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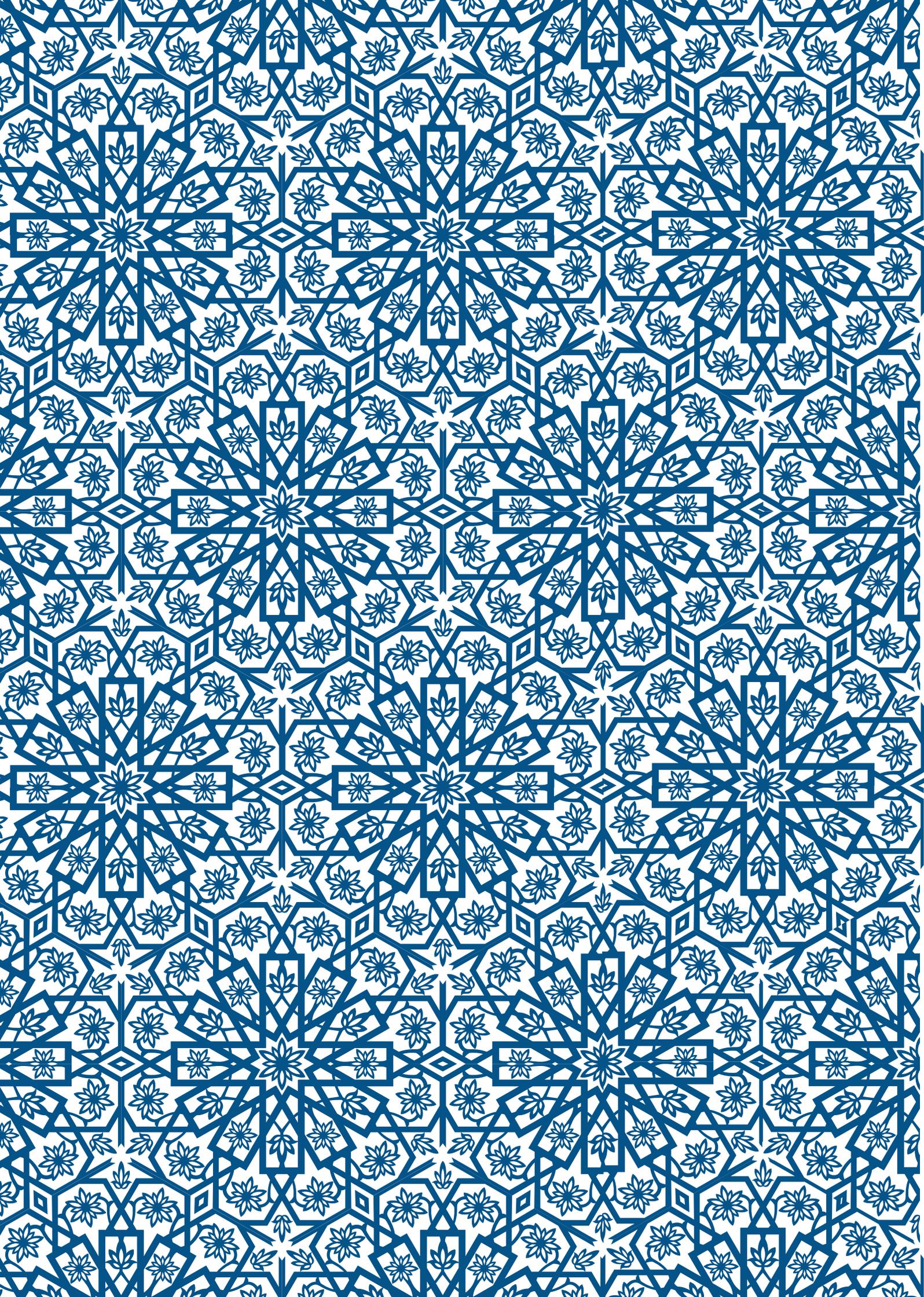
ISLAMIC COMMUNITY PROCESSES

Women's Experiences
of Family Disputes

GHENA KRAYEM AND FARRAH AHMED



For full details and analysis of the project findings see Farrah Ahmed and Gheena Krayem, *Understanding Sharia Processes: Women's Experiences of Family Disputes*. <https://www.bloomsburyprofessional.com/uk/understanding-sharia-processes-9781509920730>



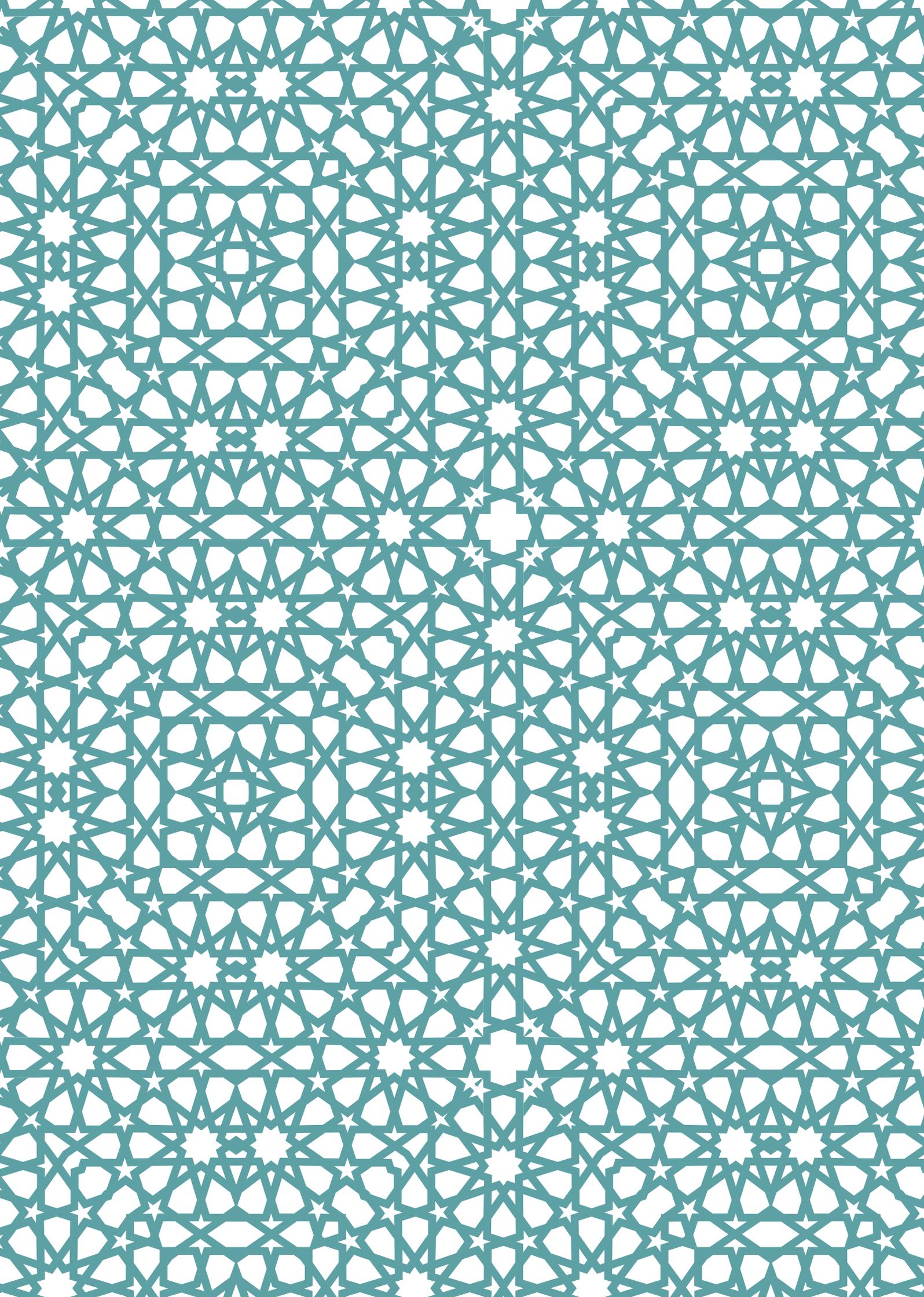
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This booklet presents the perspectives of Muslim women who have engaged with Australian Islamic divorce processes, as well as the perspectives of imams, community leaders, and professionals – lawyers, mediators, social workers, community workers and psychologists – who support women through family conflicts.

