

Expulsion, suspension, exclusive cognisance and procedural fairness

The matter of Ward

Sue Hunt

Manager, House and Procedure



LEGISLATIVE
ASSEMBLY

Expulsion and suspension have implications for:



LEGISLATIVE
ASSEMBLY

Member

Legal status, reputation
and the presumption of
innocence

Electorate

Loss or interruption of
chosen representation

Standards of conduct are
subsumed

House

Self-protection, dignity and
effective functioning

Legal challenge →
implications for exclusive
cognisance

The central question is how their exercise can be made rigorous, fair, transparent and accountable.

Four observations



LEGISLATIVE
ASSEMBLY

1

Scope of powers (grounds and purpose) are defined at common law

Powers are broad and somewhat ambiguous

2

The House controls exercise

Standing orders regulate occasion and manner of exercise, but provide limited process or guidance.

3

Judicial oversight is limited

Courts may consider legality, not merits.

4

Procedural fairness matters

Ward v Hoenig suggests it may be justiciable and is institutionally prudent.

Sources of the expulsion and suspension powers in NSW



LEGISLATIVE
ASSEMBLY

COMMON LAW

Inherent powers *reasonably necessary* to the House's functions*

This includes determining its own membership

STANDING ORDERS

Standing Orders regulate the orderly conduct of the House**

They govern how the House goes about exercising its powers

* *Barton v Taylor* (1886) 11 App Cas 197

** *Constitution Act 1902* (NSW) s 15

Armstrong v Budd (1969) 71 SR (NSW) 386



LEGISLATIVE
ASSEMBLY

FITNESS OF THE MEMBER

Unfit to perform the high responsibilities and functions of a Member

FUNCTIONING OF THE HOUSE

Prevents deliberation with mutual respect, trust and candour

DELIBERATIONS

Causes the honour and good faith of deliberations to be suspect

DIGNITY OF THE HOUSE

Brings the House into disrepute or erodes its authority and dignity

Wallace P. :

- guilty of conduct unworthy of a Member
- what is reasonably necessary changes over time

