

# Report on the Middle Eastern Communities Consultation for the Family Law and Culturally & Linguistically Diverse (CALD) Communities Project

July 2004

## Background

The Legal Services Commission, in partnership with the Migrant Resource Centre SA and the Multicultural Communities Council of SA, received a grant from the Law Foundation to assist it to administer a project to enhance access to and understanding of Australian family law for Culturally and Linguistically Diverse (CALD) Communities. The project was intended to benefit CALD communities with 'high need'. A project reference group was set up, including the Migrant Resource Centre SA, Multicultural Communities Council of SA, Migrant Women's Support and Accommodation Service, Survivors of Torture and Trauma Assistance and Rehabilitation Service, and the Family Court of Australia - Adelaide Registry. Following consultation with the reference group, the African, Asian and Middle Eastern - communities were identified as high need communities. The reference group also confirmed that community consultations would be beneficial to ascertain the needs of the communities and appropriate ways to deliver community education in a culturally sensitive fashion. With the assistance of the Middle Eastern Communities Council of South Australia, consultations with the various communities were organised and were attended by community members and leaders.

## Middle Eastern Communities Consultation

The Middle Eastern Community Consultation was conducted on Thursday 1/7/04 at the Migrant Resource Centre premises. This consultation was attended by members of the Iranian, Afghan, Egyptian, Palestinian, Pakistani, Iraqi, Lebanese, Kurdish, Turkman and Armenian communities. Interpreters were present to assist participants with limited English.

The purpose of the consultation was to obtain information from the various participants about their traditional means of dealing with various family law situations, taking into consideration cultural, religious and community issues. However, it must be recognised that the report can not adequately reflect the great diversity among and within different groups, in terms of religion, language, levels of education, culture, demography and experience. Differences in the participants' educational background were considerable, with some participants having formal education and others having none whatsoever. Participants' life experiences prior to arriving in Australia varied widely and included both short and lengthy stays in detention centres, war and rebellious uprisings, oppressive governments, torture and the death of family members through persecution, injury or disease. Participants were principally of Muslim or Orthodox Christian religious background, in addition to several people of Druse religious background. Even among participants of the same religious background and country of origin, considerable differences in culture and practice were noted. For example, the cultural and religious practices of Muslims and Christian Egyptians were significantly influenced by their region of origin. A distinction between practices in cities and rural areas was particularly notable.

It is acknowledged that the issues which were raised in the consultation are by no means a full representation of the views of the various Middle Eastern communities in South Australia. In addition, while this report has



been compiled in consultation with the community leaders of the various Middle Eastern communities in SA, it is acknowledged that information and ideas may have been misinterpreted in the process of transcription.

The participants were seated in small groups of 4-7 people to help facilitate discussion. We used an overhead projector to highlight the case study. Each small group had a facilitator from the Legal Services Commission or from the SA Registry of the Family Court. The role of the facilitator was to explain the various situations and to record participant's responses. This process was essential when seeking information from people for whom English was a second or third language.

A case study about a migrant Middle Eastern family – “the Aymans” - was used to focus discussion on relevant family issues. The case study highlighted the challenges the family faces in settling in to a new and different culture while retaining their traditional cultural values. The case study was developed based on feedback from various community groups of what they perceive as major hurdles in migration and settling into the new country - Australia.

### **Case Study:**

***The Ayman family has recently migrated to Australia from an unspecified location in the Middle East. They have no support network, their extended family was unable to migrate with them and they have difficulty in settling into the new and very different place. The husband's English is limited and he has difficulty finding a job. The wife finds full time work but the children are having difficulty settling into school and their new environment. There are stresses in the marriage. The Aymans encounter various problems, including financial difficulties, parenting conflicts, various clashes of cultures and domestic violence. Through these difficulties, we explore the interface with the Australian legal system and issues including divorce, property settlement, child protection, child residence/contact and mediation.***

