself—where we started off with approximately \$70,000 to have a priest that is recognised by the mother church and we settled on \$10,000 at the end of the day—

[*Interruption*]

No, let me finish please. If my memory serves me wrong I do apologise. It has been 10 years now. I believe we settled for \$10,000 at that time just to accommodate and have a priest that would cater for our community. I decided not to contest any positions at the following AGM and I am not too sure how much money the community had to pay to be able to accommodate the request of the Bishop further to the so-called threats. Perhaps my secretary might be able to confirm that but, as I said, I was no longer for those 12 months on the committee.

Mr KARAMACOSKI: It was \$18,000 dollars and then we got a priest.

The Hon. TREVOR KHAN: Is the church in Stewart Street?

Mr STEFANOVSKI: Yes.

The Hon. TREVOR KHAN: Being an old Wollongong boy I know where that is.

Mr STEFANOVSKI: Next to the showground.

The Hon. TREVOR KHAN: That is right. Is it a property that is owned by an incorporated association?

Mr STEFANOVSKI: Yes.

The Hon. TREVOR KHAN: What is that you are holding up?

Mr STEFANOVSKI: I was hoping you would ask me for the title certificate.

The Hon. TREVOR KHAN: Is that a photocopy?

Mr STEFANOVSKI: Yes.

CHAIR: Would you like to produce that to the Committee?

Mr STEFANOVSKI: I think it is very important because it shows that we have no trustees. It is registered as a community asset and it will always stay in that manner.

CHAIR: That can be tabled.

Mr STEFANOVSKI: It is only a couple of days old.

The Hon. TREVOR KHAN: Is that an incorporated association?

Mr STEFANOVSKI: Yes, under the Act, and we have to answer to ASIC every 12 months.

The Hon. TREVOR KHAN: Who prepared the submission dated 26 July 2010, reference 2010/MOCBTB/01?

Mr STEFANOVSKI: Our solicitor. Are you not impressed?

The Hon. TREVOR KHAN: It had the feeling of a solicitor.

Mr STEFANOVSKI: Let us be honest. In 1988 when we found out by coincidence again we translated it into Macedonian. We spent \$500 to get a professional translator just to give the community an opportunity to have a proper understanding of the effects of the bill.

The Hon. TREVOR KHAN: I understand all that, you have made that point before. Which firm of solicitors did you retain for the purposes of preparing your submission?

Mr STEFANOVSKI: One of our local solicitors because the solicitor we have been using for the last 20 or 40 years was overseas at the time.

The Hon. TREVOR KHAN: Was it Mr McConnell?

Mr STEFANOVSKI: No, sir.

The Hon. TREVOR KHAN: The only reason I ask is that it refers on the final page of the submission to the Foreign Acquisitions and Takeovers Act and the potential of a foreign charitable institution. There is a certain similarity in a sense to some of the other material that we have heard of. Is that a coincidence?

Mr STEFANOVSKI: It is not a coincidence. I can assure you our solicitor had all the information possible that we could hand over.

The Hon. TREVOR KHAN: Did that include material from Mr McConnell?

Mr STEFANOVSKI: It included material from a number of submissions. We felt it was important that we have all the information available so a proper judgement could be made on the effects of the bill. Is there something that perhaps you would like to ask more about?

The Hon. TREVOR KHAN: It just puts the submission in context. Is the fundamental point the same as that made by Newcastle that if the bill is passed your concern is you will be forced into a position of transferring property?

Mr STEFANOVSKI: If the bill is passed we are 100 per cent sure that our community will slowly destruct itself. I think you and others said today why would we need a bill when you can virtually form a corporation—that seems to be the aim of this bill—when we can sit down as Christians, with whatever belief you have in your heart or your head and form a Macedonian Orthodox Diocese of Australia and New Zealand and have a constitution that does not allow me or the administrator or any individual to be able to sell, destroy and, most importantly, be liable when something like that happens? We need to sit down and formulate a system that will cater for the overall Macedonian community in Australia and benefit all those areas we mentioned before, not just sport or religion but perhaps even politics. That is what we are all about. We would hate to think that we are just going to provide a church and everyone will live happily ever after. That is not the case; that is not who we are. I am sure Fred Nile is not all about religion. I am sure he has some sorts of hobbies that he loves to do outside his faith.

