

26 August 2010

**The President and Committee
Free Serbian Orthodox Church-School Congregations**

St George, 32 National Circuit, Manuka 2603
St George, 348 Cabramatta Road, Cabramatta 2166
St Nikola, 33-37 Second Avenue, Blacktown 2148
St Sava, 34 Hampstead Road, Flemington 2140
St Jovan, 82 Kenny Street, Wollongong 2500
St Naum Of Ohrid, 38 Gosford Road, Broadmeadow 2292
St Nikola, 48 Bandara Street, Wacol 4076
St Nikola, 243-247 Vulture Street, South Brisbane 4101
St Sava, 212 Diamond Creek Road, Greensborough 3088
St George, 6 Kate Street, St Albans 3021
King Stefan of Decani, 672-682 Dandenong Frankston Rd, Carrum Downs 3201
St Nikola, 122 Ballarat Road, North Geelong 3215
St Petar & Pavle, 54 High Street, Wodonga 3690
Holy Trinity, Yallorn North Road, Yallorn North 3825
St Sava, 1-3 Mary Street, Hindmarsh 5007
Holy Trinity, Marlborough Street, Mt Lawley 6050

Our ref: ICM
Matter no: 9415470

Dear Sir

Notice of extraordinary session of the Church-National Assembly of the Free Serbian Orthodox Church Diocese for Australia and New Zealand (hereinafter known as "the Free Diocese")

We advise that we have been instructed to act on behalf of the Free Serbian Orthodox Church Diocese for Australia and New Zealand Property Trust Limited (hereinafter known as "the Property Trust").

We have been provided with a notice of a meeting, scheduled to be held on 3 September and 4 September 2010 in Victoria, to consider the formation of a new entity – Metropolitanate of Australia and New Zealand of the Serbian Orthodox Church (hereinafter referred to as "the New Entity") and to adopt a new constitution for this New Entity. The New Entity proposes to encompass and integrate all Church-School Congregations of the Free Diocese into this New Entity.

In the letter giving notice of this meeting, dated 24 June 2010 to Church-School Congregations titled "New Joint Constitution and Unity of our Church in Australia and New Zealand" His Grace, Rt Rev Bishop Irinej (Dobrijevic) represents himself as the Administrator of the Free Diocese and states, amongst other things:

"Not one assembly [Extraordinary General Meeting of financial members of Church-School Congregations] has the right to vote for or against the acceptance or rejection of the proposed constitution."

As you would be aware many Church-School Congregations are incorporated entities and under the Constitution of the Free Diocese, each Congregation holds its own property for its own Congregation with the Free Diocese having no interest in such property (see Article 167 - Constitution of the Free Diocese).

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Under the new draft Constitution for the Metropolitanate, it is proposed to require each of the Church-School Congregations to transfer their property to another entity, to be created in the Metropolitanate, perhaps the SERBIAN ORTHODOX CHURCH IN AUSTRALIA AND NEW ZEALAND PROPERTIES LTD - ACN 129 465 194 (hereinafter referred to as "the Bishop's Company"). This would mean that for a Congregation to become or remain a member of the New Entity, that Congregation would need to transfer their property to the Bishop's Company or other structure established by the New Entity.

In our view (subject to checking your congregation's Constitution), the property of your Church-School Congregation, pursuant to the terms of the existing Constitution of the Free Diocese, is owned by your Church-School Congregation.

It is thus up to each Church-School Congregation to make a decision as to whether its property should be transferred to the Bishop's Company or other structure, to be administrated by the New Entity or whether the property is to remain under the control of your congregation.

If the New Entity requires your congregation to transfer its property to the Bishop's Company or other structure, in order to remain a congregation within the New Entity, then your congregation must decide whether to remain within the New Entity, or to "opt out" of the New Entity and become independent of the New Entity.

If a congregation determines to become independent, then it may join with other independent congregations from the Free Diocese to form a new Diocese or association of congregations under their own constitution which may be similar to the Constitution for the existing Free Diocese.

We understand that some of the Church-School Congregations of the Free Diocese are in the process of following this path. We further understand that the Property Trust of the Free Diocese which owns the St Sava Monastery New Kalenic, Canberra is also considering not accepting the terms of the draft Constitution to form the New Entity.

Constitution of the New Entity

We also note that the creation of the New Entity is inconsistent with the "Proposal of Reconciliation" agreement signed in 1991 by the then Patriarch of the Serbian Orthodox Church, Patriarch Pavle (Stojcevic), and the then Metropolitan of the Free Serbian Orthodox Church, Metropolitan Irinej (Kovacevic). In Article III Sections 2 and 3 the structure and autonomy of the New Gračanica Metropolitanate were guaranteed. Article IV Section 1 guaranteed that Church-School Congregations and Parishes would retain complete control and ownership over their respective properties and Article IV Section 2 made the former section enforceable in the civil courts. The calling of the Special Assembly and the resolutions proposed to be made purport to extinguish the Free Diocese and to alter the administrative structure of the Church-School Congregations and Parishes of the Free Diocese.

Proposal of Reconciliation (23 and 24 April 1991)

Article III – Administrative Structure; Section 1: Diocesan Structure; Part 2

The name of the Free Serbian Orthodox Church Diocese for Australia and New Zealand henceforth shall be the Serbian Orthodox Metropolitanate of New Gračanica – Diocese of Australia and New Zealand with its See being the St Sava Monastery New Kalenic, Canberra [453 Wallaroo Road, Wallaroo via Hall NSW 2618].



