



ISLAMIC POSITION ON FOSTER CARE, ADOPTION AND GUARDIANSHIP

PREPARED BY
The Australian National Imams Council (ANIC)

TABLE OF CONTENTS

| | | | |
|--|----|---|----|
| 1. Background | 03 | 5.7. Informing the Foster Children about their Biological Parents | 09 |
| 2. Introduction | 04 | 5.8. Food and Halal Consumptions | 09 |
| 3. Islamic Position on Foster Care, Adoption and Guardianship | 04 | 5.9. Prayer Obligations | 09 |
| 4. Excellence of Foster Care, Adoption and Guardianship in Islam | 05 | 5.10. Dress around the House | 10 |
| 5. Islamic Practices and Guidelines relating to Foster care, Adoption and Guardianship | 06 | 5.11. Mahram and Non-Mahram | 10 |
| 5.1. Gender | 06 | 5.12. Breastfeeding | 11 |
| 5.2. Inheritance | 06 | 5.13. Marriage Rights over Foster Children | 11 |
| 5.3. Equal Treatment, Love and Compassion Towards Foster Children | 07 | 5.14. Circumcision | 11 |
| 5.4. Rights of Expenditure | 08 | | |
| 5.5. Parenthood and Rights | 08 | | |
| 5.6. Documentation and Naming of Foster Children | 08 | | |

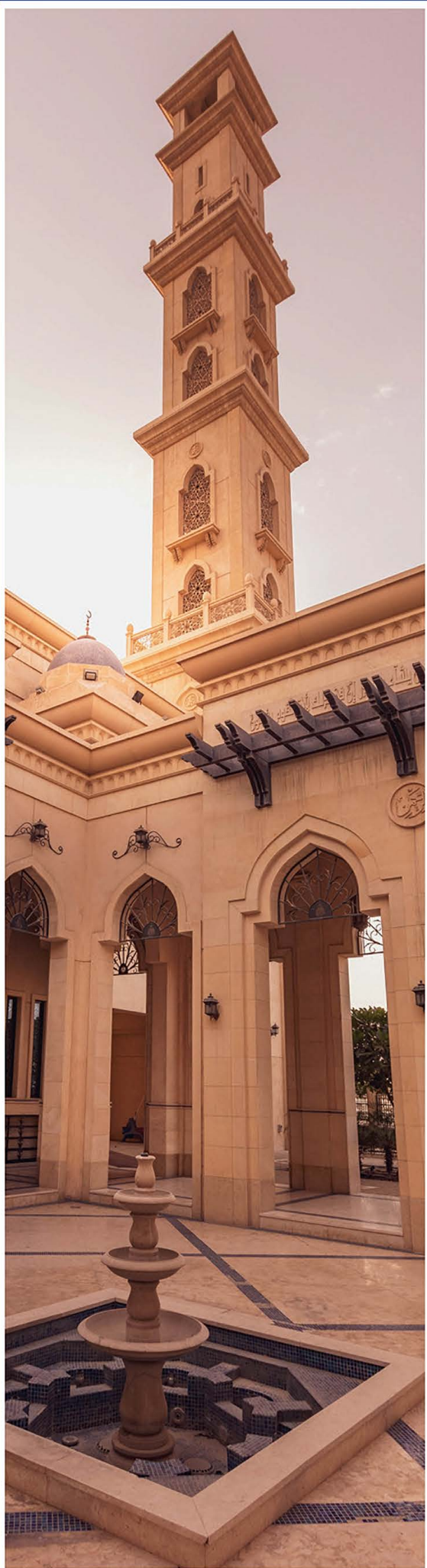


1. BACKGROUND

The Australian National Imams Council (ANIC) is an umbrella and peak Muslim organisation consisting of Muslim Imams, clerics and Islamic scholars representing each Australian State and Territory. ANIC represents the wider interests of the Australian Muslim community. ANIC is recognised by the Federal and State Governments, nationally and internationally, media and various other community and religious groups as being the central representative body of the Australian Muslim community. It also regularly facilitates collaborative initiatives with other community based organisations.

ANIC provides religious leadership, guidance, Islamic rulings and services to the Australian Muslim community by supporting local Islamic organisations and individuals, developing educational, social and outreach programs and fostering good relations with other religious communities and the wider Australian society in the effort to promote harmony, cooperation and successful integration within mainstream society.