Standing Orders 254 and 255

SO 254 | Expulsion

*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.*

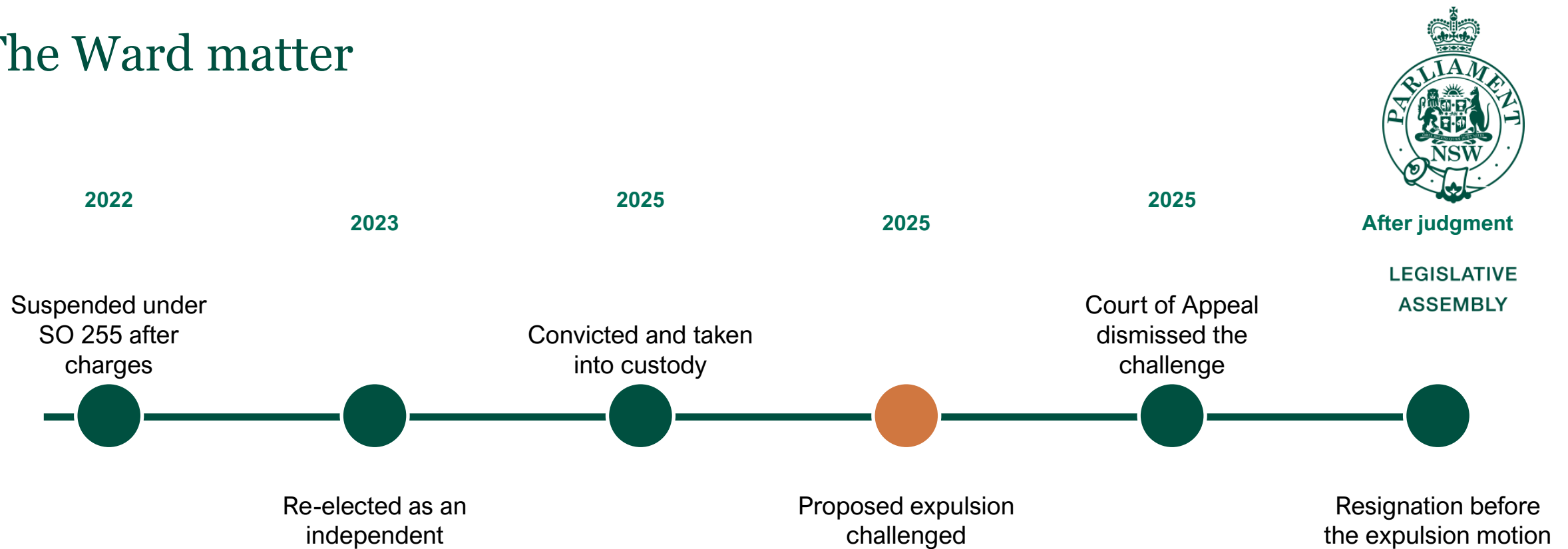
SO 255 | Criminal trial pending

*[In] a matter [where] the Member **may be prejudiced** in a criminal trial then pending on charges founded on ... misconduct, the House may suspend the Member ... until the verdict of the jury has been returned or until it is further ordered.*



LEGISLATIVE
ASSEMBLY

The Ward matter



Four tensions, between parliamentary privilege and:



LEGISLATIVE
ASSEMBLY

POLITICAL DYNAMICS

Risk of partisanship or punitive intent

STANDARDS OF CONDUCT

Whose contemporary standards should guide the House?

STANDARDS OF PROOF

When are allegations or external findings sufficient?

REPRESENTATION

Who should determine membership: the House or electors?

While these may be inherent tensions, they are highlighted by lack of formal process.

Ward v Hoenig [2025] NSWCA 180

Exclusive cognisance and the role of the court



LEGISLATIVE
ASSEMBLY

COURTS

May determine

- whether the privilege exists
- whether the House acts within scope:
 - grounds (conduct unworthy of a Member)
 - proper purpose (protective)

HOUSE

Determines

- the occasion of the exercise
- the manner of exercise
- the merits of the decision

Stockdale v Hansard (1839) 112 ER 1112; *Egan v Willis* (1998) 195 CLR 424, 447; [1998] HCA 71;

Ward v Hoenig – is procedural fairness a justiciable requirement?



LEGISLATIVE
ASSEMBLY

HEARING RULE

- adequate notice
- critical substance of allegations
- a realistic opportunity to respond

BIAS RULE

- actual impartiality
- appearance of impartiality
- before hearing the facts

- **The general question is unsettled.**
- ***Ward v Hoenig* applied administrative law principles: the content of the requirements depends on the circumstances.**

Retain the power, improve the process



Why retain it?

- Protection of the functioning and membership of the House.
- Circumstances like Ward leave no alternative.
- Expulsion can restore representation through a vacancy and election.

Why improve process?

- The test is broad and consequences are profound.
- Standards and intent should be clear and transparent.
- Judicial review is uncertain, with possible implications for exclusive cognisance.
- Transparent process protects the Member, and electorate. Accountability protects the House.

LEGISLATIVE
ASSEMBLY

Opportunities for the House

House-based measures can strengthen consistency, transparency and accountability.



1

EXPRESS THE POWER

Better explain the test
in *Armstrong v Budd*

2

IMPROVE RIGOUR AROUND STANDARDS

Options include routine
committee referral,
response and report

3

RESPECT SUB JUDICE

Consider private
inquiry or other
arrangements where
public proceedings risk
prejudice.

4

ENSURE PROCEDURAL FAIRNESS

Consider consistent
minimum rights of
speech and reply, and
safeguards against
bias.

Questions?



LEGISLATIVE
ASSEMBLY



LEGISLATIVE
ASSEMBLY