Article III – Administrative Structure; Section 2: Diocesan Reorganisation and Abolition

The Serbian Orthodox Patriarchate agrees not to reorganize, abolish or in any way alter the administrative structure of the New Gracanica Metropolitanate or its three dioceses without the agreement of the Hierarchical Council of the New Gracanica Metropolitanate, the Hierarch(s) of the affected Diocese(s) and the Church-National Assembly(ies) of the affected Diocese(s).

Article III – Administrative Structure; Section 3: Church-School Congregations and Parishes

The Church-School Congregations and Parishes under the jurisdiction of the Dioceses of the New Gracanica Metropolitanate shall remain under the direct jurisdiction of the hierarchical and administrative authorities of the New Gracanica Metropolitanate.

Article IV – Property Issues; Section 1: Ownership and Control

The New Gracanica Metropolitanate, its Dioceses, Church-School Congregations and Parishes shall retain complete control and ownership over their respective properties as set forth in their respective constitutions, regulations, by-laws and governing documents.

The Serbian Orthodox Patriarchate agrees that neither it nor any of its dependencies or administrative units in the Diaspora will, directly or indirectly, at any time or in any way assert any claim and/or assert any interest and/or seek to impress an express or implied trust over any of the real or personal or choate or inchoate or tangible or intangible property of the New Gracanica Metropolitanate, its Dioceses, Church-School Congregations, Parishes or affiliated institutions.

Article IV – Property Issues; Section 2: Enforceability

Any violation of Section 1 above shall be enforceable in the civil courts of any nation and/or state where the New Gracanica Metropolitanate has a Church-School Congregation or Parish. The terms of Section 1 above and the terms of any other part of this Agreement which relate to the ownership or control of property shall be considered secular legal terms which can be interpreted by a civil court under neutral principles of law.

We consider that any attempt to amend the Constitution of the Free Diocese, as proposed by the "Draft V Constitution" would also be inconsistent with Article 167 of the Free Diocese Constitution which states: "*The property of the Church-School Congregation in any particular State or locality, belong exclusively to those Church-School Congregations, with the Diocese having no rights on propriety claims whatsoever.*"

Further, proposed Article 26(3)(f) is inconsistent with the Constitution of the Free Diocese and states: "...*real and personal property of a Church Community [as opposed to a Church-School Congregation] may be held in trust or legal entity as approved by the Metropolitanate Executive Board. The Church Community Assembly [as opposed to a general meeting of financial members] must adopt the governing documents of the trust or legal entity...*".

On 29 December 2007 Bishop Irinej (Dobrijevic) convened a Church-National Assembly not in accordance with the Constitution of the Free Diocese and elected an unrecognised Diocesan Council of the Free Diocese. Notwithstanding, no Church-National Assembly has been



purposely convened to independently consider the question of the Free Diocese to "opt in" or "opt out" of the New Entity.

Our client's understanding of the Constitution of the Free Diocese and resolutions of an Extended Plenary meeting held at the See of the Free Diocese on 29 December 2007, reiterates Bishop Irinej (Dobrijevic) is not the Bishop of the Free Diocese but rather the former Administrator albeit the Constitution of Free Diocese does not provided for such office.

It is clear a Bishop of a Serbian Orthodox Church cannot hold office of Bishop of two Dioceses with Article 112 of the SOC Constitution having reference to administration of a vacant diocese: "*A vacant Diocese is governed by an Administrator, who is appointed by the Holy Synod. The election of the new Bishop has to be done within the time limit, forseen by canons. As long as the Bishop's seat is vacant, there cannot be exercised any Diocesan function which would affect Diocesan organization, nor can there be made any important changes in the matters which were initiated during the administration of the former Diocesan Bishop.*"

Bishop Irinej (Dobrijevic) has no capacity to implement the changes proposed in the Draft Constitution. Notwithstanding, the Special Assembly scheduled intends to reorganise the Free Diocese, alter the Administrative Structure of the Church-School Congregations and Parishes of the Free Diocese, and moreover intends to entirely extinguish the Free Diocese.

We consider that any decision by the purported Church-National Assembly scheduled to be held on 3/4 September 2010 will not be valid and we have requested Bishop Irinej (Dobrijevic) cancel this meeting stating now, no provision is made in the Constitution for this meeting to occur. The next Church-National Assembly should occur in December 2010 when this issue of the Draft Constitution can be considered in accordance with the Constitution of the Free Diocese.

We would urge that you defer consideration of the Draft Constitution until the full impact of the Draft Constitution on the Church-School Congregations can be understood, including the impact upon the property rights of each Church-School Congregation. Clearly the Draft Constitution changes the persons having authority over the Church-School Congregations which become members of the Metropolitanate. This is a most significant step and full consultation with each Church-School Congregation and its members should be undertaken.

However, if this meeting proceeds on 3/4 September 2010, then your Church-School Congregation should still consider its own legal position with respect to its property and decide whether it wishes to remain with other parishes which have been members of the Free Diocese and proceed to form a new association of churches adopting the principles which have applied to the Free Diocese in Australia since 1963.

We can assist in reviewing your Constitution and property ownership rights if you wish. Alternatively we advise that your Church-School Congregation should obtain independent legal advice as to the property and other rights of your congregation.

We would also be prepared to explain any matters which are set out in this letter but which may be unclear to you or your congregation. We look forward to discussing this matter with you or alternatively you may wish to contact representatives of the Property Trust.

Yours faithfully
Hunt & Hunt

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