2. INTRODUCTION

The document is intended primarily as a source of religious guidance for observant Muslims about the Islamic position on foster care, adoption and guardianship;

It may also help foster care agencies better understand the implications of Islamic belief and practices when they are considering placing Muslim children or young people with Muslim carers or are supporting such a placement.

ANIC recognises that there are exceptional cases and circumstances that might need exceptional Islamic rulings and verdicts. Therefore, ANIC will assess these cases and circumstances based on case by case to issue the appropriate Islamic ruling and verdict.

These guidelines are subject to the current law and code of conduct (state or federal). We urge all parties to seek legal advice on this matter.

This document is subject to review from time to time.

3. ISLAMIC POSITION ON FOSTER CARE, ADOPTION AND GUARDIANSHIP

According to Islamic law, child adoption is forbidden (Haram). But child protection and care (Kifalah) is highly recommended.

By child adoption we mean, accepting a child and considering him/her as the adoptive parents' real child.

By child protection, we suggest that the child is being taken care of by his/ her foster parents.

When using the terms 'foster caring' or 'adoption' in this document we are referring to 'protection' (Kifalah) in Islamic perspective.



4. EXCELLENCE OF FOSTER CARE, ADOPTION AND GUARDIANSHIP IN ISLAM

Fostering is an extremely rewarding act in Islam and one that has been encouraged - giving it a highly respected role. It is not only permissible for a Muslim to foster a child, but it is also a Sunnah that can gain many rewards from Allah (SWT).

The Prophet Mohammad (Peace Be Upon Him) was orphaned and fostered by many different family members. In turn, he cared for other orphans during his lifetime. Halima Saadia was the first person to take care of the Prophet when he was a baby followed by his grandfather and then an uncle. It is reported in a Hadith narrated by Sahl bin Sa'd that:

"I and the person who looks after an orphan and provides for him will be in Paradise like this" putting his index and middle fingers together. [Sahih Bukhari].

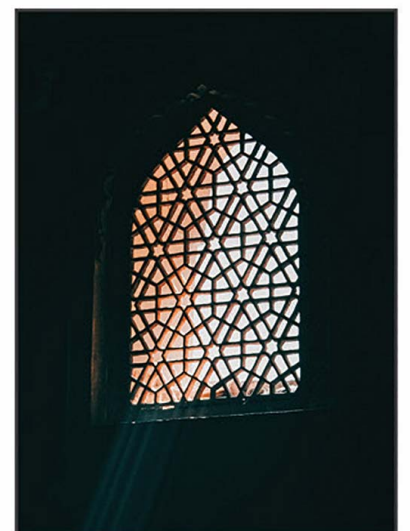
Allah Says in the Holy Quran:

"They ask you (O Mohammad) what they should spend. Say: Whatever you spend of good must be for parents and kindred and orphans and al-Masakin (the poor) and the wayfarers, and whatever you do of good deeds, truly, Allah knows it well." (Qur'an, 2:215)

Therefore, it is a blessing to look after a child and transform their life for the better. There is a tremendous reward for fostering a child and giving them the love and nourishment they need to further excel in life.

Muslim foster carers are encouraged to treat their foster child as if they were their own child, provide a loving family and in keeping with the Sunnah (Prophetic Tradition) enlightening their faith so that the child can be brought up to be the best version of themselves and reach their full potential.

The aforementioned excellence apply to fostering Muslim and non-Muslim children. It's recommended and encouraged to support children who are in need of foster care, regardless of their religion, ethnicity or race.



5. ISLAMIC PRACTICES AND GUIDELINES RELATING TO FOSTER CARE, ADOPTION AND GUARDIANSHIP.

5.1 GENDER

No doubt, with an increasing number of Muslim households in Australia, there is a growing need for foster care – for children who are not able to be with their parents for the time being.

