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4 April 2011

Australian Parliament
Joint Standing Committee on Migration
Submission No. 81

Ms Jane Hearn
Inquiry Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
CANBERRA ACT 2600

Re: Embracing Australian Values, and Maintaining the Rights to be Different

Dear Ms Hearn,

I refer to your letter of 22 February 2011 regarding the inquiry into multiculturalism in Australia. On behalf of all Muslims in Australia, I thank you for inviting us to give a submission on this important issue.

Muslims Australia Inc (Australian Federation of Islamic Councils – AFIC) was founded in 1964 as an umbrella organisation for Australian Muslims . The mission of AFIC is to provide services to the community in a manner that is in accordance with the teachings of Islam and within the framework of Australian law and to advocate on behalf of the Muslim community on all such matters that will affect the community's relevance, settlement and integration within Australian society.

The title of our submission is *Embracing Australian Values, and Maintaining the Rights to be Different*. We would like to take this opportunity to clarify some misunderstanding of the concept of Multiculturalism and particularly in relation to the role of Muslims in Australia.

To begin with, we would like you to consider some hard questions from Muslim communities in Australia:

1. Are Muslims regarded as second-class citizens in Australia? Do we have the same rights as other fellow Australians?

2. Muslims are required to have social integration with the majority of people in Australia: What does this really mean? Should Muslims remove their hijab, dress like others, drink alcohol, and go to the pub to demonstrate that they have actually integrated? Is this multiculturalism all about?

3. Can Multiculturalism provide opportunities for Muslims to keep and maintain their culture, language, identity and faith?

The Holy Qur'an encourages ethnic and other types of diversity as blessings from God. Consequently, classic Muslim jurists recognised the fact that what may suit one culture may not be quite suitable for another. For this reason, they encouraged each country to introduce its own customs into its laws, provided that these customs did not contradict basic Islamic principles. As a result, even today, the Islamic laws of Muslim countries differ significantly on various matters.

Contrary to what others belief, Islamic culture itself is an amalgam, a hybrid of several cultures. It could be said therefore, that while Muslims in Australia follow the basic rules of Islam, as do all Muslims, Islam in Australia has some distinct differences in the way it is observed and followed on a daily basis. While maintaining the basic teachings, the practice of islam in India, Saudi Arabia, and Indonesia would be different with that of say in Africa, Europe, and China.

Al-'adah muhakkamah (cultural usage shall have the weight of law) is one of the legal maxims in Islam. Imam al-Suyuti in his book *al-asybah wa al-naza'ir* states that: "what is proven by *'urf* (custom) is like that which is proven by *Shari'a*." This legal maxim is also recorded by the Hanafi jurist al-Sarakhsi. The ulama have generally accepted *'urf* as a valid criterion for purpose of interpreting the Qur'an. For instance, Muslim scholars have referred to *'urf* in determining the precise amount of maintenance that a husband must provide for his wife.

Ibn al-Qayyim writes:

> On this basis, Islamic rulings are given throughout the ages. Whenever you find a custom in practice, you must take it into consideration, and whenever you find a custom has been abandoned, you must cease to consider it. You must not become unyielding all your life in adhering to what is recorded in the books. If someone comes to you from outside of your own region seeking a legal ruling, do not hold him to the customs of your land. Ask him about the customs of his own land and hold him to those and give your legal ruling accordingly. Do not apply the customs of your country that you find in your books.[1]

Custom which does not contravene the principles of *Shari'a* is valid and authoritative. The question is how to determine whether such custom is in line with principles of Islamic law or not?

The spirit of *Shari'a* can be examined under the term *maqasid al-shari'a*, which consists of the five juristic core values of protection *(al-*

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1 Ibn Qayyim, *I'lam al-Muwaqqi'in* (3/78)

daruriyah al-khams) for religion, life, intellect, honour or lineage, and property. Basically, the *Shari'a,* on the whole, seeks primarily to protect and promote these essential values, and validates all measures necessary for their preservation and advancement.[2]

Therefore, Muslims Australia - AFIC is of the view that all types of cultures, laws and rules are to be valued by Muslims as Islamic as long as they are not in opposition to *maqasid al-shari'a.*

In brief, Islam essentially advocates legal pluralism. It considers all kind of ethnic (QS 49:13), religious (QS 5:48), linguistic and racial (QS 30:2) differences as coming from God and hence natural. Therefore, in general, in Muslim lands, communities with different religions had the right to live in accordance with their own laws and traditions, just as Muslims could follow any legal school they preferred.