To take away the church and leave everything else aside just will not happen because the setup at Stewart Street is quite simple. We have a church and right next to it is our function centre and there is a priest's house. At Berkeley we have a sporting complex. We always have ambitions and plans to build further and that is what we do. Hopefully my kids one day will get involved and have the freedom to decide that we are going to give \$5,000 to the Labor Party or the Liberal Party because they have been beneficial to us. I hate to think that someone else will be telling me that that is not okay. As long as we as members all benefit from it and it is the right and legal thing to do I do not see why we should not. We have managed over 40 years and I am sure every other Macedonian community has managed successfully and we do not need a hierarchy system to tell us what to do. We are more than happy to sit down with the hierarchy system and work together on spiritual levels but not to the extent that the administrator has the final say in what happens to assets that have been built over the last 40 or 50 years by hardworking individuals for the benefit of the overall community. I am sure most of you will be extremely well aware that we are slowly becoming part of this country. There are marriages of people from different backgrounds and different nationalities and I hate to think that one day the hierarchy will interfere in the way it deals with those things.

The Hon. TREVOR KHAN: We are getting a little away from the question. You made a reference to letters that your community or the church had received. Do you have copies of those? These are letters from the church indicating that the bill was either going to come or had come before the Parliament.

Mr STEFANOVSKI: That is the letter about the second reading from the Reverend Nile?

The Hon. TREVOR KHAN: I am not quite sure. You made a reference to some material.

Mr STEFANOVSKI: We have the letter we received. It was well after the reading.

The Hon. SHAOQUETT MOSELMANE: From whom?

Mr STEFANOVSKI: We received it in the fax. I believe it might have been from St Petka church and community in Rockdale, but do not hold me to that.

The Hon. TREVOR KHAN: Have you received any communication or correspondence from Bishop Petar or anyone representing what you describe as the hierarchy?

Mr STEFANOVSKI: We received a fax from the so-called hierarchy, from Bitola, telling us briefly after we discussed the second reading from Reverend Nile. That was on 12 June 2010.

The Hon. SHAOQUETT MOSELMANE: That is Bitola Macedonia?

Mr STEFANOVSKI: Yes.

CHAIR: Would you be prepared to table that letter?

Mr STEFANOVSKI: I cannot see why not. We came here to tell the truth.

CHAIR: If you hand it to the member of the secretariat she will take a photocopy of it and hand it back to you.

Mr STEFANOVSKI: I would just like to add that that was way after the reading by Fred Nile.

The Hon. TREVOR KHAN: We will take that as read. We take on board the issue with regard to consultation.

The Hon. LYNDA VOLTZ: Is that letter dated 10 June?

Mr STEFANOVSKI: It is dated 12 June 2010.

The Hon. LYNDA VOLTZ: Is that the fax date or the date of the letter?

Mr STEFANOVSKI: The letter says 13/6.

The Hon. LYNDA VOLTZ: Is it the one that says "13/6/2010, Melbourne"?

Mr STEFANOVSKI: Yes. You have that already?

CHAIR: The document has been tabled and we will get it photocopied so we can all have a look at it.

The Hon. LYNDA VOLTZ: I will refer to the letter because we received a copy of it in the documents we were provided with. That letter refers to the bill as one that is going through. It does not ask you at any point in the letter to make a submission, does it?

Mr STEFANOVSKI: Like I said before, it would have been terrific to sit down and discuss the bill so we could have the opportunity as community members who have a reasonably good idea of the interests of the community and the effects on people in the Illawarra.

The Hon. LYNDA VOLTZ: In fact, the last lines of the letter say, "We will keep you informed of the progress of the consideration of our bill within the New South Wales Parliament. In the meantime the bill and the second reading speech can be accessed at the following websites. With the hope that we will be properly understood." Is that right?

Mr STEFANOVSKI: That is exactly what it says.

The Hon. LYNDA VOLTZ: Did you contact the church after you received that letter?

Mr STEFANOVSKI: No, we did not to the best of my memory.

The Hon. LYNDA VOLTZ: Is there a reason you did not contact them from the time you received that letter?

