

Constructing Legislative Codes of Conduct*

Meredith Burgmann

Today I will be talking about the way in which we in the Legislative Council in New South Wales went about constructing a code of conduct, why we were asked to do that, and what the problems were along the way.

I want to start by talking about the big issue in Canberra at the moment, which is the way in which a ministerial code of conduct keeps changing. I see a ministerial code of conduct as quite different to an ordinary member's code of conduct, in that a ministerial code of conduct is quite specifically about conflict of interest—meaning mainly financial interest.

That sort of code is much less problematic than a backbencher's code of conduct, because there are a whole lot of other issues that come into a backbencher's code of conduct. A ministerial code should simply say: 'You should have no financial interests that can in any way conflict with anything you do as a minister', and there's no point in just changing the rules as more and more of your ministers get caught in it. Basically, if you are taking on public office to some extent you end up with less rights than a normal member of the public, and you've just got to cop it, even if it means that your spouse gets less rights as well.

I remember once reading an article about Bob and Helena Carr, and they were sitting in their very beautiful house, which is in his electorate, in Maroubra. The house has 180-degree views over the sea, and right in the middle of the view is this very ugly telegraph pole. Bob Carr commented to the journalist that if he were anyone other

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than the Premier of New South Wales, he'd be able to pay to get that pole removed. And it's true—you can always pay to get telegraph lines put underground, but as Premier of New South Wales he actually had to give up that right, because it would have been seen as some extra sort of perk that he got as a politician. My view about ministers is that yes, you do give up rights when you become a minister. And one of those rights may well be the right to make a lot of money in, say, a mining venture, when you're the Minister for Mines.

So I don't want to talk about ministerial codes of conduct. We have a separate ministerial code of conduct in New South Wales which I had nothing to do with developing. I think it is a good code and needs to be adhered to strictly. What I'm talking about is the general code of conduct for members of parliament.

The New South Wales Legislative Council's code of conduct arose out of the so-called Greiner/Metherall affair. For those of you who are young, in the early 1990s, the then Premier, Nick Greiner, had a recalcitrant backbencher, Terry Metherall, who had resigned and become an independent and who was voting against some government legislation. Mr Greiner wanted to get rid of him, so he was found a job in the public service, and this was considered scandalous. It was in fact not only unethical, but may have been illegal. It was found not to be, on appeal. But that's how the Independent Commission Against Corruption (ICAC) was brought into the issue, and in 1994 an amendment to the Independent Commission Against Corruption Act was moved by the independents in the lower house.

This amendment had two aims: first, it sought to expand the definition of corrupt conduct of ministers and members as presented in the existing Act; and secondly, it called for the establishment of an ethics committee for each house, whose duties would include the development of draft codes of conduct for members of the house. When this bill came to the Legislative Council however, the Council took the view that there shouldn't be community members on the ethics committee. The committee that was envisaged by the independents' amendment had three community members on it. The Legislative Council took the view that *they* were elected to represent the community, and why should there be another set of community representatives? Although I didn't particularly agree with that view at the time, when I saw the community representatives I realised they had been chosen by politicians too, so they were no more representative of the community than we were.

So that's how we ended up with two committees. The lower house one, which had the community representatives on it, and the upper house one, where—instead of setting up a new committee—we just changed the Privileges Committee to the Privilege and Ethics Committee. I ended up on that committee, in a strange way. No one was interested in the slightest in being on a committee called the Privileges Committee (as it was then) because it wasn't a paid position. I thought it sounded interesting, so agreed to do it. Shortly after that it also became the Ethics Committee, and shortly after that it became incredibly powerful and important—and paid. Everyone was in fact quite cranky that I'd volunteered to do a job that was low-status and no one wanted. It became incredibly important because we then embarked on the Franca Arena inquiry, which took almost two years, and I won't tell you how much it cost—but small third-world governments could live on it.

The first job this committee had was to produce a code of conduct. One of the problems that faced us when we went about trying to work out how politicians should behave was that the public thought we behaved terribly. My view is, even if the Greiner/Metherall affair had not occurred, the New South Wales Parliament would have eventually been called upon to adopt a code of conduct, because codes of conduct are now widely expected in the community and are being developed and enacted worldwide. I always say that in the 1980s everyone was doing mission statements, and in the 1990s everyone is doing codes of conduct.

If you look at what the public think of politicians, you realise we need a code of conduct. In a recent poll in which citizens were asked the question: ‘Which person do you believe would tell you the truth?’ nurses scored 87 percent and politicians scored only 12 percent—but what was really galling was that police scored 55 percent. The one bit of joy I got out of it was that journalists actually scored lower than us. But when only 12 percent of people believe that politicians tell the truth, we have a problem. My view is that politicians actually feed into the problem, and I’ll talk about that as I go along.