In situations where older boys and girls are placed in foster care, it is important that proper safeguards are put in place so that one does not do a good deed at one end only to corrupt it at the other. There are a number of solutions to address the issue of fostering older boys and girls:

1. If the parents have no children, then taking care of a foster child should be based on the child most in need of foster care. If they have boys then a boy would be preferred unless the foster mother is able to breastfeed the child in which they should also look at which child is most in need of foster care. The same would be advised if the foster parents only have girls; keeping in mind the age of the foster child.
2. Mixing prior to reaching the age of puberty: the rulings of mixing are the same. Parents are to separate the children, including separate sleeping rooms from the age of 10. Kids that were not breastfed by the foster mother need to be taught prior to reaching the age of puberty the rulings of mixing with the opposite sex.
3. Wearing the Hijab is obligatory in front of the foster child if there has been no breastfeeding. For example, if the foster child is a female then

she must wear hijab in front of the foster father or the foster parent's male children. Same goes if the foster child is a male, the foster mother and female children must also observe hijab in front of the male foster child.

4. Puberty - observing the rulings mentioned about mixing and hijab must be observed once the foster child reaches the age of puberty.
5. Foster children must be separated by the age of discrimination (age of tamyiz 7 - 9 years old) in the place they will sleep.

5.2 INHERITANCE

It is not permissible for either the foster child or the foster parents to inherit from one another by Islamic rights. However, it is permissible for either the foster parent or child to make a bequest for the other so long as it is less than one-third of the total inheritance.

Allah says in the Holy Quran:

“Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a

sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise.” (4;11)

Your children in the above verse is defined as your biological children. Foster or adopted children are not included.

A Hadith, reported in multiple sources further confirms that Islam permitted one-third of the total inheritance to a non-heir, this includes foster or adopted children. Sa’ad ibn Abi Waqqas, reports:

“I was stricken by an ailment that led me to the verge of death. The Prophet came to pay me a visit. I said, ‘O Allah’s Apostle! I have much property and no heir except my single daughter. Shall I give two-thirds of my property in charity?’ He said, ‘No.’ I said, ‘Half of it?’ He said, ‘No.’ I said, ‘One-third of it?’ He said, ‘You may do so, though one-third is also too much, for it is better for you to leave your offspring wealthy than to leave them poor, asking others for help’”

Notes: When adoption occurs, all legal ties with birth parents are severed. However, according to the Succession Act 2006, sections 57 and 60, the child can still request to receive an inheritance if they can prove they pass the needs test.



5.3 EQUAL TREATMENT, LOVE AND COMPASSION TOWARDS FOSTER CHILDREN

Islam has emphasised the care and concerns for any and all children in need. There is special emphasis on the most vulnerable, such as orphans and girls whose care and proper upbringing garners a very high rank in Paradise. This is enforced in numerous hadiths of the Prophet (Peace and Blessings Be Upon Him), including his statement,

“Whoever takes care of two girls until they reach puberty, he and I will come like this on the Day of Resurrection” – and he held his two fingers together.”

This includes foster children must be mutually respected and cared for without any form of abuse or disrespect.

Islam highly encourages treating a foster child in the same manner as treating your own children. Most foster children fall under the category of an ‘orphan’, either in reality or by extension. Islam highly encourages taking in the orphans and those in their categories.

The Messenger of Allah (Peace Be Upon Him) said:

“I and the one who cares for an orphan will be in Paradise like these two,” and he gestured with his two fingers, meaning the forefinger and the middle finger” (Saheeh Sunan at-Tirmidhi).

Abu Huraira (may Allah be pleased with him) reported that the Messenger of Allah (s) said,

“The best house among the Muslims is the house in which orphans are well treated.”

5.4 RIGHTS OF EXPENDITURE

When they are young, the foster child has the right of expenditure upon the foster parents to what is considered sufficient as the foster parents have willingly taken the responsibility of the foster child.

All funds provided by the government must be spent wisely for the benefit of the foster child.

When the foster or adopted child becomes older, they have the right of expenditure upon the foster parents to what is considered in society as normal and sufficient expenditure.

5.5 PARENTHOOD AND RIGHTS

According to Islam, the biological parents are the legitimate parents of the foster children and they generally have parental rights over their children subject to their ability and capacity to parenthood. This includes sanity, physical, financial, and ethical. However, this would also be subject to the powers held by the Minister as ordered by the Children's Court of NSW or the relevant State which has jurisdiction over the matter. Any parent seeking the return of their child should obtain legal advice, and will be supported to file an application with the Children's Court if doing so is consistent with the advice provided.