Part I

Part I of the booklet provides an overview of Islamic divorce processes as reported by interviewees during research conducted in Sydney and Melbourne between 2016-2020.

Part II

Part II of the booklet outlines women's reasons for engaging with Islamic divorce process.

Part III

Part III outlines women's experiences of participating in Islamic divorce processes.

Part IV

Part IV sets out recommendations for improving Islamic divorce processes based on women's experiences.

These recommendations are directed at community organisations, particularly those that offer and facilitate Islamic divorces, as well as the legal community.

Part I. Overview of Australian Islamic Divorce Processes



For full details and analysis of the project findings see Farrah Ahmed and Ghena Krayem, *Understanding Sharia Processes: Women's Experiences of Family Disputes*. <https://www.bloomsburyprofessional.com/uk/understanding-sharia-processes-9781509920730>

It is impossible to comprehensively capture Islamic divorce processes, as these processes are context-specific and change over time. However, an overview of Australian Islamic divorce processes, based on the processes of key Australian Muslim community organisations, is shown in Figure 1.



Figure 1. Overview of Australian Islamic Divorce Processes

Reconciliation

During Islamic divorce processes, imams generally attempt reconciliation before considering divorce.

“We, as Muslim leaders, the first thing as an imam, Islamically I’m required to try and reconcile between the two. So if there’s – my responsibility is to try and amend or try and reconcile between the two parties and try and bring them to terms with they could go back to their normal marital life and continue with conditions that they might put over each other after we do some mediation or after we do some counselling and so on... So, most of the time, it’s our religious obligation, our moral obligation to try and reconcile between the parties or between the couple that there is a dispute between them. We listen to their sides. Usually, it depends on the situation. So, it goes by each case. We assess each case. If it’s a case that we could bring them both at once and try and reconcile it once, we’ll do it”.

The Divorce Panel

If there is no prospect of reconciliation, imams will make a recommendation as to which type of Islamic divorce is appropriate. A panel of imams, such as the panels at the Board of Imams Victoria and the Australian National Imams Council, often deal with divorce applications. For cases heard by the Australian National Imams Council, the Grand Mufti of Australia finalises all contested divorce applications. There are various other groupings of imams that operate in Australia, such as the Lebanese Muslim Association in Sydney.

Weight Given to Civil Divorce

Islamic divorce processes often give weight to civil divorce proceedings. Australian imams generally do not issue

a religious divorce certificate without the civil divorce having first been finalised. Many imams rely on Australian civil divorce proceedings as a basis for granting divorce, if the civil divorce was initiated by the husband or he consented to the proceedings.