### **Responses to the case studies**

#### ***What is family in the Middle Eastern communities?***

*Religion was viewed as a dominant force impacting on families more than cultural or community values. Amongst the Islamic group there was a varied interpretation of the Koran. The Arabic speaking members viewed family as large, encompassing 3 generations, mother, father, children and grandparents. The Afghan community held the view that family can often be people living in the same village and connected to each other in a certain manner. The Kurdish felt that family is the most vital part of society. Palestinians may consider those who are not related by blood as family if close relationships or friendships exist.*

*Families in Egypt are similar to many other families throughout the Middle East, where religion is the core principle of family ethics, particularly in rural areas and urban ghettos. As for the remainder of Egyptian families, cultural and community values play an equal part to religion in the household.*

*Society is often patriarchal, the senior male is viewed with the utmost respect; generally the father has the major responsibility for the family and decision-making. Adult children live with their family until marriage.*

*In Egypt, the father is viewed as the money-earner and the head of the family. The mother is considered “second in command” (and is the family senior if the father is deceased or absent). Parents are quite happy for their children to earn an income. It is a child's duty to contribute financially towards the expenses of the family home. Even so, the majority of Egyptian parents discourage their children to work so as to gain a better education. On most occasions, if*

*the mother goes out to work children are left in the care of other loving family members, not with hired baby sitters. Family ties in Egypt are very strong, they extend beyond the immediate family, to include aunties, uncles, grandparents, etc. The Lebanese rely on extended family for support, baby sitting and so on. Leaving children with hired babysitters, or in day care facilities is an unknown and at times unacceptable concept.*

*A great fear amongst the Middle Eastern communities is the perception of the destruction of the rights of the head of the family, as in Australia children have rights. Parents are frightened when their children start to earn money because the parents no longer see themselves having control over their son/daughter. Social security payments to the child are viewed negatively because they often lead to an erosion of the family values. Children who display a high level of independence are also a concern for families. The general feeling is that this independence is making it difficult for the father to protect his family.*

## **Family dynamics in Australia**

***The nuclear Ayman family (mother, father and children) have migrated to Australia. The extended family remain in Africa. The wife finds full time work in Australia as her proficiency in English is sound. The husband struggles to find suitable employment. He becomes a “house husband”. This is a major change in the family dynamic. The male/female role reversal is one fraught with difficulty. The male is no longer the source of income in the family. The female is overloaded with both domestic chores and external work and there is a view that family duties are being neglected, having a negative impact on the children.***

***The first scenario seemed too difficult for some of those present because having the wife find work and the husband stay at home is not culturally acceptable, it was seen as destroying the family and the father failing to meet the needs of his family – it was better to go back home than face the shame.***

*It is consistently troublesome for an Egyptian man to concede that his wife could be the “breadwinner” of the household. This degree of difficulty is variable; of a high extremity in families from rural areas and less significant in families in urban areas, where both husband and wife are likely to have an occupation.*

*Amongst the Islamic representatives there was agreement shown that in this scenario the wife would be encouraged to work, but that there would be religious barriers in place as to where a woman could work. For example, she has to cover her head (‘hijab/purdah’) as required by Islamic law (especially Iraqi and Pakistani women), and will not be able to work as a waitress, in the casino or places serving alcohol.*

*Muslim-Egyptian families are generally divided into two, firstly the more pious families, generally from rural areas and secondly moderately liberal families from urban areas. In the first group, it is acceptable for the wife to work, if there is a need for her to join the work force and as long as she abides by the appropriate Islamic dress code. However, men from this particular group are not very enthusiastic about their wives making such decisions. The second group do not abide by particular codes of dress or prohibit certain occupations.*

*Particular pockets of the Islamic culture forbid unrelated men and women from being in the same room. Some Arabic speaking women community workers felt that according to Sharia law, a woman couldn’t be prohibited from working by her husband. This view was not shared by many of the male counterparts.*

*One issue raised by the Islamic participants was the possibility of the wife feeling resentful because the husband would be sending money back to the country of origin to support his family, but even though the wife is working she cannot do the same thing for her family. This is because the husband would normally be in control of the family’s finances. The responsibility to support the wife’s family would normally fall on her brothers, because it is generally*



the male members of society who bear responsibility in attending to their family's needs. If the wife does not have any brothers, she is obligated to support her family but will need to consult her husband first.

