

Standing Committee on  
Parliamentary Privilege and Ethics



LEGISLATIVE  
ASSEMBLY

## Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected



Report 1/58 – June 2023



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The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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## Membership

<b>Chair</b>	Mr Alex Greenwich MP
<b>Deputy Chair</b>	Ms Janelle Saffin MP
<b>Members</b>	Mr Jason Li MP Ms Lynda Voltz MP Mrs Leslie Williams MP
<b>Contact details</b>	Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics
<b>Telephone</b>	(02) 9230 2666
<b>E-mail</b>	<a href="mailto:Ethics.Committee@parliament.nsw.gov.au">Ethics.Committee@parliament.nsw.gov.au</a>
<b>Website</b>	<a href="http://www.parliament.nsw.gov.au/laprivilegeandethics">www.parliament.nsw.gov.au/laprivilegeandethics</a>

## Chair's foreword

The Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics has conducted an inquiry into matters relating to the position of a Member suspended from the service of the House and subsequently re-elected in accordance with the referral made to it by the House on 10 May 2023. As a result, and after careful deliberations, the Committee has unanimously adopted the report that follows.

Consistent with the Committee's jurisdiction and the terms of reference, the Committee's findings and recommendations provide some guidance as to whether consideration should be given to taking action against a Member in the circumstances in question, as well as matters that may be relevant to such decision-making. However, it is a matter for the House to determine whether to exercise its powers in any given case, including the power to suspend.

Suspension of a Member is a very serious matter especially where it relates to alleged conduct outside the House. Given the significance of the issues raised by the inquiry terms of reference, the Committee resolved to obtain independent legal advice, and it has benefitted from the expert opinion of Mr Stephen Free SC, Mr Brendan Lim of Counsel and Mr Jackson Wherrett of Counsel.

The report details how the suspension of a Member can potentially have serious and negative consequences on the House, a Member's constituents, victims of any alleged crimes, and the presumption of innocence of a Member. These must all be carefully considered before embarking on the use of Standing Order 255, which requires that strict and deliberate thresholds be met. Having regard to the need for careful and thorough deliberation on issues of such gravity, the Committee has also recommended that should the use of Standing Order 255 be contemplated in future, the House should refer the matter to Committee for prior consideration.

I would like to take this opportunity to thank my fellow Committee Members for the valuable contributions that they have made during the inquiry: Ms Janelle Saffin MP, Deputy Chair; Mr Jason Li MP; Ms Lynda Voltz MP; and Mrs Leslie Williams MP. The House required the newly created Committee to report on these important and complex matters to a tight deadline and Committee Members' constructive and diligent involvement in this context has been greatly appreciated.

The Committee also appreciates the support and considered advice provided by senior officers of the House and the Committee secretariat throughout the inquiry process: Ms Helen Minnican, Clerk of the Legislative Assembly; Ms Carly Maxwell, Deputy Clerk; Ms Elspeth Dyer, Manager, House and Procedure; and Ms Rickee Murray, Parliamentary Officer.

I commend the report to the House.

**Alex Greenwich MP**  
Chair

## Recommendations

Recommendation 1 \_\_\_\_\_ 16

Before using Standing Order 255, the House must seriously consider any negative risks to the Parliament, constituents, victims of any alleged crimes, and the presumption of innocence of a Member, as canvassed throughout this report.

Recommendation 2 \_\_\_\_\_ 16

On any future occasion where the use of Standing Order 255 to suspend a Member is being contemplated:

- the House should refer the matter to the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics for prior consideration; and
- the Standing Orders and the resolution establishing the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics should be amended to this effect.



# Chapter One – Background concerning the inquiry referral, the Committee's role, and conduct of the inquiry

## Referral of the inquiry to the Committee

- 1.1 On 10 May 2023, the House referred to the Committee an inquiry into matters relating to the position of a Member suspended from the service of the House and subsequently re-elected. The terms of reference required the Committee to inquire into and report on matters relating to the position of a Member who:
- (a) has been suspended from the service of the House until the verdict of the jury has been returned on criminal charges laid against him or her; and
  - (b) is subsequently re-elected in the next Parliament prior to any such jury verdict having been returned, or the proceedings having concluded.
- 1.2 The terms of reference provided that the matters for inquiry should cover:
- (a) whether consideration should be given to taking action against a Member suspended in such circumstances;
  - (b) if so, the scope of action that should be considered; and
  - (c) any other related matters.
- 1.3 The House directed that in conducting its inquiry, the Committee should give consideration to any relevant cases in previous Parliaments in New South Wales, or in other Australian jurisdictions, where a Member has been expelled or suspended from the service of the House and subsequently re-elected.
- 1.4 The Committee accepted the referral of the inquiry on 11 May 2023.

## The scope of the referral and the role of the Committee

- 1.5 The Committee notes at the outset that only the House has the power to suspend or expel a Member, a Committee of the House has no such power. In this context it is the role of the Committee to report on its examination of matters contained in the terms of reference for the inquiry and to make findings and recommendations on those matters for the guidance of the House.
- 1.6 Consistent with the Committee's jurisdiction and the terms of reference, the Committee's findings and recommendations can provide some guidance as to whether consideration should be given to taking action against a Member in the circumstances in question and matters that may be relevant to such decision-making. However, it is a matter for the House to determine whether to exercise its powers in any given case, including the power to suspend.



Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected

Background concerning the inquiry referral, the Committee's role, and conduct of the inquiry

### **Advice obtained from Counsel**

- 1.7 The Committee consulted Mr Stephen Free SC; Mr Brendan Lim, Barrister, Eleven Wentworth; and Mr Jackson Wherrett, Barrister, Eleven Wentworth on legal questions relevant to the inquiry. The resulting Memorandum of Advice, dated 1 June 2023, has not been published by the Committee.

## Chapter Two – A brief history of Standing Order 255 and relevant cases

### A brief history of Standing Order 255

#### The suspension of William Patrick "Paddy" Crick

- 2.1 The current Legislative Assembly Standing Order 255 relates to the suspension of a Member pending criminal trial:

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 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.

- 2.2 Standing Order 255 had its genesis in 1906 when a new standing order 393A was adopted by the Legislative Assembly during the course of dealing with matters surrounding William Patrick "Paddy" Crick, the Member for Blayney.

- 2.3 In 1905, a Royal Commission had been established 'to inquire into allegations of impropriety regarding certain transactions concerning Crown Lands'.<sup>1</sup> The Commissioner made adverse findings against Mr Crick, namely that in his capacity as Minister for Lands, he had received bribes from applicants for lands. Mr Crick was subsequently charged with conspiracy.<sup>2</sup>

- 2.4 On 11 July 1906, Sir Joseph Carruthers, Premier and Colonial Treasurer, moved a motion in the following terms that the House take cognisance of the Commissioner's report:

That this House do now proceed to consider so much of the report of the Royal Commission on the Administration of the Lands Department as contains findings of misconduct against William Patrick Crick, Esquire, now sitting as member of the Legislative Assembly for the electoral district of Blayney, and that certain portions of the said report be read by the Clerk.<sup>3</sup>

- 2.5 The motion was agreed to on the voices and the relevant excerpts read onto the record by the Clerk. However, the Speaker ruled that the House could not discuss the Commissioner's report, nor take action regarding the findings within it of misconduct against Mr Crick, while related matters were before the criminal courts:

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<sup>1</sup> Clune, D, and Griffith, G, *Decision and Deliberation: The Parliament of New South Wales 1856-2003*, Sydney, Federation Press, 2005, p162.