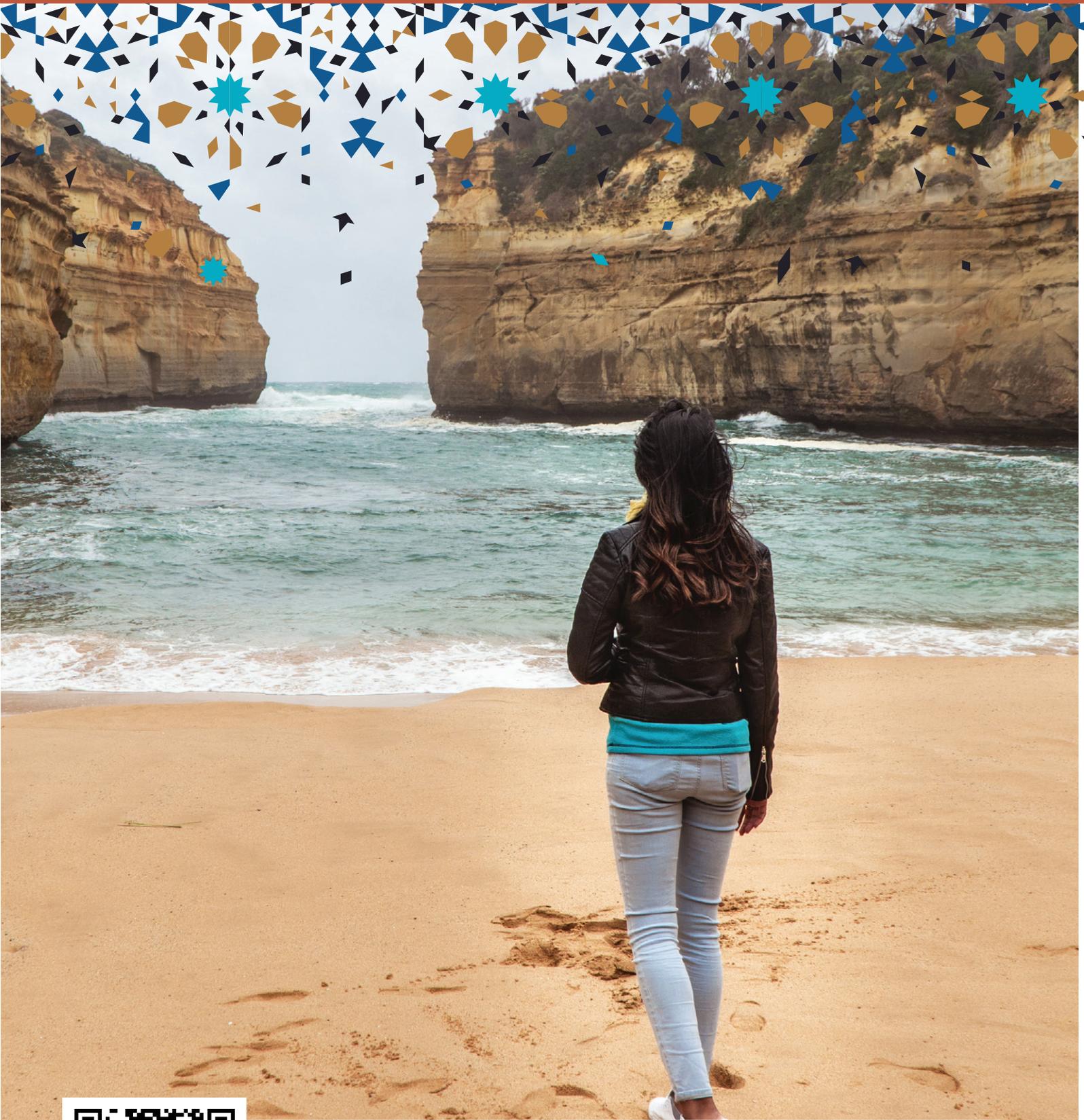
One senior imam explains:

“And I reiterate that we don’t make any decision until the court has made the judgment and issued and the divorce and during that time there will be an entire year for reflection and contemplation by either party where we will usually issue a revocable divorce during that time when both the man and the woman have recourse in thinking about how they will plan the rest of their future. It might be that they desire to reunite within that 12 month period”.

The exception to this is if there is domestic violence, in which case the divorce application can be fast tracked. For example:

“In some cases, which I administered about a month ago, a sister got her application done within fourteen days because there was proven beyond doubt, and there were charges of domestic violence and fear of life”.

Part II. Women's Reasons for Engaging with Islamic Divorce Processes



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The women we interviewed generally sought the assistance of their families, approached professionals, or participated in informal mediation within their communities before engaging with Islamic divorce processes. In response to family conflict, there are four broad, interconnected factors why women chose to engage with Islamic divorce processes to seek a religious divorce.

These are:

- (1) Religious and spiritual reasons;
- (2) The need to end emotional manipulation;
- (3) The need for closure; and
- (4) A desire to avoid stigma within their community.

Religious and Spiritual Reasons

“It wasn’t until my Iman [faith] was on the line that I thought, I’m going to lose my religion by staying with him and the tensions that the kids might be experiencing, it was better for them to have two households where they could be happy than living in tension”

*“I hold on to my Islam because I had learnt about it and it was mine and I had taken it for myself and I did not need anyone to diminish it. And now [he] used Islam to hide what he was doing [cheating on me] and he was saying that he was going to do *qiyam al layl* [night prayer], but he was with this other person and that really infuriated me. How dare you use Islam as a cover up?”*

“[I]t was very important to me. It doesn’t feel like the divorce is complete without the Islamic divorce... I just felt that [if I was]

still married in the eyes of God [then] a legal divorce is not enough. Just like I needed an Islamic marriage now I need the Islamic divorce”.

The Need to End Emotional Exploitation

*“[I was] uncertain, yeah, because I was – I got sick and tired of like the emotional abuse where he’d come and, you know, be intimate with me and give me hope and then just leave again and not hear from him for another two or three weeks. So it was just like he’d use [me] – and then I’d feel like crap and then I’d try to build myself. It was devastating... it was trauma. Yeah, it was very, very difficult to deal with every single time. It was the same thing and I kind of, like not that I blame myself, but I hated myself for [it] – I just felt cheap. Like, but then I thought well Islamically he’s my husband so maybe he might turn and feel what I feel and think, *Okay, this is my wife, and these are my kids... but it never happened”.**

The granting of a religious divorce helped this woman to cut ties with her former husband and move forward instead of repeating this cycle of emotional manipulation.

The Need for Closure

An Islamic divorce can mark the end of a significant relationship.

“I want to resolve it [the divorce]. I would like to be able to move on with my life... I want to be able – if I get involved in a [new] relationship, I want to know that I’m not doing anything wrong in the eyes of God”.

Avoiding Stigma within their Community

“It would have given me anxiety to still be married to him... I guess then

I knew he wasn't in my life. So, we, because the Arab community talks a lot, so they'd be like *she didn't do this, she didn't do that, she didn't do this...* If we didn't get, I guess, Australian divorced until a year later, I would have gone through hell for another year until that point when it was officially over... because it's just, I guess as sad as it is, it's the community atmosphere that we have".

In this case, utilising Islamic divorce processes and obtaining a religious divorce diminished the stigma and judgement from the community.



Part III. Women's Experiences of Islamic Divorce Processes



For full details and analysis of the project findings see Farrah Ahmed and Ghenia Krayem, *Understanding Sharia Processes: Women's Experiences of Family Disputes*. <https://www.bloomsburyprofessional.com/uk/understanding-sharia-processes-9781509920730>

Imams play a pivotal role in granting Muslim women divorce. Some women had positive experiences of sharia processes, describing imams playing a familial support role. One woman described the imams as her 'advocates' and felt her concerns were taken seriously by them. Another noted:

"It was really good having an imam who would just listen to me without making any judgments, that was very important".

It is understandable that imams are characterised as advocates for women if we consider that they release women from unwanted religious marriages. There is the potential, as seen in other jurisdictions, that intervention by imams can offer women a space to not only speak up and seek protection for their own interests (financial and otherwise) but also challenge cultural practices (including familial or community pressure to reconcile). Ultimately, imams can be vital to the successful resolution of marital disputes, allowing room for parties (and their families) to resolve complex matters.

