

Case Note

Review of parliamentary expulsion powers: The significance of *Ward v Hoenig*

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INTRODUCTION

In March 2022, the Hon. Gareth Ward (then NSW Minister for Families, Communities and Disability Services) was charged on five counts of historic sexual offences. In a remarkable series of events, he was suspended from the Legislative Assembly and re-elected, before a further suspension motion was contemplated but not moved. Mr Ward continued in office even after being tried, convicted, and taken into custody. He then brought legal proceedings challenging an anticipated expulsion motion against him, and lost, before finally resigning.

In an Australasian landscape where some parliaments have abolished their expulsion power, the Ward matter is remarkable, as it depicts circumstances in which the very existence of the power proved instrumental to a legislature's ability to manage its affairs. This article reviews those set of events and discusses their significance in the context of the NSW expulsion power.

The proceedings in *Ward v Hoenig*¹ presented the NSW Court of Appeal with a relatively rare occasion to consider the scope of the NSW Legislative Assembly's power to expel a member. After explaining the Court of Appeal judgment, this article makes observations about the implications of the case for the justiciability of an expulsion, and for the doctrine of exclusive cognisance in delineating the roles of the courts and the Parliament. Finally, the article makes further observations about the standards of conduct underlying the Assembly's intended exercise of its expulsion power, and the relationship between those standards and community and electoral expectations.

¹ *Ward v Hoenig* [2025] NSWCA 180.

NSW POWER OF EXPULSION

The NSW Parliament is unlike the other Australian State Parliament in that its expulsion power has no direct statutory foundation. As a former colonial legislature, the bicameral NSW Parliament originally derived its authority from Imperial statute. At common law each House has only the inherent powers and privileges that are *reasonably necessary* for its existence and the proper exercise of its functions.²

The 1969 NSW Court of Appeal decision in *Armstrong v Budd*³ confirmed that these inherent powers based on reasonable necessity include the power to expel a member on the grounds of 'conduct unworthy of a member',⁴ which 'renders them unfit to perform their responsibilities and functions' or 'bring the House into disrepute'.⁵ However, the power is not to be used to punish the member, or for political advantage.⁶ It is a self-preservation measure to protect the dignity of the House and to maintain public confidence in the Parliament.⁷

Additionally, pursuant to the constitutional powers conferred on each House to regulate its 'orderly conduct' through the adoption of Standing Orders,⁸ the Legislative Assembly has given expression to its inherent power of expulsion in Standing Order 254 which provides:

254. A member adjudged by the House guilty of conduct unworthy of a member of Parliament may be expelled by vote of the House, and the member's seat declared vacant.

² *Kielly v Carson* (1842) 4 Moo PC 63 at 88; 13 ER 225 at 234; *Barton v Taylor* (1886) 11 App Cas 197; *Willis v Perry* (1912) 13 CLR 592; *Egan v Willis* (1998) 195 CLR 424 at 447.

³ *Armstrong v Budd* (1969) 71 SR (NSW) 386.

⁴ *Armstrong v Budd* at 403 per Wallace P.

⁵ *Armstrong v Budd* at 396 per Herron CJ.

⁶ *Armstrong v Budd* at 403 per Herron CJ.

⁷ *Doyle v Falconer* (1866) LR 1 PC 328 at 340; *Armstrong v Budd* at 403 per Wallace P.

⁸ *Constitution Act 1902* (NSW) s 15(1)(a).

BACKGROUND

Criminal conduct and trial

Gareth Ward was elected as the Liberal Party Member for the NSW electorate of Kiama in 2011 and appointed as Minister for Families, Communities and Disability Services in 2019.

In April 2021 the NSW Police began investigating allegations against Mr Ward of two separate historic sexual offences. The first incident was alleged to have occurred after an evening business networking event, and the second, after an evening function at the NSW Parliament. While denying the allegations, Mr Ward resigned from the Liberal Party, relinquished his Ministerial portfolio and moved to the crossbench.