<sup>2</sup> *Legislative Assembly Debates*, 11 July 1906, pp427-432, NSW Parliament website: <https://www.parliament.nsw.gov.au/hansard/pages/home.aspx?tab=Browse&s=1> viewed 5 June 2023; and Clune D, and Griffith, G, *Decision and Deliberation: The Parliament of New South Wales 1856-2003*, p162.

<sup>3</sup> *Legislative Assembly Debates*, 11 July 1906, p427.

... the usage of the Imperial Parliament and of our own Parliament has been not to discuss such cases whilst charges on the same ground are pending in the courts below. I must be guided by that, and I now rule that it is not in order to discuss the Lands Commission report, or take action on it, so far as relates to the hon. member for Blayney and others, while the hon. member and others are defending themselves in the criminal court on charges founded on that report.<sup>4</sup>

- 2.6 On 19 July 1906, the Premier moved that the House agree to and adopt a new Standing Order for the suspension of a Member against whom a criminal trial is pending in the terms of Standing Order 393A; and that the House authorise the Speaker to present such Standing Order to His Excellency the Governor for approval. The terms of Standing Order 393A were as follows:

Whenever it shall have been ruled or decided (whether before or after the approval of this standing order) that the House may not proceed on a matter which has been initiated in the House affecting the alleged misconduct of a member because thereby the said member may be prejudiced in a criminal trial then pending on charges founded on such misconduct, the House may suspend such member from the service of the House until the verdict of the jury has been returned, or until it is further ordered.<sup>5</sup>

- 2.7 The Premier explained the rationale for the Standing Order, stating that if the House could not investigate a charge of misconduct against a Member on the grounds that it may prejudice a Member in related, pending criminal proceedings, then Parliament itself should not be prejudiced either:

... if any one attempted on a motion for the suspension of an hon. member under the new standing order to discuss the merits of a charge before the courts, Mr Speaker would rule as he did the other night, and would be upheld in his ruling. It will have to be on other grounds that a man will be suspended, and the bald ground which is asked for in this standing order is this: That if Parliament is to have its mouth closed, and is to have its investigation suspended, Parliament shall be put in the position that it shall not be prejudiced while it admits the member whose misconduct is the subject of criminal investigation, as well as parliamentary investigation, shall not be prejudiced too.<sup>6</sup>

- 2.8 In so stating, the Premier also emphasised that the Standing Order '...is to protect the House, and it is the only means we have to protect it, while criminal proceedings are pending against a Member'.<sup>7</sup>

- 2.9 Following debate, the question as to whether the proposed Standing Order should be adopted was put and agreed to on the voices.<sup>8</sup> Approximately 90

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<sup>4</sup> *Legislative Assembly Debates*, 11 July 1906, p458.

<sup>5</sup> *Legislative Assembly Debates*, 19 July 1906, p571, NSW Parliament website:

<https://www.parliament.nsw.gov.au/la/papers/pages/house-papers.aspx?tab=Browse&browseHouse=LA&type=Hansard&filterHouse=LA&paperType=Hansard&s=1> viewed 5 June 2023.

<sup>6</sup> *Legislative Assembly Debates*, 19 July 1906, p572.

<sup>7</sup> *Legislative Assembly Debates*, 19 July 1906, p577.

<sup>8</sup> *Legislative Assembly Debates*, 19 July 1906, p593.

minutes later<sup>9</sup> the Speaker announced that the 'standing order adopted by the House this day had been presented to the Governor and...his Excellency had been pleased to approve of the same'.<sup>10</sup>

- 2.10 The Premier then immediately put the Standing Order to use, moving a motion for the suspension of Mr Crick:

That the Hon. Member for Blayney – Mr Crick – be suspended from the service of the House until the verdict of the jury has been returned in the criminal trial now pending.<sup>11</sup>

- 2.11 Debate on the motion was adjourned to resume the next Tuesday, 24 July, and take precedence of all other business.<sup>12</sup>

- 2.12 On 24 July 1906, debate resumed on the suspension motion. As with the debate on the motion to adopt Standing Order 393A, the debate on the suspension motion covered whether suspension under the Standing Order was punitive, the rights of accused persons, and the possible effect on the Member's constituents; as well as the subject of indefinite suspensions.<sup>13</sup>

- 2.13 Following debate, the question on the suspension motion was put and passed on division, with 43 ayes and 10 noes. The Speaker directed Mr Crick to withdraw from the Chamber. However, he refused to go voluntarily, and upon being directed to do so by the Speaker, the Searjeant-at-Arms removed Mr Crick.<sup>14</sup>

- 2.14 Following his 1906 suspension pursuant to Standing Order 393A, Mr Crick commenced legal proceedings (and he also resigned from Parliament on 6 December 1906<sup>15</sup>). The legal proceedings are discussed later in this report.

### Disorderly conduct in the Chamber

- 2.15 Prior to this suspension, Mr Crick had a significant history of disrupting proceedings in the House. According to HV Evatt:

During his long parliamentary career, Crick was very prominent in disgraceful scenes inside the Chamber, and in fisticuffs within the precincts of the House. He was subjected to prosecutions for criminal libel and to countless actions for civil libel...In the House itself, Crick in Opposition was a terror to almost every Minister and certainly to Mr Speaker. The Standing Orders which he broke so often were

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<sup>9</sup> See *Legislative Assembly Debates*, 19 July 1906, pp593 and 603 which indicate that the House resolved to adopt the Standing Order at approximately 8:30pm, whilst the Premier moved the suspension motion the same night at approximately 9:58pm.

<sup>10</sup> *Legislative Assembly Debates*, 19 July 1906, p603.

<sup>11</sup> *Legislative Assembly Debates*, 19 July 1906, p603.

<sup>12</sup> *Legislative Assembly Debates*, 19 July 1906, p604.

<sup>13</sup> See *Legislative Assembly Debates*, 24 July 1906, pp615-652, NSW Parliament website: [HANSARD-290296563-3092 \(1\).pdf](#) viewed 5 June 2023.

<sup>14</sup> *Legislative Assembly Debates*, 24 July 1906, p652.

<sup>15</sup> *Legislative Assembly Debates*, 6 December 1906, p.4512, NSW Parliament website: [HANSARD-290296563-3152.pdf](#) viewed 5 June 2023.



Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected

A brief history of Standing Order 255 and relevant cases

repeatedly invoked by him in order to short circuit a proposal or humiliate an opponent.<sup>16</sup>

- 2.16 Mr Crick was first elected to the Legislative Assembly in February 1889 and within months he was found guilty of contempt of the House for creating a disturbance. On 13 November 1890 he was expelled from Parliament for creating further disorder:

When the House was in Committee debating the Estimates, Crick had a heated exchange with Treasurer William McMillan. He defied the Chairman of Committees when ordered to apologise and was forcibly removed from the Chamber. The House then passed a resolution that Crick's behaviour be reported to the Speaker so that he could be dealt with. When he was called upon by Speaker Abbott to explain his actions, Crick entered the Chamber drunk and was again removed by the Searjeant-at-Arms. As he was being ejected, Crick shouted at the Speaker...