However, interviewees also raised several concerns about how Islamic divorce processes are conducted in practice. Such concerns related to:

- The emphasis on reconciliation; Imams' lack of skills and training;
- A lack of transparency in decision-making;
- A failure to respond adequately to domestic violence and injustice;
- Gender imbalance on divorce panels; Issues relating to privacy and re-traumatisation; and
- How experiences with Islamic divorce processes impact women's faith and religious practice.

Emphasis on Reconciliation

Women who initiate contact with imams might express openness to reconciliation. One interviewee reported that she said to the imams:

"I don't want to get divorced. If you can find a solution for me, I'll go back and stay married".

But some women expressed concerns about the pressure that was placed upon them to reconcile with their husbands.

"He [the imam] was saying there's worse people out there and I think you guys need to work on each other... it didn't feel like the problem was solved. If anything, I felt like I walked out wanting to leave him but – and then I was scared to leave him so that night... [I sent him a message asking for forgiveness and saying] I forgive you... and he ignored me for four days... I felt he wasn't humbled by it [the visit to the imam] at all. If anything, he became more arrogant and our problems got worse after that because he felt like, You should be thankful you've got me. Who would want you? That's the sort of conversations we were having after:

Why would anyone want you? And it was very demeaning, and it took me a long time... to build myself up".



It's extremely important for imams to in fact have counselling training so that they understand strategies as well as pathways by which they can in fact bring about reconciliation.



A Lack of Skills and Training

“The biggest thing is when imams say they’re marriage counsellors, yet they have no skills in counselling at all. So, I’d often be in sessions with these imams, me and my husband and the imam, and it would just be a back and forth yelling or screaming. It was never counselling at all. So that was probably the biggest thing that probably affected the events that occurred later because there was no space for the two of us to express how we felt or what was going on for us and come to some sort of understanding. And the purpose of the imam in that situation should have been to facilitate our ability to understand each other and that never occurred.

It was either the imam sitting there giving us like half an hour to yell at each other and then going, Okay, you both need to be patient and then he’d just basically, just be really directive about things... he would just basically give us your five steps as to how to have a happy marriage but not translate that into... what’s relevant for us or personalising that for us... I didn’t understand how he could just step into someone’s home and sort of tell them what to do rather than trying to understand what’s happening for these two people and support these two people to get through what they’re going through. And there was never any of that mediation process with the imams”.

Several interviewees raised similar concerns about the qualifications of imams as community workers.

“You wouldn’t go and see a physiotherapist for a skin condition, and the same with the community sector. [They have] to be trained, qualified professionals with a base minimum. So, for me, [if you’re dealing with domestic violence], you have to have a minimum of either a social work degree or equivalent of... 8 to 10 years’ experience in the community sector”.

This concern was echoed by another interviewee:

“[I]t’s extremely important for imams to in fact have counselling training so that they understand strategies as well as pathways by which they can in fact bring about reconciliation.

Muslims... go and seek help from the imam[s] but the imams are not qualified. They are not qualified. Unlike other clergy, Catholic clergy, who have to do compulsory pastoral care units in their training. Imams don’t have that; they’re just expected to be the counsellor”.

At the same time, professionals working with women in this field recognise the imams as ‘a very very strong help-seeking mechanism for so many in the community’. Imams interviewed unanimously recognised that they need training beyond understanding the specifics of marriage and divorce in Islam.

“We need internal and external resources. Internal resources such as counsellors, psychologists, lawyers, extra services for women, like someone that can speak on behalf of females rather than her coming to stand in front of four or five men. These are the sort of resources that we want. External resources such as, like housing, other legal advices or other legal consultants, resources that will work closely with the government, any resource that can at least develop the whole program together”.

A Lack of Transparency

It was reported that some imams do not clearly communicate how they come to the decisions they issue and, as a result, women may be left confused about the rationale for the advice they are given. For example, one woman stated:

“Like being aware of what to expect, like what the process is going to look like, what are the timeframes like?... I want to get on with my life. I can’t just keep being... left hanging”.

Responding to Domestic Violence

Professionals and women reported that the imams generally understood domestic violence to be limited to physical abuse and so only sought or considered evidence of physical violence.

“I felt like the *sheikh* gave him ammunition and like when I look

back now, I felt like he boosted his [my husband’s] ego, that everything that he was saying, he was telling me, he goes, Yeah, but sister, *there’s more wrong out there. At least your husband is not on drugs, at least this – and I was like, how does that, what does that serve me?*

Like now when I think of it – at the time, no, I felt I was in the wrong. I really did...I was scared... I felt intimidated by both of them... I feel that they don’t take the psychological abuse as seriously as physical and as verbal”.

A number of professionals identified this as a common problem among imams. As one told us:

“Although emotional and psychological abuse [can be] extreme... it’s much more difficult to measure and it’s less visible. So, they’re the ones saying, *Oh, he’s verbally [abusive], but he didn’t hit you. Women get the message that I’m over-reacting*”.

Women also shared how their experiences of violence were reduced to questions about their role in ‘enraging’ or ‘provoking’ such behaviour from their husband.

“[T]hey’re caught up in a domestic violence circle or... they’re colluding with the perpetrator, or the perpetrator denies everything, or the perpetrator... flip[s] it and blame[s] the victim: she made me angry. And then, *How did she make you angry? – Well my dinner wasn’t ready, or she said this... And oh, well, I can sort of see your point. I can see why you got angry. I don’t [justify] the violence but I can see why you got angry. And... they don’t realise they’re legitimising that anger is the responsibility of the wife, as in she caused it not knowing that there’s no connection [between the violence and the woman’s behaviour]*”.

“Well, it was like – so say – it sounds really trivial but like if I would be like, *Oh, I’m really tired so I couldn’t cook dinner* that night and then, so my husband would get really aggressive and then they would, if I would give that example to a *sheikh*, they would say something like, *Oh, well you should be cooking dinner, so he doesn’t get aggressive*. So, it was always like *you’re doing something for him to be acting the way he was acting*. So, there was no acknowledgement that people have responsibility for their own actions, especially when it comes to your partner. So, it was often the excuses made for the partner but no understanding for the female in the situation”.

Interviewees underscored the need for a better response to domestic violence among imams.