There was general consensus that the scenario could raise serious health implications for the wife as she still had home duties to consider – the men do not see domestic responsibility as their role, it is the work of a wife. However, this again depends on the relationship between the two, there are some men who share the care of the children and home duties. In Muslim-Egyptian families women do bear full domestic responsibilities if they do not work.. However, if both parties work, these responsibilities are shared, the scale tipping towards the wife.

If a wife is working then the extended family has a role in assisting with the children. It was commonly seen as inappropriate to place the children in care – that is what family is for.

## Children's Issues

***This part of the case study deals with the Ayman's teenage son who is having difficulty in school. He is receiving negative reports from school, getting into fights with other children and being disruptive. The school has told the parents. The parents are upset. They migrated in order to give their children a better life. Negative reports from school are viewed extremely seriously.***

***The father attempts to remedy the situation. He has not had domestic responsibility before and finds it difficult to communicate with the child. He disciplines the child physically. The school becomes aware of this incident and the principal requests that the parents make an appointment. The parents are fearful that the government may take the child away from them.***

The Islamic and Christian representatives all made it very clear that social workers and teachers needed a better understanding of the social structure of families. At the same time, it was acknowledged that families on arrival in Australia need an understanding of Australian law and its impact on families.

From the feedback received, both Christians and Muslims believe that negative school reports are seen as very serious and that action must be taken to address the problem. However, the school's response to the issue of physical discipline was troubling for many participants. Most would prefer to have the matter dealt with through counselling sessions conducted within the boundaries of the family, rather than through intervention on the part of the school or the government.

The Afghans and Egyptians raised the issue that according to Islamic law, one should not beat a child, especially to bruise or fracture. All participants agreed that disciplining a child is a domestic matter and should not have any state interference. The Iraqis strongly stated that child discipline is a domestic family right. This perspective was also reflected in the comments of Afghan participants, who described how, in their culture, children are the responsibility of their parents until they are married. Once the children are married they become an independent unit, although they may live under one roof.

The Orthodox Iraqi group felt that social values developed in Australia have the potential to erode the Islamic culture and values. They felt it would be best if the errant child were pulled out from the mainstream schooling system and put in an Islamic school to resolve the behavioural problems. The Egyptian participants were divided on the matter of whether Islamic or Christian schools resolve a child's behavioural problems. However, there was a firm belief on the part of some participants that Australian society will erode all cultural values.

The Lebanese and Arab speaking participants raised the issue of sexual abuse of children and stated that sexually related interference is considered a big issue, but appeared not to be comfortable to discuss this any further. Interference with a child brings shame and may result in retribution /honour punishments. Many will not report

events to police and may take the law into their own hands in order to avenge the shame caused. The Egyptians stated that sexually related interference is considered taboo in all families and that it is extremely rare for such interference to occur. Children are well protected from this abuse by the high standards of ethics and morals in society. If such a situation arises, vengeance is often exercised by family members who disbelieve in reporting these events to the authorities. If matters are reported, a severe sentence is often given by authorities.

The participants felt that mainstream services need to understand the position and standing of the family unit within the community. It was also felt that cultural diversity must be understood by schools, police, community agencies and mainstream society. Some noted that discipline within Middle Eastern families is a lot more strict than that seen as appropriate by the mainstream culture. The issue of what is reasonable punishment was explored.

Many participants expressed the view that more often than not, a husband will blame the wife for any issues concerning the children's misbehaviour or perpetrated offences. The wife may be seen as neglecting her responsibilities, which impacts on the husband's status and in some instances, produces unresolvable problems that may lead to divorce, separation or domestic violence. Participants from the Egyptian community indicated that both parties often endeavour to put their differences aside for the sake of their children.