On 22 March 2022, Mr Ward was charged on five counts of historic sexual offences and granted bail. The most serious charge of sexual intercourse without consent carried a prison sentence of between 7 and 14 years in all but exceptional cases.⁹

Mr Ward having pleaded not guilty to all charges, he was committed to trial, and on 25 July 2025 convicted on all charges. Soon after, he was taken into custody, pending sentencing. He immediately commenced the appeal process,¹⁰ which provided 12 months to file a Notice of Appeal.¹¹

Moves to suspend Mr Ward

During this period, various measures were taken to exclude Mr Ward from the Legislative Assembly. Following the charges in 2022, the then Premier, the Hon. Dominic Perrottet, announced that failing Mr Ward's resignation, he would seek to have Mr Ward suspended from Parliament. The Assembly passed a resolution on 24 March 2022 suspending Mr Ward pursuant to Standing Order 255 'until the verdict of the jury has been returned on the five criminal charges laid against him on 22 March 2022 or until it is further ordered'.¹²

⁹ *Crimes Act 1900* (NSW) s 61I, in its application to offences committed after 1 January 2008 and before 1 June 2022; NSW Bench Book, [20-660].

¹⁰ *Criminal Appeal Act 1912* (NSW) s 10.

¹¹ Supreme Court (Criminal Appeal) Rules 2021 (NSW) rr 3.1, 3.5.

¹² P. Toole, New South Wales, *Parliamentary Debates*, Legislative Assembly, 24 March 2022, p. 8900. Standing Order 255 provides:

If the House decides not to proceed on a matter which has been initiated in the House concerning the alleged misconduct of a member on the grounds that the member may be prejudiced in a criminal trial

The Assembly also asked its Standing Committee on Parliamentary Privileges and Ethics (Committee) to inquire into the question of withholding the remuneration and other entitlements of a member who has been suspended.¹³ The Committee's report, tabled in May 2022, recommended against enacting legislation to that effect, and suggested the existing standing orders enabled the House to deal with conduct that could disrupt or impede the orderly business of the House.¹⁴

The resolution adopted in March 2022 purported to suspend Mr Ward until the conclusion of his criminal trial. Its operation was curtailed, however, by the principle that the power of a House to regulate its own membership does not extend beyond the current Parliament. New South Wales having fixed terms of government, the 57th Parliament was prorogued on 27 February 2023 and the Assembly dissolved on 3 March 2023. Notwithstanding his suspension, Mr Ward ran as the independent candidate for Kiama at the general State election held on 25 March 2023, and was re-elected.

When the new Parliament commenced in May 2023, the Assembly asked the Committee to investigate options where a member has been suspended from the House and re-elected. The Committee's report acknowledged that suspension was a matter for the House to decide. It noted however, that Standing Order 255 applies in limited circumstances, and advised caution in any further exercise of Standing Order 255 against a member facing criminal trial.¹⁵ Accordingly, the Assembly took no further action and Mr Ward remained in office.

Proposed expulsion

Three days after Mr Ward's conviction, on 28 July 2025, the Premier, the Hon. Chris Minns, urged Mr Ward to resign, announcing he would otherwise move to have Mr Ward expelled. On 30 July the Leader of the House, the Hon. Ron Hoenig, wrote to Mr Ward's solicitors advising that the House would consider an expulsion motion the following week. As Mr Ward was in

then pending on charges founded on the misconduct, the House may suspend the member from its service until the verdict of the jury has been returned or until it is further ordered.

¹³ A. Henskens, New South Wales, *Parliamentary Debates*, Legislative Assembly, 31 March 2022, p. 8908.

¹⁴ NSW Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Options available to the house regarding the withholding of remuneration and other entitlements of a member suspended from the service of the House*, Report 2/57 – May 2022, p. 18.

¹⁵ NSW Legislative Assembly Standing Committee of Parliamentary Privilege and Ethics, *Matters relating to the position of a member suspended from the service of the House and subsequently re-elected*, Report 1/58 – June 2023.

custody, he was invited to submit by 9am on 5 August any statement or written material that he wished the House to consider.

Mr Ward's solicitors replied on 4 August, copying in the Speaker and the Clerk. The letter asserted that any action against Mr Ward before sentencing and appeal would be premature and unnecessary. Furthermore, unless the House confirmed by 2pm that no action would be taken, proceedings would be commenced without further notice.