Parkes immediately moved that Crick be expelled...Although Crick sent a letter of resignation (couched in abusive terms) to the Speaker while debate was still in progress, the motion was proceeded with and carried by 63 votes to 10.<sup>17</sup>

- 2.17 However, shortly after his expulsion, on 6 December 1890, Mr Crick was re-elected as the Member for West Macquarie at the by-election that was caused by his expulsion.<sup>18</sup>

#### **1994 change to the wording of the Standing Order**

- 2.18 It appears that from the time of its introduction in 1906 until December 1994, the wording of Standing Order 393A remained the same. However, the Standing Rules and Orders Approved by the Governor on 12 December 1994 contain a newly worded Standing Order 295:

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 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.

- 2.19 This wording has remained consistent to the present day – the wording of the current Legislative Assembly Standing Order 255 is identical to that of the 1994 Standing Order 295.

#### **Relevant cases in other Australian jurisdictions and New Zealand and in previous Parliaments in NSW**

- 2.20 As noted earlier, the terms of reference for the inquiry ask the Committee to consider any relevant cases in other Australian jurisdictions where a Member has

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<sup>16</sup> Evatt, HV. *Australian Labour Leader: the story of W.A. Holman and the labour movement*, Angus and Robertson, 1940, p148, as quoted in Clune, D. and Griffith, G. *Decision and Deliberation The Parliament of New South Wales 1856-2003*, p160.

<sup>17</sup> Clune, D. and Griffith, G. *Decision and Deliberation The Parliament of New South Wales 1856-2003*, p161.

<sup>18</sup> See Clune, D. and Griffith, G. *Decision and Deliberation The Parliament of New South Wales 1856-2003*, p161; and NSW Parliament website: [Mr William Patrick CRICK \(1862 - 1908\) \(nsw.gov.au\)](https://www.nsw.gov.au), viewed 5 June 2023.

been expelled or suspended from the service of the House and subsequently re-elected.

- 2.21 Information received by the Clerk of the Legislative Assembly on relevant cases within Australia and New Zealand confirms that none of these jurisdictions have a standing order equivalent to the NSW Legislative Assembly's Standing Order 255 that would provide for the suspension of a Member charged with a criminal offence.
- 2.22 It also appeared that there were no cases in Australia or New Zealand where a sitting Member had been suspended in such circumstances. In all cases of a sitting Member being charged with a criminal offence in Australia or New Zealand it appears that the Member has been able to remain a Member whilst his or her matter is being dealt with.
- 2.23 In short, there appear to be no cases in other Australian jurisdictions or New Zealand where a Member has been suspended from the service of the House pending criminal trial and subsequently re-elected.
- 2.24 Regarding expulsion, there were no reports from the Clerks of any other Australian jurisdiction or New Zealand of a Member ever having been expelled and subsequently re-elected.
- 2.25 The Terms of Reference also ask the Committee to consider any relevant cases in previous Parliaments in NSW where a Member has been expelled or suspended from the service of the House and subsequently re-elected.
- 2.26 It appears that there are no cases in previous Parliaments in NSW of a sitting Member being charged with a criminal offence, suspended and subsequently re-elected. As noted above, Mr Crick was suspended from the service of the House in 1906 whilst he had criminal charges pending against him. However, he was not re-elected following the suspension. Rather, he resigned his seat following the suspension and never re-contested it.<sup>19</sup>
- 2.27 Regarding expulsion, there are two cases in the NSW Parliament where a Member was expelled from the House and subsequently re-elected. The first was Mr Crick. As above, on 13 November 1890, Mr Crick was expelled from the NSW Legislative Assembly for creating disorder<sup>20</sup> and shortly after, on 6 December 1890, he was re-elected as the Member for West Macquarie at the by-election caused by his expulsion.<sup>21</sup> He rose to serve as Minister for Lands from 1901 to 1904 and remained in Parliament until 1906, resigning on 6 December 1906

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<sup>19</sup> *Legislative Assembly Debates*, 6 December 1906, p.4512; and NSW Parliamentary website, [Mr William Patrick CRICK \(1862 - 1908\) \(nsw.gov.au\)](http://www.nsw.gov.au).

<sup>20</sup> Clune, D. and Griffith, G. *Decision and Deliberation The Parliament of New South Wales 1856-2003*, p161.

<sup>21</sup> See Clune, D. and Griffith, G. *Decision and Deliberation The Parliament of New South Wales 1856-2003*, p161; and NSW Parliament website: [Mr William Patrick CRICK \(1862 - 1908\) \(nsw.gov.au\)](http://www.nsw.gov.au).

following his 24 July 1906 suspension.<sup>22</sup> Full dates of Mr Crick's parliamentary career are as follows:

- Member for West Macquarie 16 February 1889 to 13 November 1890
- Member for West Macquarie 6 December 1890 to 6 June 1891
- Member for West Macquarie 20 June 1891 to 25 June 1894
- Member for West Macquarie 17 July 1894 to 5 July 1895
- Member for West Macquarie 24 July 1895 to 8 July 1898
- Member for West Macquarie 27 July 1898 to 14 September 1899
- Member for West Macquarie 23 September 1899 to 11 June 1901
- Member for West Macquarie 3 July 1901 to 16 July 1904
- Member for Blayney 6 August 1904 to 6 December 1906.<sup>23</sup>

2.28 The other Member of the NSW Legislative Assembly to be expelled and immediately re-elected at the resultant by-election was Richard Atkinson Price. On this expulsion, Griffith states:

The most recent case of expulsion in the Assembly involved a gross abuse of parliamentary freedom of speech. This arose from allegations made in the Assembly by Price on 13 December 1916 and 5 September 1917 against the Minister for Lands and Forests, WG Ashford. A Royal Commission was appointed to investigate the allegations. It concluded that they had been made 'wantonly and recklessly and without any foundation whatsoever'. It was on this basis that the expulsion resolution was moved and Price was expelled on 17 October 1917 for conduct unworthy of a Member of Parliament and seriously reflecting on the dignity of the House. At the subsequent by-election, less than a month later, Price was re-elected to the Assembly.<sup>24</sup>

2.29 Having been expelled on 17 October 1917, and re-elected on 10 November 1917, Mr Price continued to sit in the Legislative Assembly until 17 February 1922.<sup>25</sup>

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<sup>22</sup> Griffith, G. *NSW Parliamentary Library Research Service Briefing Paper No 17/2003: Expulsion of Members of the NSW Parliament*, p24, NSW Parliament website: [Microsoft Word - Expulsion Briefing Paper.doc \(nsw.gov.au\)](#) viewed 2 June 2023; and *Legislative Assembly Debates*, 6 December 1906, p.4512.

<sup>23</sup> NSW Parliamentary website, [Mr William Patrick CRICK \(1862 - 1908\) \(nsw.gov.au\)](#).