Due to the conflict of cultures, the temptation to return to the home country is always present. This is not always possible for refugee migrants. They are torn between the risk of persecution in their home country and family breakdown in Australia.

## Separation

**There is ongoing tension in the marriage. Due to this, the wife moves out of the matrimonial home, leaving the husband and children. She moves in with a friend from work.**

Certain traditional Iraqi groups felt that the wife would never walk out of the marital home. The possibility of the wife leaving the husband or children was beyond comprehension. The Afghans expressed the view that it is all right if she goes to a trusted person's house (father, brother, sister). Leaving the marital home and going to a friend's house is not lawful according to Islamic law. If she leaves the house without her husband's consent, then this is the precursor to divorce. In this case, after 3 months, the parties usually divorce. The Orthodox Christian Lebanese, on the other hand, highlighted that the Church will not allow divorce. The Muslim Egyptians felt that whatever the problems, the family must strive to stay together and can sort through problems among themselves and or with the assistance of experienced family members.

All participants agreed that lack of support through the family network is a big issue. The wife is affected by cultural conflict, because she knows that in Australia she can have a decent life without her husband and she does not need male authority. However, she also realises that she has broken Islamic law by leaving her husband.

There is a lot of pressure on the wife to remain with her husband no matter what. If a wife chooses to separate she can not return to her family as she may face retribution from her own family, whereas a husband can return to his country and find another bride. However, he may face some level of shame for not being able to control his first wife.

The participants highlighted the conflict between Islamic law and secular law. The husband may want to divorce the wife according to Islamic law. Only religious divorce conducted by an Imam (Islamic religious leader) is recognised, according to the participants. However, the law in place in Iraq at that time did not recognise the religious law. Some participants said that Sharia law (Islamic religious law), like Australian law, specifies that both husband and wife must respect each other's rights. The Afghans therefore noted that the tension in the relationship occurs because neither Islamic nor secular Australian law is being followed.



The issue of separation under one roof was explored. All participants affirmed that this is not an option in the Middle Eastern culture. If the wife is living under the same roof, she will be expected to wash, cook, clean and have a sexual relationship with her husband. Separation under one roof is forbidden ('haram') according to Islamic law.

The new environment and laws in Australia cause much tension resulting in a bad reputation, shame and loss of face for the family. This stress may bring about domestic violence.

## Property Settlement and Divorce

**Part of the case study deals with the wife returning back to the matrimonial home. The husband wants her to sign an undertaking not to make any claim on the marital property.**

Participants felt that the husband may want to impose such a condition in order to regain his "male authority", which has been eroded since moving to Australia. In the Egyptian community in both Muslim and Christian homes, the wife's return to the matrimonial home is always a welcome decision to all members of the household, whether she signs a legal document waiving her matrimonial property rights or not. Most wives would deny such a request. The greatest family fear in relation to property or financial matters is to deny children their right of inheritance, from either party (father or mother). This entitlement is not secure when either party starts a new family.

**The husband and wife reconcile temporarily, but later separate again. The participants were asked to talk about the issues would surround divorce and division of property.**

According to some Egyptians, the mother in the scenario is under much pressure and as she is responsible for the family, she should dissuade the husband from divorce. Upon divorce the wife is to continue occupying the matrimonial home, taking custody of the children of the marriage. The husband should pay maintenance for the wife and the children until the boys reach the age of eight and girls reach the age of twelve, beyond which the husband takes custody of the children and reoccupies the matrimonial home. Children have no right to choose which parent they want to live with until they reach the age of eighteen. Both parties are to have contact with their children during these periods of custody. Custody is also varied by agreement. The right to have the custody of children is lost if the wife is to remarry, but is not lost by the husband in the same circumstances. Some Christian Egyptians felt that divorce is not possible.