Mr Hoenig responded that afternoon that he would proceed the following day.

Court challenge

At 2.15pm on 4 August, Mr Ward's solicitors filed a summons in the Supreme Court against Mr Hoenig, the Speaker and the Clerk of the Legislative Assembly as First, Second and Third Defendants respectively. The summons sought:

- a declaration that any resolution to expel Mr Ward would be *ultra vires* and void;
- a declaration that pursuant to s 13A of the *Constitution Act 1902*, the Assembly had no power to expel Mr Ward in circumstances where his sentencing and appeal were pending;
- a declaration that Mr Ward was entitled to natural justice with respect to any proposed resolution; and
- a writ of prohibition and injunction preventing the expulsion and any consequent action.¹⁶

Mr Ward's solicitors also filed an interlocutory injunction seeking to restrain the Defendants from moving an expulsion motion against Mr Ward. On filing the application, they referred to it as 'an urgent *ex parte* injunction'.

The interlocutory hearing was listed that afternoon before Sweeney J, and stood down to 4.30pm. When there was no appearance for the Defendants, Her Honour asked counsel for Mr Ward whether proper notice of the hearing had been given. The answer was unclear, referring mainly to the Mr Ward's letter of 4 August. Her Honour proceeded *ex parte* and granted the injunction. She considered the balance of convenience favoured restraining the Legislative Assembly, to preserve the status quo for three days until the substantive hearing.¹⁷

¹⁶ *Ward v Hoenig* at [4].

¹⁷ *Ward v Hoenig* at [16]-[25].

In the matter of *Ward v Hoenig*, the Court of Appeal, constituted by Chief Justice Bell and Justices Mitchelmore and Kirk, heard the proceedings together on 7 August and found for the Defendants in both matters. The Court of Appeal dismissed the summons and vacated the interlocutory orders.

EXPULSION MOTION AND RESIGNATION

That same evening of 7 August, the Legislative Assembly resolved to consider a motion to expel Mr Ward at 10.30am the following morning.¹⁸ However, at the appointed hour, the Speaker advised the House that at 9.08am he had received Mr Ward's resignation, effective immediately. The seat of Kiama was declared vacant pending a by-election. The expulsion motion was withdrawn.¹⁹ The ensuing remarks in the Chamber suggested that, had the motion proceeded as planned, it would have been passed.²⁰

SIGNIFICANCE OF THE CIRCUMSTANCES IN WARD

As noted above, not all Australasian parliaments have retained their expulsion power; the power has been abolished by the Commonwealth, Northern Territory and ACT parliaments.²¹ The position taken in these jurisdictions is that, in order to avoid potential abuse of the power for political gain, the membership of a House should properly be left to the electorate.

While in NSW a common law expulsion power vests in each House and remains a matter for the House to exercise, historically the power has rarely been used. More commonly, either the member's misconduct has led to their resignation, or an expulsion motion has been put but not passed.²²

¹⁸ R. Hoenig, New South Wales, *Parliamentary Debates*, Legislative Assembly, 7 August 2025, p. 75.

¹⁹ *Parliamentary Debates*, Legislative Assembly, 8 August 2025, p. 3.

²⁰ *Parliamentary Debates*, Legislative Assembly, 8 August 2025, pp. 3-4.

²¹ The Parliament of Australia abolished the power to expel a member from the Australian and ACT Parliaments in 1987 (*Parliamentary Privileges Act 1987* (Cth) s 8); the Northern Territory did so in 1992 (*Legislative Assembly (Powers and Privileges) Act 1992* (NT)).

²² In NSW, since Standing Order 254 was adopted in 1894, members have been expelled from the Assembly on three occasions. Since 2000, two members charged with a criminal offence (excluding Mr Ward) have resigned; in two other cases, the member was expelled from their party but served out their term. For a discussion of unsuccessful expulsion motions in NSW, see G. Griffith, *Expulsion of Members of the NSW Parliament*, 2003, Parliamentary Library Research Service, Briefing Paper No 17/2003. The Queensland, Tasmanian, South Australian

The *Ward* matter is remarkable in coming exceptionally close to a rare instance of a successful expulsion motion.