<sup>24</sup> Griffith, G. *NSW Parliamentary Library Research Service Briefing Paper No 17/2003: Expulsion of Members of the NSW Parliament*, p25.

<sup>25</sup> NSW Parliamentary website, [Mr Richard Atkinson PRICE \(1864 - 1936\) \(nsw.gov.au\)](#), viewed 18 April 2023.



## Chapter Three – Conclusions and recommendations

### Context of the Standing Orders and the power to suspend a Member

- 3.1 The power of the NSW Legislative Assembly to suspend one of its Members is based on both statute and the inherent powers of the House.

#### Statutory power to suspend under section 15 of the *Constitution Act 1902*

- 3.2 The Speaker has authority when presiding over the Legislative Assembly to deal with disorder during proceedings, based on the recognised power of the House to maintain order and control of its proceedings, including the power to suspend Members from the service of the House.<sup>26</sup> Under section 15(1)(a) of the *Constitution Act 1902*, the Legislative Council and Legislative Assembly each have the power to adopt Standing Rules and Orders regulating ‘the orderly conduct of such Council and Assembly respectively’.
- 3.3 As noted by Professor Anne Twomey, the disciplinary power derived from section 15 of the *Constitution Act 1902*, being statutory based, is not constrained by the ‘non-punitive’ limits, which she describes as applicable to the inherent power.<sup>27</sup> However, the power derived from section 15 is confined to preserving the orderly conduct of parliamentary proceedings and dealing with conduct that is ‘actually interfering’ with proceedings. That power ‘does not extend to punishing past conduct or acting in anticipation of disorder’.<sup>28</sup> Professor Twomey expresses doubt as to whether ‘orderly conduct’ would encompass punitive measures.<sup>29</sup>

#### Chapter 20 of the Standing Orders – Disorder

- 3.4 Chapter 20 of the Legislative Assembly’s Standing Orders deal with disorder, and the suspension and expulsion of Members. Standing Orders 249-253 concern maintaining order in proceedings and provide the Speaker with authority to:
- Direct the removal from the Chamber of a Member, called to order more than three times in any one sitting for any gross breach of the rules, until the adjournment of that sitting. Any Member so removed is excluded from the parliamentary precincts for the remainder of the sitting and cannot participate in any proceedings of the House or its committees (SO 249).
  - Direct the temporary removal from the Chamber of a Member who is grossly disorderly, for a period of up to three hours (SO 249A).
  - Name a Member for disorderly conduct including:

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<sup>26</sup> Twomey, A. *The Constitution of New South Wales*, Federation Press, Sydney 2004, p508.

<sup>27</sup> Verbal briefing provided to the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics of the 57<sup>th</sup> Parliament by Professor Anne Twomey, 27 April 2022.

<sup>28</sup> Twomey, A, *The Constitution of New South Wales*, p.509, citing (1912) 13 CLR 592, at 599 per Barton J.

<sup>29</sup> Verbal briefing by Professor Anne Twomey, 27 April 2022 citing *Egan v Willis* (1996) 40 NSWLR 650, 669.

- Persistently and wilfully obstructing the business of the House;
- Being guilty of disorderly conduct;
- Using offensive words, and refusing to withdraw them;
- Persistently and wilfully refusing to conform to any Standing Order;
- Persistently and wilfully disregarding the authority of the Chair (SO 250).

- 3.5 On naming a Member, the question is immediately put that the Member be suspended from the service of the House, after the Member being heard briefly in explanation (SO 251). The period of suspension is specified according to whether the Member has been previously suspended (SO 252). The consequences of being suspended from the service of the House are specified in Standing Order 253.<sup>30</sup> The Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics in the 57<sup>th</sup> Parliament dealt with the question of any further action that can be taken against a Member suspended under Standing Order 255.<sup>31</sup>
- 3.6 *Expulsion* – Chapter 20 of the Legislative Assembly Standing Orders also contains Standing Order 254 which concerns the expulsion of a Member of the Legislative Assembly. Standing Order 254 provides that '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'.
- 3.7 *Suspension pending criminal trial* – As outlined earlier in the report, in addition to the suspension of a Member for persistent disorder in proceedings, further provision to suspend a Member is made by Standing Order 255 (which also appears in Chapter 20 of the Standing Orders) enabling suspension in certain circumstances, as follows:

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 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.

#### *Nature of the suspension power under Standing Order 255*

- 3.8 The power under Standing Order 255 does not involve a general, broad power of suspension. In interpreting this rule, regard needs to be had to its construction and the necessary pre-conditions that should be met before reaching the threshold that would trigger its potential use. The application of the Standing Order will depend on the factual circumstances of each case.

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<sup>30</sup> Under Standing Order 253, a Member who is suspended from the service of the House shall be excluded from the parliamentary precincts until the expiration of the suspension period including all intervening non-sitting days and cannot take part in any proceedings of the House or its committees.

<sup>31</sup> 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, NSW Parliament website: [Final Report - Options for action against a suspended Member - May 2022.pdf \(nsw.gov.au\)](#) viewed 5 June 2023.

- 3.9 The suspension power in Standing Order 255 operates in narrow circumstances, requiring the following pre-conditions to be met before a suspension can be imposed:
- the House must decide not to proceed on a matter that has been initiated in the House concerning the alleged misconduct of a Member; *and*
  - the House has made the decision not to proceed [with that matter] on the basis that the Member may be prejudiced in a criminal trial then pending on charges founded on the alleged misconduct.
- 3.10 These pre-conditions are consistent with the *sub judice* convention observed by the Legislative Assembly. Under this convention, the House voluntarily restricts debate where it determines that the public interest in not debating a matter outweighs the public interest in debating the matter, so as to avoid potential prejudice to criminal matters currently before the courts.<sup>32</sup>
- 3.11 As noted earlier in the report, in the case of Crick, the precursor to Standing Order 255 (i.e. Standing Order 393A), involved the suspension of the Member *only* after the Speaker enforced the *sub judice* convention and ruled that the House could not debate Royal Commission findings of misconduct in office that led to charges of bribery and corruption being laid against the Member.<sup>33</sup> It is also relevant to note in this case Mr Crick's history of disruptive conduct in the House, detailed earlier in the report.<sup>34</sup>
- 3.12 A determination by the Assembly under Standing Order 255 to suspend a Member subject to criminal charges until the jury verdict is given, in effect, allows for the House to take some action with regard to the conduct alleged but also needs to respect the *sub judice* convention. For instance, the House may wish to debate a motion to expel an individual for 'conduct unworthy of a Member' but feels constrained not to do so while charges are before the courts. Suspension in such circumstances will prevent the House from debating matters relating to the criminal charges. It can be noted that in Crick's case the charges related to bribery and corruption, matters which the Assembly would otherwise have had a stronger case for debating, compared to criminal charges against a Member unrelated to misconduct in public office.

### Inherent power to suspend

- 3.13 In addition, the Assembly has *inherent* power to take action that is reasonably necessary for the proper exercise of its functions. In this context, it may temporarily suspend a Member provided the exercise of the power is 'protective

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<sup>32</sup> See *NSW Legislative Assembly Practice, Procedure and Privilege*, Chapter 11 'Rules of Debate' pp20-21, NSW Parliament website: [Rules of debate](#) viewed 5 June 2023.