Mr STEFANOVSKI: The reason is quite simple. As a committee we made a decision to look at the bill and once we realised the bill was detrimental and not beneficial to our community we decided to object immediately to it. This is obviously why we are here today to hopefully convince you that you will reject it and give us the opportunity as a community to sit down and formulate a constitution that will cater for every Macedonian community organisation in Australia so that we can live in some harmony in the near future.

The Hon. LYNDA VOLTZ: Is it right that there are two churches in Wollongong, one at Port Kembla?

Mr STEFANOVSKI: That is correct and I believe they objected to the bill. I have some sort of letter here but I am not sure whether I am privileged to give you that information.

The Hon. LYNDA VOLTZ: I have been provided with a letter saying they support the bill, from Goce Petkovski.

Mr STEFANOVSKI: Is that a fact?

The Hon. LYNDA VOLTZ: Yes.

Mr STEFANOVSKI: Am I going to be in trouble if I give you that letter now?

CHAIR: I think you should focus on what your community is doing and not worry about others.

Mr STEFANOVSKI: I am quite happy that that was brought out but I can assure you that is extremely contradictory to the letter signed by the gentleman you mentioned where they do not object to the bill but say they have read the bill but do not agree with clause such and such and the assertions and it needs amendment. What has eventuated since and that is news to us.

The Hon. LYNDA VOLTZ: I did not see the trust deed but is the property in Wollongong the one at the showground?

Mr STEFANOVSKI: Yes.

The Hon. LYNDA VOLTZ: Is there a monastery in Wollongong as well?

Mr STEFANOVSKI: The monastery is associated with the Macedonian Orthodox Church in Port Kembla. Oddly enough, if you look at their titles they have trustees there as well.

The Hon. LYNDA VOLTZ: Are the trustees for your church the trustees of the church committee?

Mr STEFANOVSKI: Our church does not have trustees; we have community members elected at the annual general meeting according to our constitution. They work within the rules and regulations of our constitution and every 12 months, after producing a financial report through Daley and Co, who are recognised through ASIC, we elect a new committee after each financial year. We work on a voluntary basis apart from the priest and a cleaner. We find it quite puzzling that people are getting paid who are trustees under a bill. I am not too sure whether that is a conflict of interest but it certainly ought to be looked at because if I had a trustee I would want someone that is away from any interests or assets or payments of that manner.

The Hon. GREG DONNELLY: I put to you that what we are really examining and looking at are two models operating in the church and the church community. I do not separate them; I think the community around the church do interface, they are together. The model that has operated to date is a model which is locally based; it is diverse, it is built up at a local community level and the church hierarchy has provided priests into the communities, but in terms of the operation of the local community in the way it has spent its money on buildings, running community activities, expenditure of even money that is collected by the local community, those decisions have been made essentially by the local community. Is that a fair summary of the position?

Mr STEFANOVSKI: Yes, that is correct.

The Hon. GREG DONNELLY: If we look at the model that is being proposed, that is a far more centralised model, is it not, where the actual hierarchy has a very clear involvement, particularly in regard to the financial affairs on matters to do with property in the local community, so there is going to be a direct connection between the hierarchy and these affairs of the local community. Is that your understanding of essentially the model that they are putting forward?

Mr STEFANOVSKI: My understanding is extremely, with your thoughts as well—is the only thing that I am not too aware, at the end of the day, of whether we will actually have a say on how moneys are spent. For example, as I mentioned before, we might want to spend \$10,000 on our soccer club but we might not be allowed to do that because that is not part of the administrator's thoughts as far as religion is concerned, but it is the same people who will turn up on Sunday at service who actually buy the candles and will actually work on the doors and will actually try and raise money through dances. We are the same people, no matter where you put us, whether you put us on Sunday at church or Sunday afternoon at soccer.

The Hon. GREG DONNELLY: The connection between the church and the community is integral?

Mr STEFANOVSKI: That is what we are.

The Hon. GREG DONNELLY: The point I wanted to get to is this: effectively we have two quite separate models in play here: the existing model and the proposed model. Do you see any way of realistically reconciling those two? Obviously you have been involved in the church for some period of time and you are well aware of the history of everything that has come and gone over that period of time?

Mr STEFANOVSKI: Yes.