5.6 DOCUMENTATION AND NAMING OF FOSTER CHILDREN

In Islam, the parents that should be referred to as 'Mother' and 'Father' are the biological parents. However, metaphorically the foster child can refer to the foster parents as 'mother' and 'father' out of respect, love and appreciation. This can be in reverse where the foster parents can refer to the foster children as 'son' or 'daughter'.

Allah says in the Holy Quran:

"Assert their relationship to their fathers; this is more equitable with Allah; but if you do not know their fathers, then they are your brethren in faith and your friends; and there is no blame on you concerning that in which you made a mistake, but (concerning) that which your hearts do purposely (blame may rest on you), and Allah is Forgiving, Merciful." (Ahzaab 33:5)

When Prophet Mohammad (Peace Be Upon Him) freed Zaid and adopted him as his son, officially, by changing his name to Zaid ibn Mohammad, it remained so until Muslims reached Madinah. After reaching Madinah, when the legal system of Islam was revealed, Allah corrected that and said,

"Call them by their fathers' names. That is more just in the sight of Allah." (33;5)

Based on the above verse and Islamic ruling, the child must carry the family name of his biological father. The child has the discretion to add a third name that refers to the family name of the foster father.



5.7 INFORMING THE FOSTER CHILDREN ABOUT THEIR BIOLOGICAL PARENTS

It is mandatory for the foster child to know their biological parents. As Allah clearly states

“Call them by their fathers’ names. That is more just in the sight of Allah.” (33;5)

The biological parents are Islamically entitled to scheduled visits and decision making in the life of their biological child. This is subject to their capabilities and court orders. The capabilities refer to sanity, responsibility and safety of the child.

5.8 FOOD AND HALAL CONSUMPTIONS

Muslims must adhere to the Halal (lawful consumption) dietary requirements whether they are old or young.

All types of seafood, fruits, vegetables, and dairy products are Halal provided they are prepared/cooked in a halal manner and do not contain any non-halal products.

The following meats are forbidden to eat: pig meat (and all products), wild animals that use their claws or teeth to kill prey, all birds of prey, rodents, reptiles, worms, dead animals, insects and all their products and birds that are not slaughtered according to Islamic rites..

Animals and their by-products that are slaughtered according to Islamic rites are considered Halal (e.g. cattle, sheep, goats, deer). If there are non-Halal meat products available, Kocher certified meat is sufficient. Vegetarian/vegan products are all permissible to eat provided it is free from non-Halal products in the food/during preparation, such as alcohol

Cross-contamination of halal and non-halal products renders an originally halal product unlawful. This includes the preparation of utensils that were used on non-halal products or the preparation bench where a non-halal product was placed.

Cigarettes, alcohol, and any substance that affects the natural activity of the brain is not permissible to consume.

5.9 PRAYER OBLIGATIONS

According to Islam, Children are encouraged to pray from the age of 7 and specifically trained from the age of 10. Attending the Friday congregational prayers is obligatory for males who have reached the age of puberty. The foster parents are responsible to facilitate a place to perform ablution and perform the prayer in a location that is serene, absent from any statues, dogs or photographs, and other religious artifacts or symbols. This location needs to be clean from any impurities; and it is preferred to perform the prayers on a prayer mat. The foster parents should provide the means to attend the Friday congregational prayer for the boys.

Discipline must be within the legal framework of the Code of Conduct for Authorised Foster, Relative and Kinship Carers issued by the Minister.

5.10 DRESS AROUND THE HOUSE

Islam prescribes dress requirements for both men and women, with the aim of consistently maintaining morality without compromising the integrity of either gender.

From the onset of puberty, a female is required to observe a 'modest' style in dress when in the presence of those men that are not from her immediate family (non-mahram) This excludes father, brothers, paternal and maternal uncles, grandfathers. When a young Muslim girl feels she is becoming a young woman she will need to adopt a 'modest' dress code. This will typically mean covering her head with a scarf and wearing long loose clothing.

Islam encourages women to dress modestly and to avoid wearing tight fitting, transparent and revealing clothing as well as that which resembles the clothing of men. There are varying levels of adherence to this dress code depending on the individual; this may be due to level of piety or culture. It is important that the foster carer understands this and supports his/her foster child in their choice and desire to learn more. A good way to support a young Muslim woman in this journey would be to take her shopping for clothes that fit this style.