We learned from the history that based on the idea of *ahl al-kitab* and the concept of *dhimmi,* the Ottoman Empire initiated the Millet system. The Ottoman policy about non-Muslims was based on this system which organised the population on basis of religion and the sect and determined the relationship not only between the communities and the state, but also among communities themselves. The society was mainly composed of Muslims and non-Muslims. The factor which determined the status of the individual in the society and his relationship with the state was either religion or denomination. All the Muslims formed the Millet-I Islam, regardless of their races, cultures, languages and even sects. Thus in Millet-I Islam were Turks, Arabs, Kurds, Albanians, Bosnians, Lazs etc. The non-Muslims were organised in different millets, that is, around different churches such as Orthodox (Greeks, Bulgarians and Serbs), Catholic, Gregorian (Gregorians, Armenians), and around the synagogue (Jews).

The millets had a great deal of power — they set their own laws and collected and distributed their own taxes. All that was insisted was loyalty to the Empire. When a member of one millet committed a crime against a member of another, the law of the injured party applied, but the ruling Islamic majority being paramount, any dispute involving a Muslim fell under their Sharia–based law.

The rise of nationalism in Europe under the influence of the French revolution had extended to the Ottoman Empire during the 19th century. Each millet became increasingly independent with the establishment of their own schools, churches, hospitals and other facilities. These activities effectively moved the Christian population outside the framework of the Ottoman political system. The Ottoman millet system (citizenship) began to degrade with the continuous identification of the religious creed with ethnic nationality.

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[2] See Abu Ishaq al-Shatibi, *Al Muwafaqat*, Maktabah al Tijariyah al Kubra, Cairo, n.d., Vol. II, p.10; and Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, the Islamic Text Society, Cambridge, 1991, p.408

Karen Armstrong points out: "In the Islamic empire, Jews, Christians and Zoroastrians enjoyed religious freedom. This reflected the teachings of the Qur'an which is a pluralistic scripture, affirmative of other traditions. Muslims are commanded by God to respect the People of the Book, and reminded that they share the same belief and the same God" [3]

Nowadays, many Muslims scholars such as Fahmi Huwaydi and Khaled Abou El-fadl suggest that a differentiation based on faith only applies when standing individually before God, and forms no basis for any civil inequities. Modern scholars rejected the *dhimmi* classification of non-Muslims as an historically-bound concept. It is essential to note that by modern standards of citizenship and rights, this *dhimmi* minority status would now be a form of second-class citizenship. It is against the notion of equality before the law. But now it seems that Muslims in the Western world are treated like *'dhimmi'* –as a second class citizen. Even worse, such new *'dhimmi'* does not have a Millet. We live under one law: Western law.

In this context, the model of legal pluralism might be seen as against the idea of legal centralism in which law is and should be that of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions. In this sense, legal pluralism is seen as promoting discrimination that could lead to further social division because different people will be judged according to different norms and standards. In other words, multiculturalism is recognised but legal pluralism is avoided. There should be only one law for all.

The question is 'why should multiculturalism extend to languages and exotic dances but in principle not to law?' In answering this question Gary Bell (2006) argues that 'multiculturalism applied to the law should lead to an acceptance and celebration of legal pluralism – Islamic law is part of a Muslim's culture and completely denying any recognition of this law goes directly against any profession of multiculturalism.'

Such argument is also proposed by many Muslims living in the Western world, but they quickly are labelled as radical and extremists. While in the Ottoman Empire, under the Millet system, Islamic ruler allowed non-Muslims to have their own court, in most modern Western countries the idea of Islamic family tribunal or arbitration is likely to fuel the debate on radicalism and liberalism.

In Ontario, since 1992, Jewish and Catholic groups have adopted arbitration mechanisms based on their own religious framework. The Jewish Court in Toronto, called the Beith Din, has been operating for many years on behalf of the Jewish community. There has been little fuss raised over these communities' use of religious principles until Muslim leaders demanded the same rights. In 2005, officials had to

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[3] Karen Armstrong, "The Curse of the Infidel" The Guardian. 20 June 2002. http://www.guardian.co.uk/worldl2002/jun/20/religion.september 11.

decide whether to exclude one religion, or whether to scrap the religious family courts altogether. The Premier Dalton McGuinty decided that "There will be no Shariah law in Ontario. There will be no religious arbitration in Ontario. There will be one law for all Ontarians."[4]

