
WRITTEN EVIDENCE SUBMITTED BY DR GHENA KRAYEM

TO: RT HON KEITH VAZ MP
FROM: DR GHENA KRAYEM
SUBJECT: HOME AFFAIRS COMMITTEE'S INQUIRY ON SHARIA COUNCILS
DATE: 21 OCTOBER, 2016

INTRODUCTION

I am writing to contribute to your inquiry on sharia councils in the UK. I am an academic and senior lecturer at the University of Sydney, Australia with a specialization in law and specifically Islamic family law. I am currently undertaking research into Islamic family law processes in Australia, examining the experiences of individuals, professionals, community leaders and imams who are involved with and/or engaged in those processes. This research, *Australian Family Law and Islamic Dispute Resolution Processes*, is a joint collaboration between the University of Sydney and University of Melbourne and is funded for a period of three years by the Australian Research Council.

I have also written two books that examine Islamic family law processes and accommodation in common law namely; *Islamic Family Law in Australia: to Recognise or Not to Recognise* (2014) and *Accommodating Muslims under Common Law* (2016).

SUMMARY

The evidence given herein addresses the following Term of Reference:

1. How other, non-majority Muslim, countries have responded to Sharia councils operating within their jurisdiction.

I conclude:

1. There is an identified need for platforms to resolve family law issues for the Australian Muslim community using Islamic family law principles, particularly with regards to Islamic divorces.
2. The entirety of Islamic family law processes in Australia can be classed as informal family dispute resolution ('FDR') facilitated by Imam Boards or individual imams. In this way, though not formally recognised they fall comfortably within the ambit of the Australian family law framework.

3. Research indicates that the Australian Muslim community would benefit from family dispute resolution processes that are culturally sensitive and linguistically diverse to the specific cultural and religious needs of the Australian Muslim community.
4. Research indicates that recognition and accommodation of informal Islamic family law processes with the aide of training and additional resources will be beneficial in addressing some of the concerns raised by the operation of these processes.

1. HOW OTHER, NON-MAJORITY MUSLIM, COUNTRIES HAVE RESPONDED TO SHARIA COUNCILS OPERATING WITHIN THEIR JURISDICTION

The Case of Australia

Structure

1. Much like in Canada and the UK, in Australia Islamic family law operates as 'unofficial law' or 'unofficial legal pluralism'. However, unlike the UK which has more formalised Shariah Councils, in Australia there are informal groupings of Imams who work together and refer to themselves as 'council' or 'imam boards'.
2. These Imam Boards operate much like Shariah Councils in the UK in that their main areas of responsibility include issuing Islamic divorces alongside recommendations for property settlement and rarely children's issues (it seems that most couples either sort this out themselves or take it to the Australian court system). There are at least 8-10 identifiable imam boards in Australia.
3. To date, very little research has been undertaken as to the operation of these informal imam boards in Australia. However one empirical study on which these submissions are based is *Islamic Family Law in Australia: to recognize or not to recognize* (2014) by Dr. Ghena Krayem.

Dr. Krayem interviewed 65 imams, community leaders and community members in relation to the way Muslims navigate their family law problems in Australia. Dr Krayem's insights are captured in the above text and a summary of the key findings relevant to the above term of reference is summarized below.

4. Interview participants on the whole accepted that Muslims in Australia often choose to rely on Islamic legal principles in resolving their family law matters.
5. Participants also indicated the need for Muslims to comply by dual legal systems operating side by side; namely with respect to seeking a divorce. It appears that Muslims seeking to obtain a divorce seek the issuing of an Islamic divorce from the Imam Boards as well as via the Family Law Courts and at times, move between the two sets of laws to seek the greatest benefit.

6. Interestingly, many participants claimed that the Islamic family law principles were important to Muslims in Australia irrespective of religiosity. That is, even those that did not deem themselves as 'practicing Muslims' were keen to observe and have applied Islamic family law principles in matters of marriage and divorce.
7. A common assumption has been that it is older generation Muslims who have strong sentimental ties to their cultures who seek Islamic family law processes. However, the research indicates that young Muslims who are born and raised in Australia seek out Imam boards for the purposes of marriage and processes of divorce.
8. Accordingly, the research indicates that for many Australian Muslims, regardless of religiosity, age or gender Islamic principles are relied upon and processes followed in matters of marriage and divorce.
9. Informal mediation and family dispute resolution processes conducted by the Imam boards appear to be central to Islamic family law processes in Australia. Many community leaders and imams interviewed referenced such processes as being inherently from within the Islamic tradition and particularly important to family law matters.
10. Another finding related to the involvement of families as mediators in the context of Muslim marriages and divorces. It was found that such involvement was prevalent in the Muslim community as a first point of a call. For those who did not have extended family in Australia, this role was fulfilled by prominent Islamic organisations some of which are quite well-equipped to assist the individual with access to a whole host of services including Centrelink, counseling, opportunities for reconciliation and mediation. Often though, if it is a divorce that is being sought, referrals are made to imams and imam boards.
11. The entirety of Islamic family law processes in Australia can be classed as informal family dispute resolution ('FDR') facilitated by Imam Boards or individual imams. In this way, though not formally recognized they fall comfortably within the ambit of the Australian family law framework.