“I see a lot of imams washing their hands away from this matter. Especially when there is violence, a lot of them are not taking enough responsibility on this matter. They still see family relationships breakdown as an internal matter and that has to change”.
 “[A] lot of women are too embarrassed to talk about it...When it gets to the point that she wants to do something about it, she’ll say it to the imam, but the imams don’t see it as a big, major issue not like us ladies will see it as a major issue, unfortunately. I think the imams themselves, they need an awareness program about how bad it is”.

For example, one imam drew inferences about the veracity of women’s claims based on their willingness (or unwillingness) to report violence to the authorities:

“[I]f you’re saying that you don’t want to get a restraining order to protect yourself from him, how can you be in serious threat of violence? It doesn’t make sense”.

“Once you start talking about getting police involved, getting restraining orders involved and all that, they start to be a bit more honest because every woman wants to say that she’s been beaten up... she’s in a violent relationship, he’s a monster”.

“I’m dealing with a woman now who’s a victim of domestic violence and she’s in that process now of when he beats her up she hates him and then after a week or two, she loves him and she wants him back”.

Recently, both the Board of Imams Victoria and the Australian National Imams Council have implemented specific domestic violence policies and administrative procedures.

“I’m one of those persons that I do not advise the sister to have patience in the case of... family violence. I always, my advice to the sisters is that you have a right, that you seek divorce and seek separation from that man who is not willing and who is not respecting you. And to those imams that advise for *sabr* [patience] and for patience in the face of family violence, my advice is that they need to read again the text of Islam about treating a woman, about how a woman, particularly a wife, should be treated in the light of Islamic teachings”.

“[W]e empower women to do that because it [reporting violence to the police] is not against the religion, it is [sanctioned] by the religion. Whenever someone is suffering, someone is facing a difficulty, to go wherever help may come from”.
 “So we’ll give that advice and we’ll say, look, it’s unsafe for you, and it’s happened many times ... I’ll find her to be unsafe so it’s our responsibility, religious responsibility before anything else, and a moral responsibility before anything else that if we see someone going back home to an unsafe environment we need to advise them”.

“[No] patience with hitting ... Hitting, it’s danger. It is something that hurts the woman and maybe the children, and some people are very violent and if, I mean, she has the right to protect herself”.

Acknowledgement of Injustice

“I just wanted them to really explain to him what he’s done, like, and I said to them because I was really upset the day of the divorce and I said to them, *Look, I’ll divorce him, that’s fine, I’m happy with it but I hope you guys can actually explain to him the extent of what he’s done.* I don’t think they did, yeah”.

“He just got away with murder and everything that I had said that he did was disregarded. They didn’t even talk to him about what he did to me... there was no reprimand. There was no like, *Listen, you can’t do this to a woman, its wrong*”.

“[T]hey just wanted quick fix solutions... and it’s not a one size fits all... [M]arriage is a very big issue, divorce as well is a very big issue, and every family deserves this time and every person in that family needs to be heard”.

For some women the fact that imams did not acknowledge what women felt to be injustices committed against them meant that imams appeared insensitive to their concerns.

One woman described it as ‘an awful experience ... and [with] no emotional support’, labelling the process ‘mechanical’ and highlighting how disappointed she was that nothing she disclosed seemed to ‘shock’ the panel of imams.

“[Y]ou get emotional and like, again, it didn’t shock them, the violence didn’t shock them, the cheating didn’t shock them”.

However, from the imams’ perspective they face significant time restraints, hear many of these cases each day and find the content challenging to deal with. One imam explained:

“We try to make no more than five [cases in a sitting], because mentally we can’t cope”.

Gender Imbalance on Panels

“[T]he panel needs to be, I would say, ideally gender balanced because then the woman would be able to ask the right questions that she feels the woman would want to talk about, convey, double check on things and she may not be... feel intimidated by disclosing that information. But in terms of hierarchy, I don’t think there, on the panel itself, I think there should be a gender balance because more often than not, especially with domestic violence which is probably a lot of the times the reason why, or family violence, a reason why situations get really bad and they need to go to divorce courts or whether it’s gambling, drug addiction. A lot of perpetrators are male so having gender balance is actually very important because the gender and the patriarchy thing where *the woman needs to be patient, she’s softer than the guy and she should be able to withstand*, that’s also a very stereotypical understanding of females as well”.

“[I]t was awful, there was no emotional support... being there the only female amongst five imams... You get emotional (talking about violence and cheating) but it was like a real mechanical process”.

“Sometimes there are issues you can’t discuss with a man, things that happen in the bedroom... I can’t sit in front a strange man and discuss

these issues and it might be an important part of what I have to say". "[T]here could be a woman on the panel. I mean we have a lot of Muslim scholars around these days ... [Y]ou can't discuss with a man things that happen in the bedroom. I can't sit in front of a strange man and discuss these issues, and it might be a really important part that they would say, *okay your divorce is valid* but there wasn't a woman at my time and, you know, I could say to her, *Look, can I talk to you about this subject and you can relay it to the men, or something*".

Most of the imams interviewed were able to identify that a predominately male panel would potentially create discomfort for women when sharing sensitive or private details of their marriage.

"She's sitting in front of a panel of men, so shyness and embarrassment also plays a big role in that. So, we do believe that more services need to cater for women than men and these are the sort of things that we need to manage and just overcome over time.

[W]ith the females, when it comes to very private matters and some things can be very, very private... they might probably not even want to say that out of their tongue".

Both the Board of Imams Victoria and the Australian National Imams Council have made positive steps to address these issues for women through recent changes to the constitution of their divorce panels.

Re-traumatisation, Privacy and Forum-shopping

It was reported by professionals working with women that the divorce process can be:

"... debilitating, very disempowering. They're already making a very big decision, and we know with DV [domestic violence] especially... we know it takes several attempts to leave. So again, the amount of trauma and draining, the draining process this woman would have had to go through to finally either make the decision to leave and seek help and then we're putting her through – I don't think there's any words that can do justice to how crippling that experience [with imams] is, and unfair, really unfair".

"[H]aving to present and talk about what the problem is, is really quite humiliating for a lot of women and most women won't actually say the truth. So the idea of having the board is supposed to sort of give more formality and governance and protect the imams but it actually means you've got a women speaking to three people. Sometimes she'll have a conduit so one imam will speak on her behalf but her information is still travelling to men that she doesn't know. And if you're waiting to go in to be heard – and you can wait up to three to four hours – you're hearing everybody else's issues so there's absolutely no privacy and it's just really, really humiliating".

