

SENATE STANDING COMMITTEE ON FOREIGN AFFAIRS DEFENCE AND TRADE
ATTORNEY-GENERAL'S DEPARTMENT

Senator Brown asked the following question at the hearing on 6 October 2011:

Senator Brown asked whether there is a kernel of an option in section 22 of the UN Charter Act to enable a citizen to pay a ransom in the future without risking prosecution.

The answer to the honourable senator's question is as follows:

The following answer has been prepared (in consultation with the Attorney-General's Department) by the Department of Foreign Affairs and Trade which administers the *Charter of the United Nations Act 1945 (the Act)* and regulations made under the Act.

2. The only context in which section 22 of the Act, and equivalent provisions in regulations made under the Act, are relevant to this issue is where a ransom payment is made available to a person or entity subject to targeted financial sanctions imposed by the United Nations Security Council (UNSC).
3. Section 22 of the Act applies only to persons or entities designated by the Minister for Foreign Affairs (**the Minister**) under section 15 of the Act in compliance with the obligation under paragraph 1 of UNSC resolution 1373 to impose targeted financial sanctions against persons or entities involved in the commission of terrorist acts. It is not of generic application to transactions involving persons or entities not designated under section 15 of the Act, even if those persons and entities are involved in the commission of terrorist acts. It is not, therefore, available to modify the application of terrorism offences within the *Criminal Code Act 1995* or other legislation.
4. Exemption provisions exist in regulations made under the Act to give effect to targeted financial sanctions imposed by the UNSC against persons and entities which the UNSC itself has designated as being subject to the sanctions. This includes entities such as Al Shabaab, Al Qaida and the Taliban, and persons associated with them. The equivalent provision to section 22 in the Act for Al Shabaab is regulation 15 of the Charter of the United Nations (Sanctions – Somalia) Regulations 2008 (**Somalia Regulations**) and, for Al Qaida and the Taliban, is regulation 12 of the Charter of the United Nations (Sanctions – Al Qaida and the Taliban) Regulations 2008 (**Al Qaida and the Taliban Regulations**).
5. In all cases, the Minister's authority to grant exemptions is limited to grounds prescribed by the UNSC (section 22 of the Act must be read in conjunction with regulations 30 and 31 of the Charter of the United Nations (Dealing with Assets) Regulations 2008, which set out the limitations on the application of section 22). None of these permissible grounds would allow for the payment of ransoms.
6. The targeted financial sanctions contained in the Act, the Somalia Regulations and the Al-Qaida and the Taliban Regulations are international obligations to prevent terrorists

obtaining access to funds. Exemptions from these obligations are therefore strictly limited to situations where the access of funds could not contribute to the funding of terrorist acts (such as payments for basic expenses, meaning food, shelter, medical costs and so on).

7. Contravention of the UN sanction enforcement laws giving effect to the targeted financial sanctions is a criminal offence under the Act (section 21 in relation to persons or entities designated by the Minister under section 15 of the Act, section 27 in relation to persons or entities designated by the UNSC under the Somalia, Al-Qaida and Taliban sanctions regimes).

8. These offences are subject to the general principles relating to criminal responsibility provided in Part 2.3 of the Criminal Code Act 1995, which provide for situations in which a person is not criminally responsible for an offence (for example, where the conduct constituting the offence was carried out under duress or in self defence, including to terminate the unlawful imprisonment of another person).