<sup>33</sup> See *Legislative Assembly Debates*, 11 July 1906, pp427-432&458; *Legislative Assembly Debates*, 19 July 1906, pp571-572 &603-604; and *Legislative Assembly Debates*, 24 July 1906, pp615-652.

<sup>34</sup> See Evatt, HV. *Australian Labour Leader: the story of W.A. Holman and the labour movement*, p148, as quoted in Clune, D. and Griffith, G. *Decision and Deliberation The Parliament of New South Wales 1856-2003*, p160 regarding the disruptive conduct of Mr Crick. See also 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, p28.



and self-defensive' rather than 'punitive'.<sup>35</sup> To this extent, the Assembly is not limited to taking action that deals with direct obstruction to the conduct of parliamentary proceedings but may consider taking action for the wider purpose of protecting the House and its functioning as a democratic institution.

- 3.14 Professor Twomey notes<sup>36</sup> a House may exercise an inherent power of self-defence to suspend a Member charged with offences such as bribery and corruption,<sup>37</sup> and to induce a Member to comply with an order of the House, such as the production of State papers.<sup>38</sup>
- 3.15 The inherent powers of the Assembly may also be relevant to how Standing Order 255 may be interpreted. Drawing on the broader concept of 'protection' under the inherent power of the Assembly to take action to 'preserve and safeguard the dignity and honour' of the House and 'the proper conduct and exercise of its duties'<sup>39</sup> it could be argued that 'orderly conduct' within the meaning of section 15(1)(a) of the Constitution Act may be given a similarly broad interpretation. However, it is not clear whether this broader interpretation of the powers of the House would be affirmed were a suspension under Standing Order 255 to be challenged in the Courts.

### Potential legal challenges to the suspension of a Member

- 3.16 The Committee has identified a number of potential legal issues concerning the suspension of a Member where he or she:
- has been suspended from the service of the House until the verdict of the jury has been returned on criminal charges laid against him or her; and
  - is subsequently re-elected in the next Parliament prior to any such jury verdict having been returned, or the process having concluded.
- 3.17 The validity and interpretation of the suspension power under Standing Order 255, is justiciable<sup>40</sup> and is open to potential legal challenge.
- 3.18 Mr Crick challenged the validity of the Standing Order used in his suspension on the basis that it was not supported by section 15(1)(a) of the Constitution Act and the majority of the Supreme Court of NSW held that the Standing Order was invalid. Referencing the disqualification provisions in the Constitution Act concerning treason, or a conviction for an infamous crime, the Chief Justice noted that in contrast the Constitution Act was silent on the action to be taken while a charge was pending. During this time, a Member of the Assembly was presumed to be innocent. The Chief Justice said:

How then can the House step in and say a charge of which you may be innocent or guilty has been brought against you, we will ignore the presumption of law, suspend

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<sup>35</sup> See *Barton v Taylor* (1886) 11 AC 197, 205.

<sup>36</sup> Verbal briefing by Professor Anne Twomey, 27 April 2022.

<sup>37</sup> *Armstrong v Budd* (1969) 71 SR (NSW) 386, 393.

<sup>38</sup> *Egan v Willis* (1996) 40 NSWLR 650; *Egan v Willis* (1998) 195 C: R 424.

<sup>39</sup> *Armstrong v Budd* (1969) 71 SR(NSW) 386 at 403 per Wallace P.

<sup>40</sup> Verbal briefing by Professor Anne Twomey, 27 April 2022.

you until your innocence is by the verdict of a jury established, and by so doing ignore the rights of your constituents and practically disenfranchise them.<sup>41</sup>

- 3.19 The decision of the NSW Supreme Court that the Standing Order under which Mr Crick was suspended was invalid, was overturned by the Privy Council on appeal.<sup>42</sup> The Privy Council held that Mr Crick's suspension could be seen to be an exercise of the Assembly's inherent self-defensive power rather than punishment and that after the Speaker had ruled that the House could not consider the Royal Commission's findings regarding Mr Crick, he persisted in taking part in the proceedings of the House which may have been 'a deliberate insult and challenge to the whole House'.<sup>43</sup> Similarly, it appears that the type of offences Mr Crick was charged with, being offences that related to honesty and probity in public office, were important to the Privy Council's decision.<sup>44</sup> There was a particular reason for the House to debate these matters and consider the position of the Member as a matter of sound public administration. The Privy Council also held that the validity of the Standing Order was justiciable where it was apparent that a Standing Order did not relate to the orderly conduct of the House.<sup>45</sup>
- 3.20 Professor Twomey has noted that the High Court may be reluctant to interfere with the inner workings of Parliament, observing that 'the courts will give significant weight to the view of a House that a Standing Order is required to regulate orderly behaviour and that a House may have the capacity to punish Members for disorderly behaviour pursuant to Standing Orders *validly adopted* under s.15 of the *Constitution Act*'.<sup>46</sup> However, the cases arising from the use of the Standing Orders to suspend Crick in 1906 confirm the potential for legal challenge to the validity of the Standing Order.<sup>47</sup>
- 3.21 As to whether the decision in *Harnett v Crick* would be followed, it has been suggested that the Privy Council's reasoning is limited and not compelling; and that the extent to which the Privy Council's decision would be considered binding has decreased and would now be assessed on the strength of the reasoning used. (The Committee notes advice that were Standing Order 255 to be challenged before the NSW courts they would be likely to consider themselves bound by the Privy Council's decision in *Harnett v Crick*. However, the Privy Council's decision in the Crick matter would not be binding on the High Court if an appeal against a suspension were to be litigated before it).
- 3.22 It also is the case that the Privy Council's decision in *Harnett v Crick* emphasised the peculiar and special circumstances in which Standing Order 393A (now

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<sup>41</sup> *Crick v Harnett* [1907] 7 SR (NSW) 126 at 135-6.

<sup>42</sup> *Harnett v Crick* [1908] AC 470,476.

<sup>43</sup> *Harnett v Crick* [1908] AC at 476.

<sup>44</sup> See *Harnett v Crick* [1908] AC at 476, where Lord Macnaghten observes that Mr Crick was charged with bribery and corruption offences and that "[n]o graver charge can be made against a public man in a public capacity".

<sup>45</sup> *Harnett v Crick* [1908] AC 470 at 475-476.

<sup>46</sup> Twomey, A. *The Constitution of New South Wales*, p512.

<sup>47</sup> Twomey, A. *The Constitution of New South Wales*, p.471. More recently, the case of *R v Obeid* (No. 2) can be seen to point to the potential for the courts to examine the validity of a law that a House has used as the authority for taking action, as distinct from reviewing the decision taken.

Standing Order 255) was adopted. Therefore, it may not be binding authority that the Standing Order would be considered valid in its other potential applications.