Another controversy in the Western world arose when in 2008 the Archbishop of Canterbury says the adoption of certain aspects of Sharia law in the UK 'seems unavoidable'. Dr Williams argues that adopting parts of Islamic Sharia law would help maintain social cohesion. Dr Williams noted that Orthodox Jewish courts already operated, and that the law accommodated the anti-abortion views of some Christians. Five months later, Lord Phillips, Lord Chief Justice of England and Wales who had chaired the Archbishop of Canterbury's lecture gave his own endorsement. It seems that Dr Williams has no difficulty conceding that citizens can boast "multiple affiliations" within the nation State. There are instances when a citizen ought to be entitled to resolve a conflict within his own ethnic community or according to the laws and tradition of her own religion. However, a spokesman for the Prime Minister Gordon Brown said that British law must be based on British values. "Sharia cannot be used as a justification for committing breaches of English law, nor should the principles of Sharia be included in a civil court for resolving contractual disputes," he said.[5]

In the context of Australia, the Federal Government has ruled out the introduction of Islamic courts in Australia following debate triggered by the global head of the Anglican Church. In fact, Australian Muslim leaders put a similar proposal to the Howard government in April 2005, but it was rejected. In 2008, the Attorney-General, Robert McClelland, also ruled out introducing Islamic law, or Shari'a. "The Rudd Government is not considering and will not consider the introduction of any part of Shari'a law into the Australian legal system," he said.[6]

But, is it true that Australia will never consider Islamic law? It seems that in two areas namely Islamic finance and halal food, Australian government has been actively involved.

First, Islamic banking attracted new interest since it largely escaped the fallout from the global financial crisis, thanks to rules that forbid the sort of risky business that is felling mainstream institutions. The development of Islamic finance in Australia could provide banks with an alternative source of wholesale funding and draw Islamic banks to set up

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[4] 'McGuinty rules out use of sharia law in Ontario', available at http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1126472943217_26/?hub=TopStories ; see also Anna C. Korteweg, The Sharia Debate in Ontario: Gender, Islam, and Representations of Muslim Women's Agency, *Gender & Society*, Vol. 22 No. 4, August 2008.

[5] Sharia law in UK is 'unavoidable' available at http://news.bbc.co.uk/1/hi/uk/7232661.stm

[6] 'Australia rejects call for Islamic courts' available at http://www.smh.com.au/news/national/australia-rejects-call-for-islamic-courts/2008/02/08/1202234167178.html

operations in the country, Assistant Treasurer Nick Sherry said, as reported in media.[7]
As part of a push to promote Sydney as a regional financial hub, the federal government has pledged to win a greater slice of the regional Islamic finance market by amending tax laws.

The government said such changes would draw fully-fledged Islamic banks to Australia, attract investment in Australian assets from Shariah investors, offer new funding routes through Sukuk bonds and allow the establishment of Shariah-compliant investment products.

"Islamic finance could provide an alternative source of wholesale funds for Australia's financial institutions -- particularly as a result of excess liquidity generated from oil revenues in the Middle East -- and the increase in economic growth in countries with significant Muslim populations, such as Indonesia, India and Pakistan," Mr Sherry told an Islamic Finance conference in Melbourne.

So, although the Attorney-General ruled out introducing Islamic law, or Sharia, at the same time Australian financial institutions are encouraged to do much more to attract Muslim business by developing innovative products which comply with Islamic law.

Second, in the area of halal products, Australian government already work with Islamic organisations as Australia needs to export its meat and dairy product to Indonesia and other Muslim countries. In Australia, Halal red meat production for export is governed by the Australian Government Muslim Slaughter Program (AGMS). The Government and industry considers the AGMS to be both a transparent and efficient Halal standard when included in an establishment's Approved Arrangement.

As Australia's Halal red meat export program, the AGMS is incorporated into the arrangements of all Halal exporting red meat establishments. The AGMS is underpinned by legislation and Australian Government involvement, through the Australian Quarantine and Inspection Service (AQIS). These aspects contribute to the transparency and efficiency of the AGMS and assist in assuring Australia's Halal export markets of the integrity of the system.

AQIS introduced the AGMS program in 1983 to underpin the production of Halal meat and meat products. The AGMS is controlled by legal requirements in the Export Control (Meat and Meat Products) Orders under the Export Control Act 1982, and applies to red meat, edible offal and meat products.