Moreover, it marks an instance where the existence of the power confirmed its utility. The matter involved a member who, confident of electoral support, was refusing to resign, despite conviction and imprisonment. Inaction on the Assembly's part raised the prospect of a member purporting to represent his electorate, and take part in parliamentary proceedings, from prison. Suspending the member until the next election would have left his seat unrepresented for that 18-month period, with implications for representative democracy in NSW. At that point, on principle and in practical terms, the Assembly's remaining option was to seek to expel Mr Ward and declare the seat of Kiama vacant. Although the Assembly's expulsion power was not ultimately exercised, its mere existence proved instrumental to the ability of the House to manage its affairs.

COURT OF APPEAL JUDGMENT

In a joint judgment, the Court of Appeal discussed the two sources of the expulsion power available to the NSW Legislative Assembly: the inherent power and the power expressed in standing orders. It rejected the contention that the exercise of either power would be *ultra vires*.

The Court dismissed the argument that s 13A of the *Constitution Act 1902* operated to prevent the proposed expulsion. It also discussed the extent to which the Assembly's expulsion power and its exercise are justiciable. The question whether the House must provide procedural fairness when considering an expulsion motion was raised but not determined. Finally, the judgment provided reasons for vacating the interlocutory injunction.

Inherent power of expulsion

The Court of Appeal confirmed that the two Houses of the NSW Parliament have inherited through the Westminster tradition an inherent power of expulsion, which is a manifestation of the broader powers and privileges of both Houses. Citing the High Court decision in *Egan v Willis*,²³ the Court confirmed that each House has the 'powers, privileges and immunities as are

and Western Australian Parliaments have never expelled Members. The Victorian Legislative Assembly has expelled Members on at least five occasions. The House of Representatives has exercised its expulsion power once on 1920.

²³ *Egan v Willis* (1998) 195 CLR 424; [1998] HCA 71.

reasonably necessary for the proper exercise of its functions'.²⁴ The Court noted that the relevant function of the Legislative Assembly, in relation to the power of expulsion, is the function of regulating its own membership.²⁵

The Court of Appeal went on to cite its earlier formulations of the NSW Legislative Council's inherent power of expulsion in *Armstrong v Budd*,²⁶ which by implication also apply to the Assembly. In that case, Herron J confirmed the common law power is implied by necessity for the exercise of the functions of the House,²⁷ in order to protect the high standing of the Parliament and discharge those functions with the confidence of the community. The power may be exercised on the grounds of disorderly conduct in the chamber or conduct occurring outside the chamber, which renders the member unfit for service or the Council unable to function with dignity, involving 'want of honesty and probity'.²⁸ These grounds were expressed by Wallace P in *Armstrong v Budd* as 'conduct unworthy of a member'.²⁹

The Court also cited *Armstrong v Budd* to affirm that the power must be exercised for a proper purpose. Unlike the British House of Commons, the NSW Houses of Parliament, being governed by the common law, are not vested with judicial power, which confers the power to punish for contempts. It follows that in NSW the power of expulsion cannot be used to punish a member.³⁰ Nor may it be used to gain political or other advantage.³¹

In applying these principles to the facts, the Court of Appeal examined Mr Hoenig's letter of 30 July, which read:

I am sure you would appreciate that in view of the verdict of the jury convicting you of serious criminal offences that the House needs to consider whether your continued membership of the House requires it to act to

²⁴ *Ward v Hoenig* at [32], citing *Egan v Willis* at [48].

²⁵ *Ward v Hoenig* at [34], citing *Holmes v Angwin* (1906) 4 CLR 297 at 305; [1906] HCA 64.

²⁶ *Armstrong v Budd* (1969) 71 SR (NSW) 386 at 396 per Herron CJ, cited in *Ward v Hoenig* at [35]. That case concerned the Legislative Council's expulsion in 1969 of A. E. Armstrong, for conduct involving procuring false evidence and possible bribery of a judge. Mr Armstrong had sought a Supreme Court declaration that the expulsion was null and void, but this was denied and the expulsion upheld.

