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Senator the Hon Ian Macdonald  
Chair, Senate Legal and Constitutional Affairs Legislation Committee  
c/o Committee Secretary  
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3 March 2015

Dear Chair

**Re: Opportunity to Respond to Comments by Senator Brandis in Hansard –  
Privilege Resolution 1(13)**

I refer to your letter of 19 February 2015, offering me an opportunity to respond to comments made by Senator Brandis during a supplementary Senate estimates hearing on 20 November 2014. My response for publication in Hansard is below.

Thank you for your assistance in this matter.

Yours sincerely

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In a supplementary Senate estimates hearing on 20 November 2014, the Attorney General, the Hon. Senator George Brandis, commented, under parliamentary privilege, that my legal views are ‘often’ motivated by a ‘political agenda’ or are sometimes ‘political polemic’. His comments were made in a discussion of legal advice I provided, as a barrister for the Media Entertainment and Arts Alliance (MEAA), to the 2007 NSW Coronial Inquest into the Death of Brian Raymond Peters (a ‘Balibo Five’ journalist killed in the Indonesian invasion of Portuguese Timor in 1975). Senator Brandis provided no substantiation of his assertions. He also appeared not to have read my advice.

I strongly object to Senator Brandis’ statements. They are unfounded and – but for parliamentary privilege – defamatory. They have the potential to adversely affect my reputation as a barrister, by undermining the confidence of clients, solicitors, judges, parliamentarians and the public in my competence and integrity as a barrister.

Since Senator Brandis also refers to my professorial title, his comments may additionally adversely affect my reputation as a law teacher and researcher amongst law students and their families, legal academics, the legal profession, and the public. These adverse reputational impacts are heightened because the Attorney General is the first law officer of the Commonwealth and himself a barrister and Queen’s Counsel.

For the record, my advice was provided in accordance with my professional responsibilities as barrister. It was not tainted by ‘political polemic’ or a ‘political agenda’. No political party was involved in or influenced its preparation. I was not then, and am not, a member of a political party. I was not involved in any political campaign or lobby group in relation to the Balibo Five. My advice faithfully represented the interest that my client, the union of Australian journalists, had in securing justice for Australian-based journalists allegedly killed in foreign war crimes.

I note that the NSW Coroner and counsel assisting, Mark Tedeschi QC, reached similar conclusions to me on war crimes liability. There was no suggestion at the Inquest that my advice was ‘political polemic’ or motivated by a ‘political agenda’. Holding suspected war criminals to account under Australian federal criminal law statute (the Geneva Conventions Act 1957 (Cth)), which implements treaties to which Australia is a party (the Geneva Conventions of 1949), is a strictly legal, not ‘political’, endeavour.

I note that the substance of my advice was reformulated (with the consent of the MEAA) as an article in a leading Australian scholarly law journal, *Sydney Law Review*,<sup>1</sup> which required double-blind peer-review and does not publish ‘political polemic’. I note also that I have an international reputation as an expert in the subject of my advice, the international law of armed conflict and international criminal law, and I practice in these areas as a barrister and legal expert in international criminal courts and tribunals.

Under Senate Standing Order 9 on Parliamentary Privilege, Senators appearing before committees – including Senator Brandis in this matter – are required to exercise their freedom of speech ‘in a responsible manner’; ‘to have regard to the rights of others’; to be mindful of the damage that may be done to others and to the standing of the Parliament; to ensure statements are soundly based; and to note the limited opportunity for those outside parliament to respond to allegations made in Parliament.

It is also a ministerial responsibility of Australia’s first law officer to oversee the enforcement of Australian criminal law to protect Australian-based victims of war crimes – and not to disparage lawyers who seek justice according to law for journalists allegedly murdered in war.

By letter of 11 December 2014, I wrote to the Attorney General to offer him an opportunity to correct his statements. As of March 2014, he has not replied.

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<sup>1</sup> Ben Saul, ‘Prosecuting War Crimes at Balibo under Australian Law: The Killing of Five Journalists in East Timor by Indonesia’ (2009) 31 *Sydney Law Review* 83-120.