Codes of conduct in the legislative sphere are problematic. They have their limitations and clarity is needed regarding the purposes and type of code to be adopted. For instance, should the code aim to provide members with a frame of reference for making decisions that involve competing values? Someone said that we should have in our code a statement that every decision that we make should be in the public interest, and I—as an ex-academic—said *no*. What is the public interest? How on earth could you have a code that said decisions you make should be ‘in the public interest’? Because I can assure you that the public interest that I stand for is a very different public interest than the one David Oldfield stands for. There is no such thing as the public interest, in fact, so I was very clear that I wanted all that absolutely meaningless rhetoric out of the code of conduct.

Alternatively, should it attempt to provide detailed statements of the conduct required of members in all conceivable situations? Then again, there’s a middle path, as our proposed code suggested, and I’ll just quote a part of our report, which was good and solid. This is only the first volume; there are two volumes of report on our code.

The Committee believes that the code of conduct has an important role to play in combination with other factors. In particular, it considers that, combined with an effective program of ethics training and induction, the code of conduct will heighten members’ awareness of ethical issues, such as conflicts of interest.

Secondly, combined with appropriate tools, such as a casebook of specific examples, illustrating the principles embodied in the code, the code will provide guidance in areas where members are uncertain or confused as to the nature of their ethical obligations.

Thirdly, combined with an effective enforcement mechanism, which is applied fairly and in a non-partisan manner, the code of conduct may enhance public confidence in the institution of parliament by

demonstrating that members of the Legislative Council are accountable for their conduct.

And fourthly, combined with strong accountability mechanisms in other areas of political life—for example, an effective legislative committee system, and continuing public debate concerning the nature of members' roles and responsibilities—the code of conduct may contribute to the enhancement of ethical standards.

My view is that none of those things have happened. We tried to get both the Legislative Assembly and the Legislative Council committees to adopt the same code. Regretfully, in the process of trying to get them to adopt the same code I discovered that the great divide in parliament is not between Liberal and Labor, it is between the upper house and the lower house, although I'm told it's not as bad in the federal parliament. Certainly in New South Wales it's trench warfare.

Not only could we not get the same code, but the real battle came down to how the code should be implemented. Our committee supported an outside commissioner for ethical standards, or a conflict of interest commissioner, whereas the lower house committee continually supported what I call a 'catch-and-kill-your-own' model—that is, an in-house committee that deals with what may or may not be an ethical breach.

Why did our committee come to the conclusion that we needed some sort of outside person or body in order to regulate parliamentarians' behaviour? My view was that a parliamentary committee, which seemed the other alternative, was nearly always going to end up voting on party political grounds. And not only could delicate issues be trampled on during an unseemly party political brawl, but you could get the alternative, a conspiracy of silence arising out of all sides having something to hide. I just felt that an outside person would be more appropriate.

We looked at how outside ethics commissioners have operated in other countries, and the place that I liked best, in terms of its model, was Saskatchewan, which is a very cold province of Canada, and which has had socialist governments for most of its history. When I asked why they kept having socialist governments, they said it's so cold we all have to stick together. But they have this excellent code of conduct and an excellent ethics commissioner model. Being of a suspicious nature, my view was that the places with the best codes of conduct always got them arising out of a terrible scandal, and I asked what terrible scandal occurred to have their code of conduct arise? They said, 'Oh, nothing'. And it was only some time later I discovered that the Attorney-General had murdered his wife, and hence the code of conduct (although one would have thought that that was probably just considered illegal, rather than unethical).

The option of having an ethics commissioner with a capacity to receive public complaints, to investigate and then to sanction or enforce discipline against ethics breaches, is clearly important. When our committee looked at models of implementation, we came across the classic problem of how to establish an outside commissioner who could not only advise, which is one of their most important roles, but sometimes also arbitrate. These dual roles obviously have the potential for conflict. If you go to someone to ask for advice on a course of action, and then you

follow that course and it's not right and it comes back to him or her for judgement, then that's a classic legal problem. You cannot sit in judgement on something you have already advised on.

In the United States, where an enormous bureaucracy has sprung up around the ethics committees—and they have two ethics committees in the States too, one for the lower house and one for the upper house, and I suspect that also arose out of the sort of problems we had in our house—one of the problems is that it has split into two divisions to reflect this dichotomy of roles. One arm does not know what the other arm has done. Perhaps a better solution would be to have two commissioners; one who provides advice and one who may eventually arbitrate on the facts. Certainly closer consideration of the powers of such commissioners is needed. I might also say that it's proving very hard to find one. Ours has just resigned and we're still trying to find another one.