"Women need to be able to be comfortable to disclose information and my clients have told me that they can't be open with sheikhs, they can't disclose a lot of information, they don't feel comfortable doing so, they feel as if they're going to be judged, there's no rapport that's being developed for them to be comfortable to disclose information".

Although some imams claimed to understand women's discomfort in sharing private information during divorce proceedings, ultimately the spaces in which these proceedings

take place are not considered to be safe spaces by the women using them.

The phenomena of ‘imam shopping’ should also be noted, which is where women go to multiple imams to seek different opinions in the context of religious divorce.

“I guess we tried to do mediation through our family first and then we went through the different imams or sheikhs that were recommended to us and they were either not helpful or they didn’t want to help either. And so it got to a point where things were just not going anywhere and my partner didn’t want to give me a divorce so I ended up just having to leave the home that we were living at and I went back to my parents’ house and still asked for a divorce. It was happening so I had to go through... I think it’s the Imam’s Council of Victoria”.

While some imams complained that ‘imam shopping’ wasted their time and created ‘tensions’ between imams, from the perspective of the women this is often necessary for the preservation of their mental health, as well as to secure their substantive divorce rights.

“Well, [if] you’re not happy with that opinion, go and get another one. Just even I know definitely... communities some people who just go overseas, just go to Canada, bypass Australia completely, go online, find an imam that has openly said I will divorce you, come to me and I will divorce you and I’ll give it to you”.

Impact on Faith

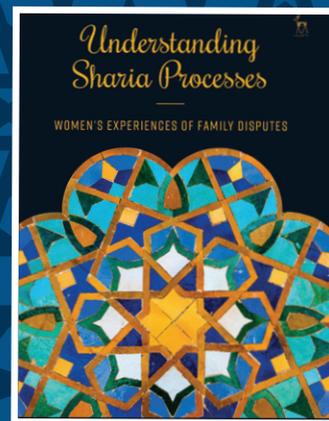
Some women turned to their faith for strength during the difficult process of divorce.

“It [my faith] helped a lot especially during my mental health rehabilitation phase and I felt that

when someone has rock bottom the only way to go after that is to go upwards so my faith played a long way to heal and recover from my traumatic experience and it has only grown strong after that period”.

However, some women described how the divorce process left them questioning their faith.

“I couldn’t step foot in a mosque... for a long time I just didn’t want anything to do with Islam. I was just hurt”.



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Part IV. Recommendations for Improving Islamic Divorce Processes



For full details and analysis of the project findings see Farrah Ahmed and Ghenia Krayem, *Understanding Sharia Processes: Women's Experiences of Family Disputes*. <https://www.bloomsburyprofessional.com/uk/understanding-sharia-processes-9781509920730>

During the period of research, a number of important changes occurred in Australian Islamic divorce processes. For example, imams associated with bodies like the Australian National Imams Council and the Board of Imams in Victoria made a number of changes in order to improve their processes. Therefore the recommendations that follow may not apply equally to all organisations and their respective Islamic divorce processes.

Support and Resources for Religious Divorce

The following recommendations should be viewed against the extraordinary stressors and resource constraints that imams face. For example, imams complained of being threatened and fearing for their safety as a result of being involved in Islamic divorce processes, so much so that some imams have had to hire security guards for protection from aggressive/aggrieved husbands.

Almost all imams complained of being under-resourced, unsupported, under-skilled and having to respond to divorce applications under serious time constraints. Imams felt they were under considerable scrutiny and criticism. As one imam put it, '[t]he media want to pick on us'. Unsurprisingly, imams felt under a lot of pressure and stress.

Few of the recommendations outlined below are workable unless imams are able to work in conditions which are safe and well-resourced.

Community organisations should also consider whether women seeking Islamic divorce should have to bear the costs themselves. While women did not generally raise cost as a concern, many faced financial difficulty. If community organisations could fund the panels granting religious divorce, so that they did not have to charge women

for their services, this would reduce the financial burden for women and, more importantly, indicate community support for these women.

Pre-marriage Briefing and Counselling

Counsellors and psychologists reported that Muslim couples often only approached them when the relationship had deteriorated significantly. It has been suggested pre-marriage counselling may help to:

“[T]ake the stigma away from the whole counselling, you know, marriage counselling thing and have it seen as a more positive, proactive move rather than a signal of failure”.

Rethinking Marriage Contracts and Delegated Divorce Rights

Pre-marriage briefing and counselling sessions would also offer an opportunity to discuss the Islamic marriage contract. One imam encouraged women to gain knowledge about clauses granting them specific types of Islamic divorce:

“The lady, before marriage, she should know all of this: you can have the right to get your divorce if you write this in the contract, you have the right to do this... So we encourage all of them to please make a course with a knowledgeable person”.

Notably, the standard marriage contracts used by the Board of Imams in Victoria now contain a clause that delegates divorce rights to the wife (known as *talaq tafweedh*), which can be relied upon via application to an Islamic panel.

Financial Agreements

Another possibility which those drafting Islamic marriage contracts should consider is whether these contracts could serve as binding

financial agreements under the Family Law Act 1975 (Cth). If Islamic marriage contracts were recognised as binding financial agreements, this would allow women to enforce property settlements.

“[E]very Muslim getting married should do a binding financial agreement. That would get rid of all those issues”.

Organisations such as the Board of Imams in Victoria now use marriage contracts that include binding financial agreements.

The Initial Stages of Islamic Divorce Processes

We found that women were poorly informed about what to expect from Islamic divorce processes. Women should be briefed thoroughly, verbally and in writing, on the process and timeline before they engage substantively with the divorce processes. Given the other stressors on women during these processes, it is particularly important that those offering religious divorce offer an accurate and detailed account of the process and timeline from beginning to end.

Women on Panels

Islamic divorce panels should include female religious scholars. All women interviewed noted that speaking to an all-male panel of imams was intimidating and uncomfortable. Women felt particularly humiliated when describing intimate aspects of their marriage to male imams. A number of women also believed that male imams identified more closely, and sympathised more, with their husbands. In a significant development, the Australian National Imams Council recently appointed the first female council member in Australia. This scholar also now sits as part of the the

Board of Imams Victoria. She described her role as follows:

“In my opinion, when it comes to family disputes where women are involved too, the presence of a female member on that panel is very essential and much needed. As a woman in that role, I can give better understanding to other women’s feelings, needs and what they might be going through, and clarify it to the other party. In addition, the presence of a female member can create a comfort zone for other women to disclose their personal and confidential issues where they might be reluctant to disclose in front of male members. I know for sure that I’m adding value to my role as a women”

Professionals on Panels

There are also potential benefits of including a range of professionals – lawyers, mental health professionals and social workers – on the panels which hear religious divorce applications.