Payment of a dowry is common practice and "mehr/mahar" is exchanged when family sign the marriage deed. In some Middle Eastern communities, the husband pays the dowry to the wife (her family) and in some other groups the process is vice versa. Under Islamic law, the original giving party can make a claim to have the gifts returned upon divorce. For example, if the wife seeks divorce and is unable to give legal reasons (according to Islamic law), then she may lose her "mehr".

Dowry in Egypt is divided into two portions. The first portion is given before the deed of marriage is signed. It includes an agreed sum of money and jewellery given from the husband to the wife and her family. The wife's family uses part of the money to furnish the destined matrimonial home. The second portion is an agreed sum of money to be paid by the husband to the wife if he decides to divorce her. This is a legally binding agreement, although the money is not payable if the wife seeks divorce from the husband or if she commits adultery.

The Australian property settlement provisions are invalid according to Islamic law. The husband is usually able to divorce his wife in Egypt without any need for a judge, by repeating the divorce oath three times. However, this is only the case if he has preserved this right by agreement between the parties before marriage. Occasionally, this

*right is preserved by the wife. All divorces must be legally endorsed at a later stage by an Imam (religious leader) or by a judge.*

*The Afghans felt that it was the husband's duty to support the wife and family until divorce. They strongly felt that family issues must be resolved by their religious leaders, the Imams. The secular courts should only interfere if invited to negotiate and resolve the issues.*

*At this stage of the project, we did not explore what constitutes 'invite' except with the Egyptian Community, who were asked "does filing an application in the Australian Family Court or Federal Magistrate Court by one of the parties constitute an invitation?" They responded that filing an application by one of the parties would constitute an invitation which would signal the termination of the family bond, resulting in great emotional trauma and grief for the other party.*

## Mediation

*There was a general consensus amongst the various groups that mediation of disputes is a good practice and must be encouraged. Family, community and religious mediation will put pressure on the couple to reunite. Mediation is generally conducted by community elders, family elders or Mullah (religious leader) who works to bring people together; it is to prevent the separation. At a later stage, an Ulama (religious leader and authority on Sharia law) may be invited to discuss the legal position. When Australian mainstream style mediation (to resolve the dispute without having to go to court) was explained, the participants were uncomfortable with the concept that mediation will not result in bringing the disputing parties together. It was further explained that this exists within the role of counselling (which occurs at the very early stage).*

*Many participants were uncomfortable with the idea of counselling by someone from a foreign culture who may not understand their difficulties. The Egyptians explained that mediation and counselling by external authorities is usually not chosen. They prefer family and elders as mediators. The external mediators are viewed as separating families. Some groups however were open to the idea of external mediation, if internal mediation, which aims to bring people together, has failed.*

*No fault divorce is not acceptable according to the Koran. The Koran specifies that a party must be at fault, if they want to divorce. Reasons for divorce are usually adultery or that a wife has neglected her duties towards husband and family. It is easier for husbands to apply and have a divorce granted.*

## Domestic Violence

*Islamic law states that the husband must not beat the wife to bruise or break skin. The Koran allocates equal responsibility and the husband is responsible for his actions and behaviour. In Islamic families, if the husband is violent towards the wife –other than when she has committed "haram" (forbidden act-adultery) - then the wife could return to her family until the husband promises not to be violent towards his wife. It is only after this undertaking that the wife will recommence the domestic relationship. Obviously this is not possible when the wife has left her home country and her family is not in Australia.*

*The Islamic religion does not condone violence. Violence is only acceptable in certain very restricted circumstances, such as where the wife has committed adultery. Where adultery has been identified, punishment is implemented by the community.*

*Domestic violence is very rarely discussed outside the privacy of the home. Domestic violence is rarely reported to the police as most Middle Eastern people fear the law. This view has often been shaped by the way people are treated by law enforcement authorities in the home country. A wife who complains about her husband's violence is*



seen as “backbiting”, which is a major sin. The wife’s role is to put up with the violence as the male is often viewed as right. The wife will suffer a huge loss of face if she admits she has been beaten.