²⁷ *Armstrong v Budd* at 391.

²⁸ *Armstrong v Budd* at 397; see also per Sugarman J at 408.

²⁹ *Armstrong v Budd* at 403.

³⁰ *Armstrong v Budd* at 396.

³¹ *Armstrong v Budd* at 403.

*protect the high standing of the Parliament so it may discharge with the confidence of the community the great responsibility that it bears.*³²

Counsel for Mr Ward argued that the letter failed to identify or provide particulars of any 'unworthy conduct' and that there was no evidence of 'wrongful behaviour, corrupt conduct and other disorderly conduct which requires the intervention of the chamber to protect itself'. The Court disagreed. It found that although the letter did not use the phrase 'unworthy conduct', it established that the proposed motion was grounded in concerns about the Assembly's self-preservation based on Mr Ward's 'serious criminal offences'.³³

The Court also found that the Assembly intended to act against Mr Ward for a proper purpose, in that its intended purpose was protective / self-defensive rather than punitive. Once again the Court relied on the letter of 30 July which spoke of the House acting 'for its own self-preservation and the orderly exercise of its functions', doing so 'to protect the high standing of the Parliament so it may discharge with the confidence of the community the great responsibility that it bears'.³⁴

Counsel for Mr Ward argued (in the context of arguments as to procedural fairness) that expulsion in circumstances where Mr Ward was in custody awaiting sentencing, with an appeal pending, would be premature and punitive in nature.³⁵ Furthermore, he said, an expulsion would amount to punishment of criminal guilt, which was a judicial matter, and contrary to the principle in the *Kable* line of cases. These arguments were rejected. In the Court's view, Mr Ward's expulsion would have no real impact on the sentencing or appeal process.³⁶ Nor did the Court find any evidence that the motion was proposed for any improper motive.³⁷

For these reasons, the Court of Appeal was satisfied that the Assembly's proposed action would fall within the scope and purpose of its inherent power of expulsion.

Power of expulsion under the Standing Orders

The judgment also referred to the Assembly's expulsion power under Standing Order 254, which provides:

³² *Ward v Hoenig* at [12].

³³ *Ward v Hoenig* at [62].

³⁴ *Ward v Hoenig* at [58].

³⁵ *Ward v Hoenig* at [71].

³⁶ *Ward v Hoenig* at [79]-[81]. See *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51; [1996] HCA 24.

³⁷ *Ward v Hoenig* at [65]-[66].

254. A member adjudged by the House guilty of conduct unworthy of a member of Parliament may be expelled by vote of the House, and the member's seat declared vacant.

The Court noted that each House is authorised under s 15(1)(a) of the *Constitution Act 1902* to regulate 'the orderly conduct of the House' through the adoption of standing orders. It confirmed that 'there is no apparent reason why the Assembly may not regulate its powers within the applicable limits, and arguably it has done so by making Standing Order 254'.³⁸

The words 'conduct unworthy of a member' in Standing Order 254 echo the formulation of the inherent power provided by President Wallace in *Armstrong v Budd*.³⁹ To that extent, the standing order references the common law. The Court of Appeal noted that while the arguments put forward in *Ward* focused mainly on the inherent power of expulsion (based on reasonable necessity), the validity of Standing Order 254 was not in issue; indeed, counsel for Mr Ward had relied upon it.⁴⁰

Expulsion and s13A of the Constitution Act

The Court of Appeal also confirmed that the NSW Parliament's expulsion powers - whether expressed in the common law or through the standing orders - are unimpeded by constitutional provisions concerning the disqualification of members from office.

Section 13A(1)(e) of the *Constitution Act 1902* (NSW) provides that a member of either House who is convicted of an 'infamous crime', or for an offence punishable by imprisonment for life or for a term of 5 or more years' imprisonment, is disqualified as a member of that House and their seat becomes vacant.

In 2000, s 13A was amended, adding a new s 13A(2), which provides that the member is not disqualified if they lodge an appeal within the prescribed timeframe, or if their appeal is successful. The amendment also added s 13A(3):

(3) Nothing in s 13A affects any power of the House to expel a member. In other words, the rule operates subject to Parliament's inherent powers, and

³⁸ *Ward v Hoenig* at [53].