The Hon. GREG DONNELLY: It has just not resolved itself to date; there is litigation going on in the Supreme Court and I could go on and on. Surely there are a number of wise heads inside the church community and the church hierarchy. Is there any hybrid model of some description that can bring the hierarchy closer in terms of the affairs of the church and the running of the church at the community level and I suppose flowing back the other way, a greater connection with the community back to the hierarchy and the support of the hierarchy? Is there something that we are missing that has not been raised today because I notice you have been here for much of the day?

CHAIR: Again we are talking specifically about the bill.

The Hon. GREG DONNELLY: Yes, that is right.

Mr STEFANOVSKI: Yes.

The Hon. GREG DONNELLY: If there is, what do you say has been missed?

Mr STEFANOVSKI: I have thought for years about a system that would cater for everybody and to be honest with you, I was extremely disappointed when it was rejected. After months of sitting down and trying to formulate a system that would cater not only for community members but the hierarchy itself, we came up with a constitution that would actually be very transparent, where there is no hidden agendas, where if there was a concern by the hierarchy that money was misappropriated or perhaps spent in the wrong direction, that we even agreed to the extent where the actual current priest is a signatory on all payments.

It is community property, it is community assets and he is part of our community so it is not as if we are not willing to work and approve even a signatory for everyday payments; it is just that, unfortunately, it was not good enough for the administrator. We were prepared to have that set out, but unfortunately I am under the impression the hierarchy system was not prepared to accept our signature on those everyday payments that we make, whether we were buying biscuits, tea or perhaps candles for the actual church.

As I mentioned before, I think that it is important that our secretary brings you up to date, at least for a minute, with his experience when he met our Archbishop, which is the highest possible person in our hierarchy church, the Macedonian Orthodox Church in the synod in the Republic of Macedonia, and I am sure you will be

pleasantly surprised what his thoughts were of the situation that we have been put in this beautiful country under the circumstances.

Reverend the Hon. FRED NILE: Point of order: This may be hearsay.

CHAIR: I understand that. I will just give the Hon. Shaoquett Moselmane the opportunity to ask some questions.

The Hon. SHAOQUETT MOSELMANE: I am not sure how the church operates when allocating a priest for each of the churches. Is there a contract between the church and the diocese, the Bishop, to allocate a priest for \$10,000 or \$20,000? How does that work? You raised an issue about a particular payment. How does that work?

Mr STEFANOVSKI: Unfortunately from my experience in all the years that was the only contract I have actually witnessed and it was because we stood up to a situation with the administrator that was not pleasing or to his liking. At the end of the day it is a ridiculous setup if you have to have a priest where you have a contract. The ideal way is that he performs his duties and we do not interfere in that area, and we do not because we do not understand—

The Hon. SHAOQUETT MOSELMANE: So it is not the practice of all the churches where you are allocated a priest and in return you have to pay money?

Mr STEFANOVSKI: That was the first time I have had experience and, as I said, we started with \$70,000 approximately, to my memory, \$10,000 but the secretary is telling me it is \$18,000. The way the setup is now, we have a priest, we pay for his duties, he is regular, he is very polite and he does his job. We are doing well. We have a good relationship. Whether we will have that relationship in the future after today—I am hoping I will not have to ring you up tomorrow and tell you that we might have to be asking for another priest in two weeks time. I am hoping that does not happen.

The Hon. SHAOQUETT MOSELMANE: Mr Chair, my second point goes to the point that the Reverend the Hon. Fred Nile raised earlier. I know your response about restricting the bill to the church. The church itself operates hand-in-hand with other community institutions, sporting clubs, dance organisations and so forth.

Mr STEFANOVSKI: That is right.

The Hon. SHAOQUETT MOSELMANE: Could you elaborate on the consequences of dividing the church from the rest of the operation of the community organisation?

Mr STEFANOVSKI: It just cannot happen. The church is everything and to be honest with you, over Christmas and Easter are our biggest days—and I am sure they are the biggest days with most Christian faiths—and where the actual finances come through and it is those finances that pay the priest, pay the cleaner and cater for everyday electricity bills, utilities, et cetera. If the church was to be divided, there would not be much of any other association, so to say that that money is not utilised in other areas of our community would be wrong because, as I said before, we are one body of people that have a different love for different parts of our religion, sport, et cetera. I do not want to repeat myself, but one without the other, it is just not going to work; it is not going to happen. The church is part of our life and so is our religion, and without that I think it would destroy the Wollongong community.