*Both the Christians and Muslims in the Middle Eastern group admit that when the circumstance is beyond internal management, then it is acceptable to seek assistance from religious leaders/parents.*

## **Conclusion**

One participant said of the consultation, “I learned that most of us from the same cultural background think the same way on issues of religion, law and our culture, which was surprising to me considering the various religious backgrounds.”

The participants considered that mainstream service providers need to be better educated about the active role of the extended Middle Eastern family in caring for children, providing mediation, dealing with domestic violence and all other areas of family and the law.

The Middle Eastern consultation was largely attended by members of the Muslim and Orthodox Christian faiths. The Sharia law governs the way of life for Muslims in relation to issues of family, the upbringing of children, separation, divorce, property settlement and domestic violence. There are areas where Sharia practices are consistent with Australian family law and there are areas of conflict. As with any law, interpretation of the Sharia law is a major factor and can vary.

The Family Court and the various governmental and community services that manage matters of family law, domestic violence and children’s issues need to be aware of Sharia law and Islamic practices when dealing with the Muslim community. Having specialists within the mainstream system who can deal with these different cultural and religious family issues, especially in mediation sessions, would address this problem. If that is not achievable, a better awareness by educating people working in this area as to specific cultural issues concerning Muslim and Middle Eastern Christian families would help bridge this gap.

The Middle Eastern Christian communities mainly belong to the Orthodox group. They have their own systems and way of life dictated by religious law and practices. The mainstream organisations that handle counselling and mediation must be aware that many of these people would have gone to their religious leader for counselling and/or mediation prior to approaching them. The outcome of the religious mediation may assist the mainstream mediator to narrow down the issues of dispute and arrive at a resolution. This may require the religious and the mainstream mediator to have a working relationship. A successful mainstream mediation may prevent the matter from progressing to the Family Court.

**The Legal Services Commission would like to thank the following people and organisations for their participation, assistance and contribution in this project.**

**All participants and organisations involved in the consultation including**

**Rasoul Ahmadi**, Afghan Community

**Leila Mansour**, South Australian Lebanese Women's Association

**Al Kilabi Saheb**,

**Jamal Amin**, Middle Eastern Community Council of South Australia

**Sherko Kirmanj**, Kurdish community, Middle Eastern Community Council South Australia

**Abbod Alraddi**, Iraqi community

**Ahlul Bait**, Islamic Association

**Abdul K Flamer**, (Iraqi/Arabic) LM Training School

**Mohammad Lattie Wahabzada** (Afghan Community) Pashto

**Alec Balayante**, (Armenian) Armenian Cultural Association of SA

**Najah Saaid**, Middle Eastern Community Council of SA

**Bisan Shahin**, (Palestinian/Arabic) STTARS

**Werya Qane**, Kurdish community

**Iman Abdul Hafiz**, (Iraq) Migrant Resource Centre

**Abdul Khalid**, Iraqi community

**R Ali**, Iraqi community

**S Naqvi**, Islamic Shia Society

**Mayada Al Thaie**, Muslim Women's Association

**Dawood Hussaini**, (Afghani Interpreter)

**Tarek Ahmed Mohamed**, Arabic Interpreter from Egypt

## MIDDLE EASTERN TRAINING NEEDS ANALYSIS

### **Iraqi Community**

Child Protection  
Immigration and Family

Family Law  
Centre link

Child Support

Domestic Violence

### **Kurdish Community**

Child Protection  
Australian Legal System  
Centrelink

Immigration and Family  
Family Law

Domestic Violence  
Child Support

### **Afghan Community**

Family Law  
Centrelink

Domestic Violence

Australian Legal System

### **Arabic speaking people in general**

Child Protection  
Australian Legal System  
Centrelink

Immigration and Family  
Family Law

Domestic Violence  
Child Support