Issues and Concerns

1. Reasons why Muslims use Imam Boards based on findings of above research:

- a. Muslim women in particular generally do not consider themselves 'divorced' even if the Courts issue them a divorce. For the purposes of closure and in order to ensure they are actually divorced, Muslims seek a divorce from imam boards.
- b. Almost all Muslims have a religious marriage. Accordingly, when the marriage breaks down the logical consequence is for them to seek a religious divorce also.

- c. Many Muslim couples choose not to register their marriages. This means they are only religiously married. In such cases, the only avenue for seeking a divorce for many is via the Imam boards. Without this avenue, women in particular would remain 'married' if the husband does not issue the divorce. This is referred to in the research as 'limping marriages'.
- d. Another form of 'limping marriages' can occur if the marriage was in fact registered, a divorce issued by the Family Court but the Husband does not grant the woman an Islamic divorce. In these circumstances, the woman will seek to obtain an Islamic divorce from the Imam boards or an individual imam.
- e. In the research some women have explained that the Courts have been inadequate in resolving their family law matters in a timely fashion and this added to emotional distress.
- f. Many Australian Muslims are also found not to access mainstream services including family dispute resolution services due to communication barriers, lack of knowledge about services, socio-cultural norms discouraging the use of mainstream services, lack of trust, lack of culturally-sensitive and appropriate services.

2. Concerns with Regards to Imam Boards

- a. Islamic family law processes are not clearly defined
- b. Some Imams involved in these processes are not qualified in Islamic law.
- c. There is a lack of women involved in the Islamic family processes as mediators, support people etc.
- d. Additional pressures and stress on couples and particularly women, as a result of the need to navigate dual processes.
- e. Property distributions on the suggestion of the Imam boards though not binding, are often times adhered to and are too often at the detriment of women.
- f. Imams do not have the requisite skills and training to deal with the complexity of family law matters particularly with respect to family violence.

Response to Informal Islamic Family Law Processes in Australia

1. In 2001 the Family Law Council of Australia in its report *Cultural Community Divorce and the Family Law Act 1975* suggested that the establishment of a Shariah Council in Australia would alleviate many of the divorce difficulties

- experienced in the Muslim community and that cross-cultural mediation is best suited to resolving such difficulties.
2. Various Muslim community academics and community leaders have noted that a Council or tribunal dealing with Islamic family law issues would address the problems suffered by the Muslim community in the context of family law disputes.
 3. However, to date the Muslim community has not put together a formal proposal for the formation of a Shariah Council. Instead, community leaders and imam boards have met with government leaders seeking recognition and accommodation of the existing informal dispute resolution processes. This research indicates that the reason for this may be that the Australian framework for dispute resolution places greater emphasis on mediation rather than arbitration as is the case in the UK.
 4. Under the *Family Law Act (Cth) 1975*, prior to commencing family law proceedings in relation to children in the Family or Federal Circuit Court in Australia it is compulsory for parties to attend family dispute resolution (FDR), a form of mediation, with an accredited family dispute resolution practitioner (FDRP). If the matter is not appropriate or the FDR is unsuccessful, parties are issued with a certificate from the FDRP enabling them to commence legal proceedings. At times, parties may also attend Court-ordered family dispute resolution (FDR) during proceedings in matters that the Court deems appropriate. Attending family dispute resolution for property matters is encouraged and available, though not compulsory.
 5. Calls from small segments of the Muslim community for separate courts or tribunals applying Islamic law have quickly been rejected by the government of the day.
 6. This research has indicated that the Australian government has not done enough to accommodate the needs of a culturally and religiously diverse society in the area of family law.
 7. While there is strong emphasis on alternate family dispute resolution (FDR) in the context of family law in Australia being a pre-requisite for instituting proceedings in the family law courts; as well as an overlap in objectives with the informal dispute resolution processes in the Muslim community via imam boards, they operate in isolation from each other.
 8. In November 2010 the Australian Law Reform Commission and the NSW Law Reform Commission launched their joint report *Family Violence – A National Legal Response* in which they noted that '*more culturally-responsive models of non-judicial dispute resolution are being developed to accommodate the cultural contexts, values and needs of parties involved in or affected by disputes*'.

9. In 2010 key initiatives were commenced with objective of making FDR processes more culturally-sensitive and relevant to the needs of Muslim couples including the following:
 - a. Joint initiative between Family Relationships Centre and a Muslim organization to provide assistance to Muslim clients;
 - b. Secondment of a local imam who is also a practicing solicitor as a Family Liaison Officer at the Family Relationships Centre;
 - c. Legal Aid NSW has offered FDR training and scholarships to culturally diverse candidates with extensive understanding of their communities;
 - d. Training and accreditation of several Muslim family dispute resolution practitioners by Legal Aid NSW.

10. The 2012 Family Law Council Report identified the following issues in relation to Indigenous and Culturally and Linguistically Diverse (CALD) clients of the family law system:
 - a. Ways in which the family law system (courts, legal assistance and family relationship services) meets client needs;
 - b. Whether there are ways the family law system can better meet client needs including ways of engaging these clients in the family law system;
 - c. What considerations are taken into account when applying the Family Law Act to clients of these communities.

11. The research indicates that the Muslim community in Australia does not seek to set up a parallel legal system but rather that it is seeking out ways in which the informal community processes can fit within the existing family law structure. This ensures that all legal obligations are complied with and Australian Muslims are adhering to what they perceive to be important aspects of their faith.