- 3.23 In support of the view that *Harnett v Crick* is of limited application, it should be noted that every Member of the Supreme Court and the Privy Council who considered the case expressed doubt that Standing Order 255 could be said to regulate the 'orderly conduct' of the Legislative Assembly, at least to the extent that it concerned the obstruction of business and the conduct of its proceedings *solely* because charges had been laid against a Member. In other words, the mere fact of a Member being charged with a criminal offence does not give rise of itself to an issue concerning the 'orderly conduct' of the Assembly. The additional element required is that the Assembly is prevented from taking action and dealing with the matter which it has a legitimate interest in debating e.g. misconduct in public office, due to the operation of the *sub judice* convention.
- 3.24 However, where suspension of a Member has been held to be invalid under Standing Order 255, suspension may still be held to be valid under the inherent powers of the Assembly. The inherent powers of the Assembly enable it to take action that is reasonably necessary for the proper exercise of its functions, although in these circumstances the action to suspend would need to be protective and self-defensive, rather than punitive.
- 3.25 The inherent powers of the Assembly are not limited to regulating conduct that directly obstructs parliamentary proceedings but also have been described as encompassing a 'power to preserve and safeguard the dignity and honour of the [House]'.<sup>48</sup> The term 'orderly conduct' can be given a broad construction that extends to protecting the House as an institution. On this reasoning, the protection of the Assembly's high standing and its dignity and honour allow it to suspend a Member whose presence in the House might be viewed as some form of an affront to its high standing and reputation. Such a contestable assessment of the implications of a Member's presence might survive legal challenge due to a reluctance by the courts to interfere with the inner workings of Parliament. However, the Committee expresses concern about taking any action that would potentially increase the risk of legal challenges being brought before the courts which raise issues about the ability of the House to regulate its own affairs.

#### **Principle of representative government**

- 3.26 It is conceivable that a challenge could be mounted to the suspension of a Member from the service of the House, particularly in circumstances where the Member has been re-elected following an earlier suspension on the same matter, on the basis that the suspension infringes a possible limitation on State power, based on the principle of representative government entrenched by the Commonwealth Constitution as developed by the High Court.
- 3.27 This reasoning would be based on the view that the Commonwealth Constitution assumes the continued existence of representative democracies in each State. Hence, it could be argued that the use of Standing Order 255 in circumstances where a re-elected Member is suspended for an indefinite or lengthy period,

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<sup>48</sup> *Armstrong v Budd* (1969) 71 SR(NSW) 386 at 403. This decision concerned the powers of the Legislative Council but would equally apply to the Assembly.



purely on the basis that they have been charged with a criminal offence, involves a denial of effective representation for the Member's constituents.

- 3.28 Although the prospects for success based on such a challenge are not clear, it is the view of the Committee that having been re-elected, the suspension of a Member for a further substantial period, pending the return of a verdict by the jury, would undermine the right to effective representation for the Member's electorate.

## Conclusion

- 3.29 The decision by the House as to whether the power of suspension should be used in any case must be dependent on the particular circumstances. The Committee does not consider that it would be helpful to seek to govern or regulate the use of the suspension powers available to the Assembly through specific rules about the application of these powers.
- 3.30 Although the Committee considers Standing Order 255 is validly made, the circumstances in which it can be used are limited and must be in accordance with the conditions required within the Standing Order. To purport to use it in situations beyond these conditions increase the prospects that a suspension could be successfully challenged in the courts.
- 3.31 Moreover, despite the legal position, there may be doubts about the appropriateness of a majority in the Assembly acting to diminish the rights of a Member's constituents to effective representation through the suspension of that Member, particularly where the Member has been re-elected following an earlier suspension and with full public knowledge of pending criminal charges. Suspension in these circumstances would involve a repeated denial of the electorate being represented in the Assembly by their chosen Member.
- 3.32 The Committee also has concerns about provoking a situation where the ability of the House to regulate its own affairs becomes the subject of litigation before the courts. Any such proceedings may tend to detract from the position of the House as being in charge of its own affairs and proceedings.
- 3.33 Where no further charges have been brought against the Member since their re-election, so that there are no new matters of which the electorate was unaware when it re-elected the Member, the case for a further suspension may be regarded as weakened. Furthermore, where there are no charges which appear to involve people working within the parliamentary precincts there is no need to restrict the Member's presence, on the grounds of concerns about a potential impact on alleged victims.
- 3.34 There is an overarching public interest in criminal proceedings occurring expeditiously, including in respect of the implications of delay on the well-being of alleged victims, witnesses and also the defendant. In the context of the circumstances raised in the referral, it is preferable to avoid any risk that the suspension of a Member may cause a temporary or permanent stay in the trial of the Member. In addition, it is preferable not to cause any delay to the proceedings against a Member, which the risk of litigation about a further suspension by the House may cause.



- 3.35 Despite the existence of the power to suspend under Standing Order 255, the Committee is of the view that the power must only be used as originally envisaged. That is, where the alleged misconduct of the Member is directly relevant to the legitimate interests of the House; the House has determined that it is unable to proceed to debate or take action on the conduct concerned due to the *sub judice* convention; and suspension under the Standing Order enables the House to protect its position until the criminal proceedings are determined.
- 3.36 Finally, the Committee considers that the House, no less than any other body, must recognise and respect the principle of the presumption of innocence. Suspension of a Member for an indefinite or lengthy period where the proceedings or actions of the House are not being obstructed by that Member, while criminal proceedings are ongoing, has significant potential to undermine that important principle.
- 3.37 The Legislative Assembly Committee on Parliamentary Privilege and Ethics makes the following recommendations.

#### **Recommendation 1**

Before using Standing Order 255, the House must seriously consider any negative risks to the Parliament, constituents, victims of any alleged crimes, and the presumption of innocence of a Member, as canvassed throughout this report.

#### **Recommendation 2**

On any future occasion where the use of Standing Order 255 to suspend a Member is being contemplated:

- the House should refer the matter to the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics for prior consideration; and
- the Standing Orders and the resolution establishing the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics should be amended to this effect.

## Appendix One – Terms of reference

**EXTRACT FROM VOTES AND PROCEEDINGS NO. 2  
WEDNESDAY 10 MAY 2023, ENTRY NO. 15**

Mr Ron Hoenig moved, That this House provide the Standing Committee on Parliamentary Privilege and Ethics with the following terms of reference:

- (1) That the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics inquire into and report on matters relating to the position of a Member who:
  - (a) has been suspended from the service of the House until the verdict of the jury has been returned on criminal charges laid against him or her; and
  - (b) is subsequently re-elected in the next Parliament prior to any such jury verdict having been returned, or the proceedings having concluded.
- (2) That the matters for inquiry should cover:
  - (a) whether consideration should be given to taking action against a Member in such circumstances;
  - (b) if so, the scope of action that should be considered; and
  - (c) any other related matter.
- (3) That in conducting its inquiry the Committee give consideration to any relevant cases in previous Parliaments in New South Wales, or in other Australian jurisdictions, where a Member has been expelled or suspended from the service of the House and subsequently re-elected.
- (4) That the Committee report by 8 June 2023.

Question put and passed.

## Appendix Two – Conduct of inquiry

### **Terms of Reference**

On 10 May 2023, the Legislative Assembly referred to the Committee an inquiry into matters relating to the position of a Member suspended from the service of the House and subsequently re-elected. On 11 May 2023, the Committee accepted the referral. The full terms of reference can be found at Appendix One.