The Muslim male is obliged to cover the area between the navel and knees in front of everyone. They are also required to dress modestly and avoid wearing tightly fitted, transparent and revealing clothing or that which resembles the female dress.

5.11 MAHRAM AND NON-MAHRAM

Privacy of men and woman is one of the main concerns that Foster carers have – what is one to do when a child reaches the age of puberty and the issue of being a Mahram arises. Some people avoid fostering or adopting children because when the child attains puberty, this will result in family members sharing the home with

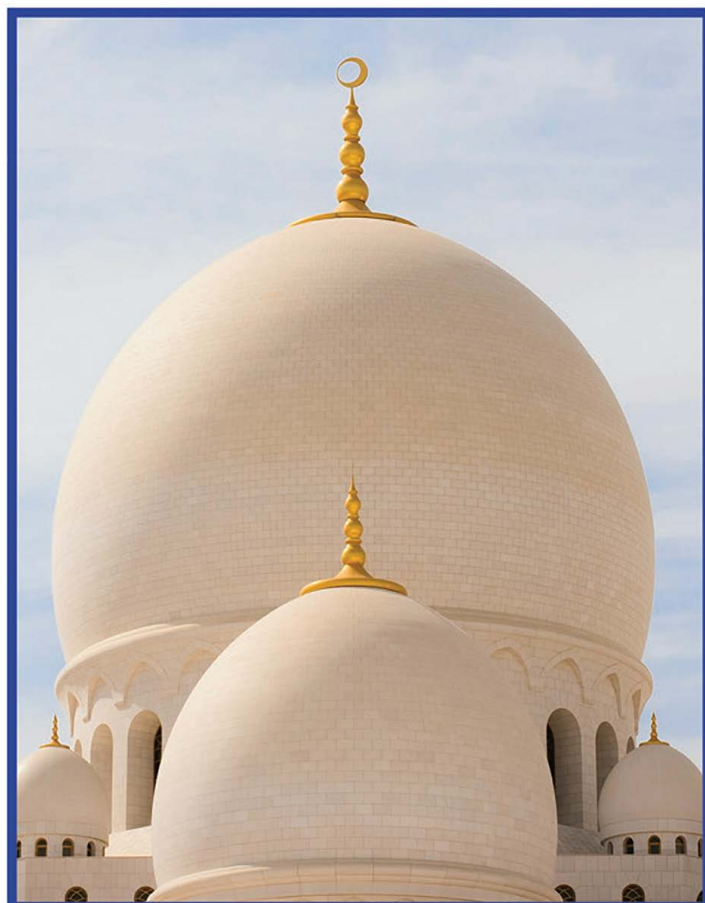
non-mahrams – which will mean that ladies will need to wear a head scarf when non-mahrams are present.

Although this happens when a non-Mahram visits a Muslim household, such a visit may only last for a few hours in a day. Having a non-mahram fostered adolescent living in the house is more of a full-time situation. This is why in some cases some foster carers ask that the child leave their home at the onset of puberty.

A Muslim female must wear the hijab in front of all non-mahrams; that includes male foster children who have reached the age of puberty.

The practice of wearing hijab when in the presence of non-mahrams may seem strange to non-Muslims, but these concerns are valid and in a general sense Muslims are required to guard their modesty. There are many verses in the Qur'an and the teachings of the Prophet Mohammad (Peace Be Upon Him) which address these issues.

Islam sees attraction between the sexes as very powerful and at times overpowering. This is why sexual relations between a Muslim man and a Muslim woman are only permitted within marriage – and are avoided and discouraged outside marriage.



5.12 BREASTFEEDING

For the foster child to become a child by breastfeeding it must fulfill two conditions:

1. The foster child must be under the age of two without eating any solids
2. The foster child breastfeeds five separate sufficient breastfeeds

The effects of breastfeeding will establish the Mahram relationship between the child and the breastfeeding mother including those who are related to her, like her children, siblings, parents and husband etc. When this is established, this will not have an effect on the relationship with the biological parents.

Notes: The NSW Department of Communities and Justice (DCJ, formerly FACS) does not have a policy on Caregiver breastfeeding young children in their care. The decision therefore is an individual casework matter.