³⁹ *Armstrong v Budd* at 403.

⁴⁰ *Ward v Hoenig* at [53].

*powers conferred by the Standing Orders of each House, to expel or suspend a member.*⁴¹

Counsel for Mr Ward argued that, in circumstances where s 13A(2) applies due to the member's pending criminal appeal, the House is constrained from expelling the member until after the appeal, because otherwise the exception created by the provision would serve no logical purpose.⁴²

The Court rejected this argument on the basis that s 13A(3) precludes that very proposition. It referred to the Hon. Michael Egan AO's second reading speech relating to the amendments:

*In some cases, [...] the behaviour of the member may be such that it is unacceptable that the member continues to sit as a member while the appeal process is under way. In such cases, the House will retain its discretion to expel a member for unworthy conduct, by way of a vote of the House. Other options may include the suspension of the member, or the granting of leave to the member so that he or she does not sit during the appeal process. This ensures that the House retains the flexibility to deal with members in a way that is necessary to preserve public confidence in the integrity of the Parliament.*⁴³

In the Court's view, these words confirmed that the very purpose of s 13A(3) was to preserve the House's powers of expulsion and suspension, despite any pending appeal.

Procedural fairness and parliamentary process

The pleadings in *Ward v Hoenig* also sought a declaration that Mr Ward was 'entitled as a citizen of New South Wales and member of Parliament to natural justice with respect to the proposed resolution'.⁴⁴ It was contended that the power to expel was 'subject to a duty to

⁴¹ *Constitution Amendment Act 2000* (NSW) Sch 1, cl 2.

⁴² *Ward v Hoenig* at [41].

⁴³ *Ward v Hoenig* at [44]; M. Egan, New South Wales, *Parliamentary Debates*, Legislative Council, 7 June 2000, p. 6689. Minister Egan also confirmed that the 2000 amendments aimed to ensure fairness and certainty for the member, given that a conviction which is overturned on appeal is *void ab initio* (p. 6688); and that they were intended to strengthen confidence in the parliamentary process, particularly as a member's disqualification temporarily disenfranchises voters in their electorate (p. 6689).

⁴⁴ *Ward v Hoenig* at [4].

provide procedural fairness and the procedure proposed to be adopted [was] inconsistent with that duty', as Mr Ward had been denied the right to appear in person.⁴⁵

The Defendants countered that the question of the need for natural justice goes to the manner of the exercise of the power to expel, and is therefore a matter for the House, not the Court.

The Court approached the issue by first considering whether natural justice had in fact been afforded. It considered that Mr Hoenig's invitation to Mr Ward to submit written material pertaining to the proposed motion afforded adequate natural justice to Mr Ward by overcoming his absence from the Chamber.⁴⁶ The Court was also satisfied that this invitation provided sufficient particulars of the alleged misconduct by simply noting Mr Ward's criminal conviction.⁴⁷

The Court thus found no need to consider the legal question as to whether procedural fairness is required.⁴⁸

Interlocutory injunction

As noted above, the Court of Appeal vacated the injunction previously granted by Sweeney J, which had restrained the Defendants from moving an expulsion motion against Mr Ward.

The Court of Appeal noted the proceedings before Sweeney J had been procedurally irregular; orders had been made *ex parte*, despite uncertainties as to whether the Defendants had proper notice of the date and time of the hearing. The Court also Sweeney J's reasons:

The restraint is sought for a short period, until Friday. That is a factor I take into account in deciding whether or not I should restrain the defendants. If the defendants are not restrained, they may move tomorrow. It is not clear how quickly their proceedings would proceed, but in order to preserve the status quo of Mr Ward's position and prevent the Assembly from taking action to expel him before the question of the Assembly's power under s 13A of the Constitution is determined by the Court, in my view the balance of

⁴⁵ *Ward v Hoenig* at [5], [68].

⁴⁶ *Ward v Hoenig* at [74]-[76].

⁴⁷ *Ward v Hoenig* at [73].

