ALQUDSI v THE QUEEN (S279/2015)

Court from which cause removed: Supreme Court of New South Wales

Date cause removed: 15 December 2015

The Applicant has been charged on indictment with offences against s 7(1)(e) of the *Crimes (Foreign Incursions and Recruitment) Act* 1978 (Cth) ("the Act"). The charges allege that between 25 June and 14 October 2013 the Applicant performed services to support the commission of offences against s 6 of the Act, being the entry into Syria of seven persons with intent to engage in armed hostilities in that country.

After being committed for trial in the Supreme Court of New South Wales, the Applicant applied for an order that he be tried by a judge alone ("the Application"). Section 80 of the Commonwealth Constitution however provides that any trial on indictment for an offence against laws of the Commonwealth shall be by jury.

After being served with a Notice of a Constitutional Matter by the Applicant, the Attorney-General of the Commonwealth applied to this Court for it to remove from the Supreme Court of New South Wales the question whether the Application could properly be granted despite s 80 of the Constitution. On 15 December 2015 Chief Justice French ordered that the Application be removed into this Court.

The Attorney-General of the Commonwealth, who is taken to have intervened in the removed cause, has filed a Notice of a Constitutional Matter in this Court. The Attorneys-General of Victoria, South Australia, Tasmania and Queensland have given notice that they are intervening in the removed cause.

The following question has been stated by Chief Justice French for the consideration of the Full Court:

1. Are ss 132(1) to 132(6) of the *Criminal Procedure Act* 1986 (NSW) incapable of being applied to the Applicant's trial by s 68 of the *Judiciary Act* 1903 (Cth) because their application would be inconsistent with s 80 of the Constitution?