The AGMS program has a number of elements to ensure the integrity of Halal products, including the inspection of establishments by both AQIS and an approved Islamic organisation. Only approved Islamic

[7] http://www.theaustralian.com.au/business/industry-sectors/australian-banks-to-benefit-from-islamic-finance-says-federal-minister-nick-sherry/story-e6frg96f-1225876902384

organisations can certify Halal red meat and meat products for export. AQIS maintains a list of all approved Islamic organisations responsible for the provision of Halal inspection, supervision and certification services for red meat and meat products and the specific countries they are listed for.

In addition, Halal red meat for export receives an official Halal meat certificate co-signed by AQIS and a recognised Islamic organisation. Halal certificate is a written *fatwa* and by co-signing the halal certificate, it indicates that the Australian government has been already involved in Shari'a matters.

Apart from the economic motive, how can we reconcile the conflicting statement and fact above whether Australia will or will not accommodate Shari'a?

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Professor Ronald F. Inglehart of University of Michigan and Professor Pippa Norris of Harvard University conducted an interesting survey: The Attitudes and Values Dividing the West and the Muslim World. According to their research, in reference to key political issues, the attitudes and values of the two societies are virtually identical. Fully 86 percent of those surveyed in the West, and 87 percent of those in Muslim nations, strongly agree that democracy may have problems but it's better than any other forms of government. [8]

Andrew F. March in his books *Islam and Liberal Citizenship The Search for an Overlapping Consensus* (Oxford University Press, 2009) demonstrates that there are very strong and authentically Islamic arguments for accepting the demands of citizenship in a liberal democracy, many of them found even in medieval works of Islamic jurisprudence. In fact, he shows, it is precisely the fact that Rawlsian political liberalism makes no claims to metaphysical truth that makes it appealing to Muslims.

The research findings above are important since many Australians believe that there is a clash of civilizations between Islam and the West. While it is true that culture does matter, we take the view that no culture, civilization or nation can truly separate itself into a pure and an impure. There are only hybrid cultures. This fact alone makes the clash of civilizations prophecy appear unrealistic.

We acknowledge that some Muslims believe that Islamic law is immutable, regardless of history, time, culture, and location. They claim that Muslims may change, but Islam will not. This means that Islamic

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[8] Pippa Norris and Ronald Ingleheart, 'Islam and the West: Testing the Clash of Civilization Thesis', John F Kennedy School of Government, Harvard University, Working Paper Number:RWP02-015, available at http://ksgnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP02-015

regulations are static and final. However, many Muslim scholars would argue that the view above is not justified under Islamic legal tradition itself. Since Islamic law involves human understanding, the social norms of this law follow the nature of human beings because they are derived from specific historical circumstances. This means that most of the regulations in Islamic law may be amended, changed, altered, and adapted to social change. Therefore, Muslims Australia – AFIC takes the position that Islamic law is changeable according to the requirements of different places and times, and therefore, suits the values shared by Australian people.

Opponents of Sharia have long complained that it involves an inherent bias against women and treats them as second-rate citizens. It is important for Muslims to seriously consider this criticism. But at the same time it is also important for the Australian government to respect the rights of Muslim women who want to keep and maintain the way they dress, eat, and interact with others as long as such behaviours does not inflict harm to others. If they are covering their head to toe, it doesn't matter whether you like it or not, as long as they do not breach any public law, then there is no excuse for the government and also for others to put restriction on those Muslim women, let alone harass them as some Muslim women have already reported.

This is the idea of "twin tolerations", coined by Alfred Stepan, which are the minimum degree of toleration democracy needs from religion and the minimum degree of toleration that religion needs from the state for the polity to be democratic.

Religious institutions –including majority ones-- should not have constitutionally privileged prerogatives which allow them authoritatively to mandate public policy to democratically elected officials. The minimum degree of toleration religion needs from democracy is not only the complete right to worship, but the freedom of religious individuals and groups to publicly advance their values in civil society, and to sponsor organizations and movements in political society, as long as their public advancement of these beliefs does not impinge negatively on the liberties of other citizens, or violate democracy and the law, by violence or other means.

Muslims in Australia should accept the Australian values, and Australia should also provide a 'public sphere' for Muslims to practice their belief. It takes two to tango.

This approach demands a compromise from Islam, which should be open to other values, and also to make a similar demand of Australia. It is not only Australian Muslims who should reconcile these identities, but also all Australians.

As a peak body for all Islamic organisations in Australia, we strongly support that multiculturalism should lead to legal pluralism (as shown in

Islamic finance and halal certification) and twin tolerations. We are very proud and happy to be part of Australian life and society.

We thank you for the opportunity to submit our views. We are happy to discuss this issue further.

Yours sincerely,

Ikebal Adam Patel,
PRESIDENT.