

POLITICIANS WADE INTO ISLAMIC INHERITANCE LAW DEBATE

Two weeks ago, CCN reported that a daughter had challenged her mother's Islamic will in an Australian court. She had objected to receiving half a share compared to each of her brothers. It was clearly established in court that the mother was suffering from dementia at the time she signed her will. The Master presiding the case ruled that the will was invalid as the mother was not of not of sound mind, memory and understanding as a result of her dementia. He did not rule on the Islamic aspects of the will.

Since this case, a number of politicians have weighed into the discussion on the applicability of Islamic law of inheritance in Australia. Whilst the Master did not rule on the applicability of Islamic law, Nicola Roxon, the Attorney-General is reported by *The Australian* as saying that there was no place for shariah in Australia, including in legal practices involving wills ("Sharia can co-exist in Australia", 22 March 2012).

Now that's a tough call. Australian law provides you with the freedom to choose who you want to distribute your assets to. If you choose to distribute them in accordance with Islamic law, then provided you have complied with all the laws pertaining to preparing and signing a will in Australia, your will is valid. In effect you have a will that is compliant with both Australian and Islamic laws.

Australian laws allow you to favour one child over another in the distribution of your estate. So if you choose to give your daughter half that of a son, that is perfectly acceptable under Australian law; provided the daughter(s) has sufficient funds to support herself if she is reliant upon you for her upkeep.

Support for this concept came from Opposition legal affairs spokesperson, George Brandis. "Our laws start with the presumption that people are entitled to write their will as they choose, subject to certain formal requirements. The Coalition does not believe that sharia law should be accepted or recognised in Australia. It is logically possible for somebody to do something that is both consistent with Australian law and consistent with sharia principles. The question is: are they obedient to Australian law."

He continued, "There are members of certain communities who observe sharia practices and those practices are entirely consistent with Australian law – this is a free country.

"It is more accurate to say that people are following certain sharia customs when making wills (and) as long as they are consistent with Australian law, there is no problem." (Source: *The Australian*, "Brandis defends sharia for wills," 31 March 2012.).