⁴⁸ *Ward v Hoenig* at [71], citing *Commissioner for ACT Revenue v Alphaone* (1994) 49 FCR 576 at 591; [1994] FCA 1074.

*convenience favours me granting the relief sought by Mr Ward. So I will make orders to restrain the three defendants.*⁴⁹

In the Court's view, the procedural irregularities alone would have provided grounds for vacating the injunction. In any case, counsel for Mr Ward had failed to establish grounds for continuing the interim orders.⁵⁰

JUSTICIABILITY AND IMPLICATIONS FOR EXCLUSIVE COGNISANCE

Review of scope, purpose and exercise of the power

The effect of the decision in *Ward v Hoenig* was to confirm and clarify the existence and scope of the power of the Legislative Assembly to expel a member. The Court of Appeal confirmed the proper grounds, and the proper purpose, of the Assembly's exercise of the power.

Ward v Hoenig also offers indications as to the Court of Appeal's position on the justiciability of the expulsion of a member. This has implications for the principle of exclusive cognisance as between the Court and the Parliament.

The traditional Westminster view is that a court of law may review the *existence* and *scope* of parliamentary privileges, which as part of the common law are limited by 'reasonable necessity'. Thus, as noted above, in relation to the NSW Parliament's expulsion power, a court may examine whether the resolution to expel a member was adopted on proper grounds, which may be expressed as the grounds of 'conduct unworthy of a member'. The Court of Appeal in *Ward* confirmed its jurisdiction in that regard.

Prior to *Ward*, there was limited authority for the proposition that a court may also review the *purpose* for which the power was exercised; in other words, whether the House acted in self-protection, rather than for punitive or political reasons. In *Armstrong v Budd*, Wallace P alone examined the motive of the resolution of the House, and whether it was a sham, conducted for political or other advantage.⁵¹ However, any uncertainty about this jurisdictional question appears to have been resolved in *Ward*, given that the Court of Appeal had no hesitation in ruling on the issue of proper purpose.

⁴⁹ *Ward v Hoenig* at [16]-[25].

⁵⁰ See *Resort Hotels Management Pty Ltd v Resort Hotels of Australia Pty Ltd* (1991) 22 NSWLR 730 at 731 per McLelland J.

⁵¹ *Armstrong v Budd* at 403; Griffith, *Expulsion of members of the NSW Parliament*, p. 17-18.

Importantly, the *Ward* decision also distinguished between justiciability of the existence and scope of the power, and of its exercise. The Court of Appeal cited the finding of Wallace P (in relation to the Legislative Council) that '[t]he manner and the occasion of the exercise of the power are for the decision of the Council'.⁵² It also noted:

*[i]t is not for the courts to engage in merits review of the decision made.*⁵³

In other words, if a House has expelled a member on proper grounds and for a proper purpose, a court may not question that decision.

By way of observation, this approach to exclusive cognisance is consistent with the application of ordinary principles of judicial review of administrative power; the court may review the legality of an action, but not its merits.⁵⁴

So, too, is the approach taken in *Ward v Hoening* as to whether exclusive cognisance permits the Court to provide interim relief to prevent an expulsion. On one view, any form of judicial intervention that prevents Parliament from properly exercising the function of regulating its membership, particularly on an *ex parte* basis, offends exclusive cognisance. However, Sweeney J's decision to grant an injunction to preserve the status quo for three days, pending a hearing in the Court's appeal jurisdiction, is consistent with the availability of interim relief pending judicial review of an administrative decision.

While the Court of Appeal readily lifted the injunction, it did so partly in recognition of the procedural irregularities involved in the interim hearing, and partly because the need for injunctive relief had been overtaken by the substantive decision. The Court made no suggestion that Sweeney J lacked jurisdiction to provide this type of interim relief.

The Court of Appeal was less forthcoming on the justiciability of procedural aspects of the expulsion power. Mr Ward had pleaded that the proposed expulsion would be void for want of procedural fairness. Conceivably (and as argued by the Defendants), the question whether procedural fairness needs to be provided at all is a matter for the Assembly, being an aspect of the Assembly's exercise of its expulsion power, or more broadly, the management of its own affairs. The Court of Appeal ruled that, as procedural fairness had in fact been provided, there was no need to rule on whether it was required. This type of jurisdictional approach has been described as a *prudential approach*, with the Court confining itself to determining only what

⁵² *Armstrong v Budd* at 403.