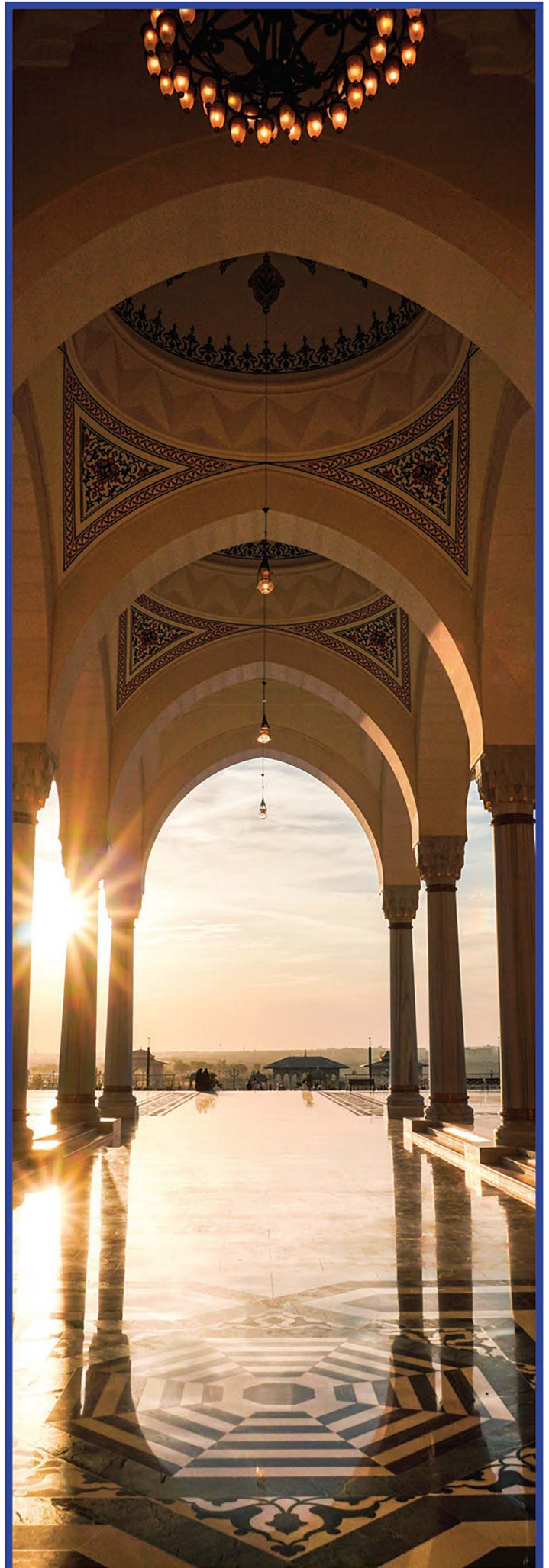
5.13 MARRIAGE RIGHTS OVER FOSTER CHILDREN

In relation to an Islamic marriage, the biological father and family members of the foster child are considered to be the Islamic legal guardian (Wali) of the child. In their absence or lack of capability, the Imam or whom he appoints becomes the guardian (Wali). This right does not include the foster parents unless authorised by the biological parents or the Imam.

Note: Consistent with the Australian law, any marriage should not occur for any person under the age of 18 and must be within the legal framework.

5.14 CIRCUMCISION

Islam prescribes, by way of obligation, that boys need to be circumcised. It is preferable that the circumcision be carried out within seven days from the birth and as soon possible otherwise (before the boy attains puberty). Please note that the biological parents of the boy must also provide their consent for the circumcision. The above requirements do not apply to girls. Any form of female circumcision is forbidden in Islam and illegal in Australia.





AUSTRALIAN NATIONAL IMAMS COUNCIL

(Committed in Serving the Community)

Tel:

(61) 1300 765 940

Fax:

(61) 1300 765 964

Web:

www.anic.org.au

Email:

info@anic.org.au

HEAD OFFICE: Building 3. Level 2, 20 Worth Street, Chullora NSW, 2190 AUSTRALIA

MELB OFFICE: 945 Sydney Road, Coburg VIC, 3085 AUSTRALIA

POSTAL ADDRESS: P.O. Box 5062 Chullora, 2190 AUSTRALIA

STAY CONNECTED WITH ANIC