CHAIR: That concludes the members' questions. If I can go back to the point of order raised by Reverend the Hon. Fred Nile. I understand what you are proposing is for the secretary to indicate to us details of discussions he has had with the religious order in Macedonia. Is that what is intended?

Mr STEFANOVSKI: I thought it was important mainly because we had the opportunity to have virtually half of our committee being overseas because of our dancing group going there for the first time. They had the opportunity to take those documents over there that you have in front of you and talk to the other Bishops as well as the Archbishop and have him tell us what he thinks of the actual situation.

CHAIR: Before you go any further, I have serious concerns about allowing that to happen, mainly because we have not had an opportunity to consider it in any submission form. I am happy, subject to the

comments of Committee members, for you to take it as a question on notice to allow you an opportunity to put that in writing to us so that we, as a Committee can consider it and decide whether or not it should be published. I am reluctant to simply allow an opportunity where the evidence cannot be tested. I do not make that as a derogatory comment of the secretary. I am sure he would be more than upfront and honest in his comments but it does make it difficult for the Committee. I ask that you take it as a question on notice unless any Committee members express a differing view.

Mr STEFANOVSKI: May I say something, sir?

CHAIR: Certainly.

Mr STEFANOVSKI: I think there were worse things said today in front of everybody so I don't think this will be in any way hurtful or painful and if the truth that we have sworn on this *Bible* is concerning somebody then perhaps we should not be here at all.

CHAIR: Do any Committee members wish to comment on what I have indicated?

Reverend the Hon. FRED NILE: I accept the Chairman's ruling.

The Hon. LYNDA VOLTZ: I wonder if we allow them to address the concerns they raised with the Archbishop maybe that would be a way around it.

CHAIR: I do not think that is what is being raised. I think what is being raised are discussions that members of the clergy have held overseas with the Archbishop.

Mr STEFANOVSKI: He is like the Pope.

CHAIR: I understand that.

Mr STEFANOVSKI: We swore to tell the whole truth, and surely 60 seconds—

CHAIR: If you will allow me to get some input from the Committee, I would be grateful.

The Hon. TREVOR KHAN: Without being derogatory, I can say that all my clients over the years swore to tell the truth.

CHAIR: I am going to rule that you please take it as a question on notice from me, which will allow you 21 days to respond to it, and I will uphold a point of order of the Reverend the Hon. Fred Nile. Thank you very much for your time and the evidence you have given.

Mr STEFANOVSKI: May I conclude with something, which will take less than 60 seconds, from our constitution because I think it is important for members on this council to understand what we are on about. We are not a group of people who are out there to cause problems. We would love to come to an understanding where we can work—

CHAIR: I would rather you table it so we could see it as a whole document rather than you just read paragraphs.

Mr STEFANOVSKI: I am only going to read one paragraph out of the constitution because I think it is important.

CHAIR: Please.

Mr STEFANOVSKI: Part (d) of point B of our constitution states—and this is exactly what we do and why we have had no problems for the last forty years:

To teach members and friends and the children of members and friends **the Macedonian Language** and the English Language and the principles of English education and for this purpose to co-operate with the education department of the State of New South Wales and generally with any other organisation for the purpose of **the Macedonian Community, becoming a productive part of a multi cultural Australia and the Australian way of life.**

I think that says it all and I would hate to lose that all because of, quite simply, money.

CHAIR: Again, gentlemen, thank you very much for your time and effort. It was very helpful to have you from another community, Wollongong, here.

The Hon. TREVOR KHAN: A great community.

CHAIR: A great community. Like the Hon. Trevor Khan, I come from Wollongong, so I thank you for your evidence and your assistance today. Committee members and the secretariat may have further questions on notice. You also have the earlier one I mentioned. The secretariat will be in touch with you in relation to providing answers to those questions. The Committee has ruled that the answers are to be provided within 21 days. Again, thank you very much, gentlemen.

Mr STEFANOVSKI: Thank you for having us today.

(The witnesses withdrew)

(The Committee adjourned at 4.16 p.m.)