⁵³ *Ward v Hoening* at [54].

⁵⁴ Compare *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 35–37 per Brennan J.

the facts strictly require.⁵⁵ Whether adopting a prudential approach in itself amounts to observance of exclusive cognisance – rather than avoidance of the issue - is an open question.

STANDARDS OF MEMBER CONDUCT

Another point of interest is the Legislative Assembly's evolving practice in the exercise of its expulsion and suspension powers. The Court of Appeal in *Ward v Hoenig* confirmed that the exercise of the power is squarely a matter for Parliament to determine. However, the conduct considered by the Assembly to be 'unworthy of a member' indicates a shift in standards of member conduct. Traditionally, the type of misconduct regarded by the NSW Parliament as damaging to its own dignity or reputation has centred on dishonesty, corruption or misconduct within the chamber. In the *Ward* matter, the 'unworthy conduct' involved criminal misconduct in the form of sexual violence, not directly connected to parliamentary proceedings. This suggests that contemporary member standards encompass both public forms of malfeasance and private misconduct.

In fact, the notion that standards of 'unworthy conduct' should evolve is nothing new. *Armstrong v Budd* provides authority that what is 'reasonably necessary' for the preservation of the dignity of the House changes over time, and should reflect contemporary conditions and modern habits of thought.⁵⁶ It follows, given that the NSW expulsion power rests on a common law foundation, that standards of conduct underlying the exercise of the power should also reflect modern community expectations.⁵⁷

It also follows that the application of these standards should reflect *electoral* expectations. This is particularly so, given that the NSW model relies on standards for the regulation the membership of a House, in stark contrast to the Commonwealth, ACT and NT model, which relies directly on electoral representation.

There is an apparent disparity between the standard of conduct applied by Mr Ward's electorate in 2023, when he was re-elected despite the charges against him, and the standard applied by the Legislative Assembly in 2025. This could be due to several factors, including that in 2023 guilt had not been proven, or that community expectations may have evolved in the

⁵⁵ For further discussion of the prudential approach see, for example, G. Appelby and R. Goss, 'Parliamentary Privilege and the Courts in *Attorney-General (Tas) v Casimaty*: A Case of Grand Theories and Lost Opportunities' *APR* 40/1 14, 26; Murray Wesson, 'McCloy, Proportionality and the Question of Deference' on *AUSPUBLAW* (3 March 2016) <https://auspublaw.org/blog/2016/3/mccloy-proportionality-and-the-question-of-deference>.

⁵⁶ *Armstrong v Budd* at 402 per Wallace P.

⁵⁷ See further Griffith, pp. 12-13.

interim.⁵⁸ Nonetheless, the disparity underscores that neither a standards-based model, nor an electoral-based model, is infallible. It also behoves the House to exercise caution in applying a standards-based model, given the implications of an expulsion for electoral representation.

CONCLUSION

The Ward matter also highlights that an inherent power to regulate parliamentary membership which is common law based provides flexibility, allowing the power to be exercised in alignment with contemporary standards of member conduct. In the context of a common law based power which is based on necessity, the circumstances proved that very necessity.

The Court of Appeal in *Ward v Hoenig* largely confirmed the existing common law on the existence, scope and purpose of the NSW expulsion power. In so doing, the Court adopted a conventional approach to exclusive cognisance by limiting its jurisdiction along established principles. In some respects, it prudently declined to define those limits.

The Ward matter also highlights that where an inherent power to regulate parliamentary membership is common law based, this provides flexibility, allowing the power to be exercised in alignment with contemporary standards of member conduct. This may also, however, create a tension between parliamentary standards and community or electoral standards, of conduct, with implications for electoral representation. In such an environment, the preservation of the institution of parliament remains a contemporary and dynamic issue.

⁵⁸ As noted above, another factor underlying the proposed expulsion in 2025 was the lack of feasible alternatives.