“I think the *sheikhs* should have on their panel a multidisciplinary panel where it’s the *sheikhs* who have the legal rulings but then it has to be additional experts, whether it’s a mental health professional, a child advocate professional, just like mimicking the mainstream services, mainstream law, family law. We’ll appoint a family consultant to explore the dynamics of the family and give recommendations. That’s a very good model. They also have an independent lawyer for the child as well so that the lawyer can actually look at what’s in the best interests of the child irrespective of what the parents’ wishes are and how they engage or what not. They take it into consideration, but you know what I mean. So, and I think that that multi-professional disciplinary panel is better informed than having religious theologians because they’re

not experts in areas of mediation, they're not experts in family law, they're not experts in child development".

Education and Transparency about Divorce Options and Financial Entitlements

Women seeking Islamic divorce had little understanding of their options. Understanding their options and the difference types of divorce is particularly important because of the implications for mahr (Islamic marriage gift). Though the women we interviewed varied in age, cultural background and level of Islamic and secular education, only one received or retained her *mahr*.

Clearer Processes and Procedures

Providers of Islamic divorce processes have acknowledged the need for clearer policies, processes and procedures – relating to domestic violence, confidentiality and conflicts of interest – and the need to make such policies known to clients. As Muslim communities across Australia are relatively small, women expressed concerns about confidentiality and local community gossip. Women were also concerned about potential conflicts of interest.

The Board of Imams Victoria and the Australian National Imams Council are currently working on these issues:

"we do have procedures but what we want to do, we want to put more meat on them, introduce more procedures".

Such processes should include structured timetables, clearer information for the parties, screening processes that adequately account for parties' vulnerabilities, and better

written records to document the process and final determinations.

Acknowledgement and Response to Injustice, Abuse and Harm

Women using Islamic divorce processes expected an authoritative acknowledgement that their former husband's behaviour was un-Islamic. They expected that the imam, as a religious authority figure, would rebuke or chastise their husbands.

For many women, these desires and expectations were not met by the processes. Imams should consider whether they can do more to acknowledge injustice and harm experienced by women.

Domestic Violence

Imams stated that they encouraged women to report domestic violence to the police and gave weight to legal processes relating to domestic violence. However, as outlined above, women and professionals highlighted a number of areas for potential improvement.

Importantly, professionals working with women stated that whether or not the woman chooses to leave the relationship, the labelling of domestic violence is important in order for the violent partner to be held accountable and potentially change their behaviour. In situations where a man can be rehabilitated and the marriage saved:

"[S]ome services have to be present for the man to give him a chance to change or give him some education because, in many cases, he can learn, he can change".

The identification of and response to domestic violence in Islamic divorce processes is a key area for

change. Notably, both the Board of Imams Victoria and the Australian National Imams Council have recently implemented specific domestic violence policy and administrative procedures. The Board of Imams Victoria has also employed a trained and skilled family violence practitioner to work with women experiencing domestic violence. Further, recognising the need to work with men on this issue, the Board of Imams Victoria is developing programs for men to address this issue.

Referral and Integration of Support Services

Imams need to be empowered to refer women to a greater range of services appropriate to their circumstances.

“[Imams] become the jack of all trades despite them not having any professional skills in relationship counselling, marriage counselling or even counselling post-separation... they don’t have any mediation skills as well. [Their professional in experience with counselling] brings additional problems to the... divorce or mediation process, because they don’t know how to effectively and therapeutically engage the couple”.

“We want marriage counsellors, we want psychologists, we want mediators, but, you know, I’m the sheikh, I’m the person sitting and I have to find all these people. And that’s, we’re out of resources”.

There are many instances where women would have benefitted from specialised counselling, mediation, legal aid and domestic violence services. Referrals to, or integration of, such services into Islamic divorce process would benefit women.

• Counselling

A counsellor explained their role:

“So I do the work with her, I do the work with him and then when they’re good, then bring them together. And I find it works, having that one on one time with the man, it’s different. I didn’t used to do that. I used to put them together and it was like I’m a referee more than a counsellor. I will get their permission and I find out exactly what I’m allowed to tell the imam from what they’ve told me and whatnot. And then they sit with the imams and we go through the process. And sometimes they don’t need me, and if they do need me I’ll sit with them... and introduce the process and then hand them over to... the imams”.

• Mediation

Imams were also open to the possibility that issues around separation – apart from the issuance of the religious divorce itself – could be dealt with by mediation instead of by the imams themselves. One imam responded to this suggestion as follows:

“Yeah, so this way, instead of asking what’s going to change from our side, instead of saying, Look, we are not going to deal with women, with the children and this, we’ll say, Yes, we’ll deal with it but we’ll refer you to a mediator and we’ll give a recommendation. That would be perfect. That would be perfect, if we can get mediators to do this, it would be perfect... Yeah, it would be perfect. There’s no problem. Yeah, and even if the mediator, regardless of their faith, we are happy if there is a body of mediators”.

• Legal Services

Women engaged in Islamic divorce processes should be referred to legal services in order to claim postdivorce entitlements through the civil law system as a matter of course. As property settlements within the Islamic framework are very similar to the

Australian legal framework – namely a contributions-based system that accounts for both financial and nonfinancial contributions – imams could also be offered training on Australian family law to identify convergences between Islamic divorce proceedings and family law.

• Relationship Support

Where appropriate, imams should consider referring women to professional services focused on family relationships.

Sensitivity to Cultural and Linguistic Diversity

Islamic divorce processes need to be more sensitive to the diverse needs of the Australian Muslim community. For example, one interviewee described the difficulties she faced when having to explain her domestic situation to a panel who had little English language.

“I guess, he didn’t speak any English at all. So there was another man that semi spoke English and the female was, she was sort of semi speaking English as well... And as I was speaking, the female was translating to the man and the man was translating to the scribe so I’m pretty sure all of my [story]... would have been lost in translation”.