### **Conference with Counsel**

On Monday 15 May 2023, the Committee attended a conference with Mr Jackson Wherrett, Barrister, Eleven Wentworth; Mr Mark Smyth, Partner, Herbert Smith Freehills; and Mr George Napier, Solicitor, Herbert Smith Freehills concerning legal advice sought by the Committee for the inquiry.

On Monday 29 May 2023, the Committee attended a conference with Mr Stephen Free SC; Mr Brendan Lim, Barrister, Eleven Wentworth; Mr Jackson Wherrett, Barrister, Eleven Wentworth; Mr Mark Smyth, Partner, Herbert Smith Freehills; and Mr George Napier, Solicitor, Herbert Smith Freehills concerning legal advice sought by the Committee for the inquiry.

The resulting memorandum of advice is dated 1 June 2023.

### **Advice from comparable jurisdictions**

Updates were also sought to advice provided to the Clerk in April 2022 by the Clerks in each Australian State and Territory and by the Clerks of the Parliament of Australia and the New Zealand Parliament concerning relevant cases in those jurisdictions and comparable procedures. Responses received were taken into account for the purposes of the Committee's current inquiry.

## Appendix Three – Extracts from minutes

### **MINUTES OF MEETING No. 1**

Thursday 11 May 2023, 1:45pm

Room 1254, Parliament House

#### **Members present:**

Mr Alex Greenwich MP (Chair)

Ms Janelle Saffin MP (Deputy Chair)

Mr Jason Li MP

Ms Lynda Voltz MP

Mrs Leslie Williams MP

#### **Officers in attendance:**

Ms Helen Minnican, Clerk of the Legislative Assembly

Ms Elspeth Dyer, Manager, House and Procedure

Ms Rickee Murray, Parliamentary Officer

The Chair opened the meeting at 1:47pm

### **1. Appointment of committee**

The Chair referred to the resolution appointing the Committee.

*Legislative Assembly Votes and Proceedings No. 2, Wednesday 10 May 2013, entry no. 13:*

#### **13 APPOINTMENT OF STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS**

Mr Ron Hoenig moved, That notwithstanding anything to the contrary in the standing orders:

- (1) A Standing Committee on Parliamentary Privilege and Ethics (referred to as “the Committee”) be appointed to:
  - a. consider and report upon any matters relating to privilege which may be referred to it under standing order 92 or by resolution of the House;
  - b. receive and consider reports from the Independent Complaints Officer and to undertake such other functions as are referred to in the resolution establishing the Independent Complaints Officer.
- (2) The Committee is the designated Committee for the purpose of exercising the functions in Part 7A Division 2 of the Independent Commission Against Corruption Act 1988, relating to Parliamentary ethical standards including the review of the Code of Conduct.
- (3) The Committee consist of five Members – three Government Members, one Opposition Member and one Cross Bench Member – being: Jason Yat-Sen Li, Lynda Jane Voltz, Janelle Anne Saffin, Leslie Gladys Williams and Alexander Hart Greenwich.

- (4) Alexander Hart Greenwich be the Chair of the Committee.
- (5) Any three Members of the Committee shall constitute a quorum.
- (6) The Committee have leave to make visits of inspection within the State of New South Wales and other States and Territories of Australia.
- (7) The Committee have power to confer with any similar Committee appointed by the Legislative Council.

Question put and passed.

## **2. Election of Deputy Chair**

The Chair conducted the election of the Deputy Speaker.

Resolved, on the motion of Ms Voltz, seconded by Mr Li: That Ms Janelle Saffin MP be elected Deputy Chair of the Committee.

## **3. Administrative and staffing arrangements**

The Clerk introduced the Committee secretariat and outlined staffing and administrative arrangements.

## **4. Standard procedural motions**

The Chair outlined the aim of the standard procedural motions noting that they are a framework within which the Committee can initially operate, and that they can be changed later to suit the circumstances of the Committee.

Resolved, on the motion of Mrs Williams:

1. That if a committee is meeting and a division or quorum is called in the Legislative Assembly, or either House in the case of joint committees, the meeting will be suspended until the committee regains its quorum.
2. That draft reports, evidence, transcripts, submissions and other committee documents are not to be disclosed or published by a committee member or any other person unless authorised by the committee or the House.
3. That media statements on behalf of the committee can only be made by the Chair.
4. That the Chair and Committee Director seek the Speaker's approval, through the Clerk of the Legislative Assembly, for funding of visits of inspection, consultancies and other committee expenses.

That all committee expenditure comply with Legislative Assembly policies.



5. That the Chair and committee staff arrange advertising for inquiries, writing to interested parties requesting submissions, calling witnesses, and visits of inspection.
6. That witnesses appearing before the committee will not be represented by a legal professional or other advocate unless authorised by the committee.

**5. Inquiry Referral: Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected**

The Chair identified that the House had referred an inquiry to the Committee and noted the inquiry terms of reference.

On 10 May 2023 the House resolved:

- (1) That the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics inquire into and report on matters relating to the position of a Member who:
  - a. has been suspended from the service of the house until the verdict of the jury has been returned on criminal charges laid against him or her; and
  - b. is subsequently re-elected in the next Parliament prior to any such jury verdict having been returned, or the proceedings having concluded.
- (2) That the matters for inquiry should cover:
  - a. whether consideration should be given to taking action against a Member in such circumstances;
  - b. if so, the scope of action that should be considered; and
  - c. any other related matter.
- (3) That in conducting its inquiry the Committee give consideration to any relevant cases in previous Parliaments in New South Wales, or in other Australian jurisdictions, where a Member has been expelled or suspended from the service of the House and subsequently re-elected.
- (4) That the Committee report by 8 June 2023.

Resolved, on the motion of Ms Voltz: That the Committee accept the referral by the House of the inquiry into matters relating to the position of a Member suspended from the service of the House and subsequently re-elected.

The Clerk advised the Committee that Mr Mark Smyth, Partner, Herbert Smith Freehills and Mr Stephen Free SC are available for the provision of legal advice to the Committee for its inquiry.

The Clerk also circulated draft questions to put to the legal advisers, for consideration by the Committee, seeking any feedback from the Committee about these questions by 12 May 2023.

Discussion ensued.

Resolved, on the motion of Ms Voltz: That the Clerk be authorised to instruct Mr Smyth on seeking advice from Mr Free SC on behalf of the Committee to assist with the inquiry, and that a conference be arranged for the Committee to discuss matters.

## 6. Correspondence

The Chair advised that the Committee had received an e-mail of 8 May 2023 from [REDACTED] concerning matters surrounding [REDACTED]

Resolved, on the motion of Mrs Williams: That the Chair respond to [REDACTED] on behalf of the Committee:

- noting that the Committee has adopted an inquiry: Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected;
- advising that details concerning the inquiry have been published on the Committee's webpage.

## 7. \*\*\*

## 8. Next meeting

Next meeting proposed for Monday 15 May 2023. Committee secretariat to contact Members seeking availability.

The meeting was adjourned at 2:11 pm.