Imams acknowledge that one of the ‘gaps’ in their services is their lack of access to accredited interpreters. They generally rely on translations from imams who are fluent in the relevant language or other members of the community, including people who support participants through the processes.

“While you’re dealing with a country that everyone speaks English, I mean, most of your clients are going to want you to speak English. The

*other ones who don’t speak English, they go to their own leaders. If he is from, for example, Pakistan speaking background, they’re going to go to Rooty Hill *sheikhs*, or if they are Arabic or Lebanese they’re going to go to like to LMA [Lebanese Muslim Association] or to... another *sheikh*. But we’re here to represent all, and if you have to represent all you have to speak the common language which is English... And now we’re at the position... where we have mainly an Arabic sitting and an English sitting which takes place on Tuesday”.*

Enhanced Role for Muslim Women’s Organisations

The support of Muslim women’s organisations, such as Muslim Women Australia (MWA) and the Australian Muslim Women’s Centre for Human Rights (Victoria), for women facing relationship problems is vital, particularly as concerns about their community standing or reputation are important to some women.

“[B]ut you still see a whole lot of women living under the same sort of situation that I was but they’re too frightened to get away... just what everyone else is going to think. Like there’s women who have busted their husbands cheating and women who their husbands don’t come home but, you know, to walk away and leave them, what would the community think of them”.

Women interviewees stated that they found culturally specific services helpful in navigating the divorce process. For example, in the case of one woman who was supported by case workers in a Muslim women’s refuge:

“Like I’d advise them at the time, you know, I’d just get their advice, like, He’s called today, what do you think? Should I let- and they were very supportive in saying, Okay, let him see



the kids, go see, maybe he might, you know, the support was there”.

However in more recent times, high demand, limited resources and more streamlined panel processes has meant that women’s organisations have not been able to maintain this support for women in the community.

“I think it would really be very amazing and vital to have a woman have the same case worker that has been working with her, that is planning her, doing her case management plan, that’s walking with her throughout her journey of conflict and, you know, whether she leaves her husband or doesn’t. But we have a process that is time, that

*is evaluated in its efficiency and effective way for every case worker that works with the client. So we would love it if that case worker was not, was able to actually move in and still advocate on behalf of the woman inside, to the panel of *mashaikh* [plural of *shaikh*, an imam or religious scholar] because she has the full story for her. And we have, like I am of the opinion and believe that it is important for the woman to not to tell her story a million and, a million times. And it’s important that our *mashaikh* recognise the experience and the expertise of Muslim women organisations who’ve been, you know, who have been in the field for a long time, who’ve advocated on behalf of women and who have the Islamic*

jurisprudence that can, that just gets us by where we're able to walk with the woman inside. Because I hear a lot of things about when women say they go in there and they come out they feel like they're so distraught, they're not the same".

Community-based access to legal services via Muslim women's organisations may help alleviate women's concerns that accessing legal services is going to lead to isolation or judgement from their communities. A greater role for Muslim women's advocacy services like Muslim Women Australia would ensure that vulnerable women are supported in a holistic way and that their various needs, such as housing, legal advice, financial support and counselling, are met in a religiously and culturally appropriate manner.

Improving the Family Law System

• Better Enforcement of Orders against Former Partners

Women who engaged with the family law system reported frustration with problems in enforcement of court orders against their former partners. One woman reported that two court orders against her former partner to provide his financial information were not enforced. She concluded: 'I really do feel like I'm being abused and the courts can't do anything.'

Interviewees reported men allegedly underreported their earnings from their personal businesses in order to avoid paying the appropriate amount of child support. A number of women reported that they received either very little or absolutely no child support.

• Better-Tailored Legal Aid

A number of women felt that there was too little time to discuss their issues

with legal aid lawyers. Some women also raised concerns about the effectiveness of their legal aid lawyer. One woman complained that the lawyer did not give her an opportunity to speak in court even though she wanted to and her husband was able to speak to the judge. Another woman felt that her lawyer was insensitive to her history of domestic violence and was not supportive of her desire to have her ex-husband stop contacting her.

The additional burden on women in undergoing dual state and community processes should be taken into consideration when allocating legal aid and legal representation.

• Enhancing the Cultural Sensitivity of Mainstream Services

A number of women felt that the mainstream services they accessed were unaware of their cultural or religious needs and therefore did not provide necessary support. For example, some of the women felt that their husbands were being manipulative and controlling throughout civil proceedings, particularly during mediation sessions, and that mediators did not appreciate this due to a lack of cultural understanding.

Women did not always feel comfortable bringing cultural or religious needs or preferences to the attention of mediators.

Mainstream services need to be culturally sensitive and knowledgeable to serve these women well and make them feel comfortable enough to articulate their cultural needs, including a greater diversity of mediators from different religious, cultural and ethnic backgrounds.

"When I talked about marriage, mahr, straightaway you knew the process. I guess that's where it

“helps... familiarity, if the counsellors are familiar with the Islamic religion, culture or religion laws. It helps them to understand the client”

• Legal Recognition of Mahr (Islamic Marriage-Gift to be Given to the Wife)

Only one of the women interviewed received the *mahr* that was owed under their Islamic marriage contract. Even where a right to *mahr* was recognised during divorce proceedings, there was an enforceability gap. Imams are generally powerless to enforce the payment of *mahr* if the husband is unwilling to pay.

The Australian legal system might have a role to play here, such as in the case *Mohamed v Mohamed* [2012] NSWSC 852. The potential for Islamic marriage contracts to make mahr legally enforceable is an area that requires further research and advocacy.

• A Muslim Family Relationship Centre/Service

The recommendations outlined in this booklet are multi-faceted. One way of meeting them might be through the creation of a specialist Muslim Family Relationship Centre. Some Muslims are reluctant to access mainstream dispute resolution processes as they do not view these processes as being sensitive to their religious beliefs and needs when navigating divorce.

A specialised service for Muslim families may help to overcome these concerns, as well as shortcomings within current Islamic divorce processes, particularly the pressure on imams to be a ‘jack of all trades’, including mediators, counsellors and religious experts.

Such a service could provide information and education from

premarital through to post-divorce support. It could also address imams’ concerns that they cannot offer the range of services required by women seeking divorce and their acknowledgement of the need to make appropriate referrals to specialised services.



This report can be accessed online at https://law.unimelb.edu.au/centres/alc/research/publications/islamic-community-processes-womens-experiences-of-family-disputes/_recache