## MINUTES OF MEETING No. 2

Monday 15 May 2023, 10:30am

Herbert Smith Freehills, 161 Castlereagh Street Sydney and via Microsoft TEAMS

### Members present:

Mr Alex Greenwich MP (Chair)  
Ms Janelle Saffin MP (Deputy Chair)  
Mr Jason Li MP  
Ms Lynda Voltz MP  
Mrs Leslie Williams MP

### Officers in attendance:

Ms Helen Minnican, Clerk of the Legislative Assembly  
Ms Elspeth Dyer, Manager, House and Procedure  
Ms Rickee Murray, Parliamentary Officer

The Chair opened the meeting at 10:34am.

## 1. Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected



The Committee attended a conference with Mr Mark Smyth, Partner, Herbert Smith Freehills; Mr George Napier, Solicitor, Herbert Smith Freehills; and Mr Jackson Wherrett, Barrister, Eleven Wentworth concerning legal advice sought by the Committee to assist with the inquiry.

## **2. Next meeting**

Committee secretariat to circulate a meeting date for Members' consideration.

The meeting was adjourned at 11:04 am.

### **MINUTES OF MEETING No. 3**

Monday 29 May 2023, 5:00pm

Herbert Smith Freehills, 161 Castlereagh Street Sydney and via Microsoft TEAMS

#### **Members present:**

Mr Alex Greenwich MP (Chair)

Ms Janelle Saffin MP (Deputy Chair)

Mr Jason Li MP

Ms Lynda Voltz MP

Mrs Leslie Williams MP

#### **Officers in attendance:**

Ms Helen Minnican, Clerk of the Legislative Assembly

Ms Elspeth Dyer, Manager, House and Procedure

Ms Rickee Murray, Parliamentary Officer

The Chair opened the meeting at 5:01 pm.

## **1. Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected**

The Committee attended a conference with Mr Stephen Free SC; Mr Jackson Wherrett, Barrister, Eleven Wentworth; Mr Brendan Lim, Barrister Eleven Wentworth; Mr Mark Smyth, Partner, Herbert Smith Freehills; and Mr George Napier, Solicitor, Herbert Smith Freehills; concerning legal advice sought by the Committee to assist with the inquiry.

## **2. Next meeting**

The Committee agreed to meet on Wednesday 31 May 2023 after Question Time at approximately 12.15 pm.

The meeting was adjourned at 5:44 pm.

### **MINUTES OF MEETING No. 4**

Wednesday 31 May 2023, 12:15pm

Clerk's Meeting Room

#### **Members present:**

Mr Alex Greenwich MP (Chair)

Ms Janelle Saffin MP (Deputy Chair)

Mr Jason Li MP

Ms Lynda Voltz MP

Mrs Leslie Williams MP

**Officers in attendance:**

Ms Helen Minnican, Clerk of the Legislative Assembly

Ms Elspeth Dyer, Manager, House and Procedure

Ms Rickee Murray, Parliamentary Officer

The Chair opened the meeting at 12:22 pm.

**1. Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected**

The Chair noted that the secretariat had prepared and circulated in the meeting papers a document of relevance to the inquiry, for information – Table containing information about sitting Members charged with criminal offences in other Australian jurisdictions and New Zealand, and expulsions, if any, in these jurisdictions.

The Chair further noted that legal advice from Counsel is expected on 31 May 2023.

The Chair raised the issue of report direction for the inquiry.

Discussion ensued.

Mr Li departed the meeting at 12:35pm.

**2. Next meeting**

The Committee agreed to next meet on Wednesday 7 June at 10:00am.

The meeting was adjourned at 12:45pm.

**UNCONFIRMED MINUTE EXTRACTS OF MEETING No. 5**

Wednesday 7 June 2023, 10:00am

Clerk's Meeting Room and via Webex

**Members present:**

Mr Alex Greenwich MP (Chair)

Ms Janelle Saffin MP (Deputy Chair)

Mr Jason Li MP

Ms Lynda Voltz MP

Mrs Leslie Williams MP

**Officers in attendance:**

Ms Helen Minnican, Clerk of the Legislative Assembly

Ms Elspeth Dyer, Manager, House and Procedure

The Chair opened the meeting at 10:05am.

### 1. Confirmation of Minutes

Resolved on the motion of Ms Voltz:

- That the draft minutes of meeting no. 1 on 11 May 2023 be confirmed.
- That the draft minutes of meeting no. 2 on 15 May 2023 be confirmed.
- That the draft minutes of meeting no. 3 on 29 May 2023 be confirmed.
- That the draft minutes of meeting no. 4 on 31 May 2023 be confirmed.

### 2. Correspondence

The Committee noted the following item of correspondence sent:

- Response to [REDACTED] dated 11 May 2023 advising of the commencement of the Committee's inquiry "Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected".

### 3. Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected

The Chair referred to the Chair's draft report *Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected* circulated to Members by email on 5 June 2023, as amended by the Chair's proposed amendments circulated to Members by email on 6 June 2023.

The Committee agreed to consider the Chair's draft report circulated to Members by email on 5 June 2023 as amended by the Chair's proposed amendments circulated to Members by email on 6 June 2023 ('the Chair's draft report'), commencing with the body of the report and then moving to the recommendations.

Upon which, Ms Saffin moved that the word 'Council' in the first sentence of paragraph 3.25 be deleted and that '[House]' be inserted instead.

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

Upon which, Ms Saffin moved that the following words be added to the end of footnote 48: 'This decision concerned the powers of the Legislative Council but would equally apply to the Assembly'.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

Upon which, Ms Voltz moved that the word 'must' in the first sentence of paragraph 3.31 be deleted and replaced by the word 'may'.

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

Upon which, Ms Voltz moved that the word 'must' in the first sentence of paragraph 3.33 be deleted and replaced with the word 'may'.

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

Upon which, Mr Li moved that the word 'alleged' be deleted from recommendation 1 and replaced with 'victims of any alleged crimes'.

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

Upon which, Mr Li moved that the words 'as canvassed throughout this report' be added to the end of recommendation 1.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

Upon which, Mrs Williams moved that all identifying details regarding [REDACTED] correspondence of 8 May 2023 concerning [REDACTED] and the Chair's response to [REDACTED] be removed from the minute extracts section of the report.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

The Chair also briefed the Committee on his proposed amendments to the Chair's draft report, which were circulated to the Committee by email on 6 June 2023 and discussion ensued.

Resolved, on the motion of Mrs Williams:

- The Committee adopt the Chair's draft report as amended.
- Reference to identifying details around correspondence received from [REDACTED] and the Chair's response to [REDACTED] not be included at appendix 3 to the report as 'unconfirmed minute extracts' when it is tabled.
- The report be signed by the Chair and tabled out of session with the Clerk.
- The secretariat be permitted to make appropriate final editing and stylistic changes as required.
- Once tabled, the report be published on the Committee's webpage.

The Chair thanked Committee Members, the Clerk, the Deputy Clerk and the secretariat for their work on the inquiry.

4. \*\*\*

5. \*\*\*

6. \*\*\*

**7. Next meeting**

Committee secretariat to contact Members concerning a date for the next meeting.

The meeting was adjourned at 10:43am.