The other model, of course, is the 'catch-and-kill-your-own' model, which is favoured by most legislators. I often wonder why. I mean, who on earth wants to be on a committee which looks at the ethics of your fellow members of Parliament? I was on a committee that looked at whether one of my sister members of Parliament should be expelled from the Parliament. It was a privilege committee rather than an ethics committee situation, and it was horrible. For a year and a half we sat there trying to decide whether she should be expelled, and it was not a pleasant experience.

Members of Parliament want an inside model, because they imagine that an outside commissioner will be like our former head of ICAC, Ian Temby, whose findings led to the downfall of Greiner. There is an absolute fear in New South Wales that we'll get another Temby and then we'll all be thrown out of Parliament. People who adopt this position argue that the real sanction anyway is always a political one, that is, losing your party's support or having the public turn against you in an election.

However, the problem with a 'catch-and-kill-your-own' approach is that the ethics committee, and unfortunately the chair, then becomes the police person of Parliament. In fact we've even had one of our quite eccentric upper house members (and you can guess which one) suggest that members of Parliament should be random breath tested. I have visions of myself wandering the corridors with an RBT trolley, testing parliamentarians as they come out of the bar. Those are the sort of issues that some people see as ethical issues—should parliamentarians be drunk in Parliament? I always get rid of that discussion by saying: well look, if you sit sensible sitting hours you won't see drunk parliamentarians, because quite frankly I've never seen anyone drunk before five o'clock—not in the chamber. Still, one might end up as the new McCarthyite ogre, gaining enormous power through being the chair of the ethics committee, and that has happened in America. The chairs of the ethics committees are *enormously* powerful.

When I discussed with the Canadian members of Parliament what they liked about the outside ethics commissioner in the Saskatchewan model, they thought the idea of the ethics commissioner being an ex-MP was a good one. When I discussed it with members of Parliament in New South Wales they also thought it was a good idea—not because they think they'll get more favourable advice, but because he or she would actually understand the issues.

I must say that the ethics adviser that we appointed was basically a former public servant, and he didn't understand enough of the issues that members of Parliament have to deal with, so he always did real 'black-letter law' stuff. For example, I was trying to find out whether it would be OK to take, on a charter flight, a member of staff and a senior person in the Human Rights Commission who was making a speech in the same town. We were trying to get to Broken Hill and Wilcannia for Women's Day. His decision eventually was that I couldn't take any members of staff, and I couldn't take the Human Rights Commissioner; she had to fly to Adelaide and then fly to Broken Hill and then get some staff there to drive her to Wilcannia, while I was flying there. It was a crazy decision.

That was what made me aware that you have to get someone as a commissioner who is confident enough of their own position to say 'yes, you can do that', or 'no, that would be a bit silly'. You need someone who understands transparency—who understands that the real judge, in the end, is the *Sunday Telegraph*. You need someone who understands that the question is, if the *Sunday Telegraph* found out that I had taken a senior person from the Human Rights Commission on the plane with me, would they see that as a terrible junket or would they see that as something that was sensible and saved the government a bit of money? It's the same as the incredible ongoing battle about what is legitimate parliamentary activity, and what is party political.

So that whole discussion about whether to have an outside commissioner—and if you do, what sort of person they should be—has been an ongoing debate in New South Wales.

When we came down to the nitty-gritty of the actual code, the problem was whether one supported an aspirational or prescriptive code. Our committee's view was that a purely aspirational code could really only say: 'be good and eat your greens'; or it could be a meaningless code that said 'you will always act in the public interest'. We also felt that the public would have eaten us alive if we had adopted a short aspirational code.

There were other differences—the Legislative Council committee modified the injunction to uphold the law. The original code we were working on had the words 'we must uphold the law.' It seems self-evident that that's what you would have in a code, but I looked around and on our committee we had at least four or five people who had deliberately gone out and broken the law at some stage, and probably intended to do so in the future. So why bring in a code of conduct which said you must uphold the law? We also had an extensive account of conflict of interest in our draft code, more so than in the Legislative Assembly code, and we also included a section on post-employment restrictions.

The upper house and lower house couldn't come to an agreement, so what we agreed to do was have something that hadn't been used since 1917, called the Free Conference of Managers, and that was where it stood for about six to nine months. We had agreed that we'd have a Free Conference of Managers to bring about a joint code.

However then *real politik* reared its ugly head. There was an election coming, and we had an ICAC commissioner who was looking at us a bit askance, so the executive government came up with a code of conduct and everybody immediately said: oh yes, we'll have that. It was interesting. The lower house had their code, which was pretty ordinary, and we had our code, which we thought was terrific. Basically this new code was called the Premier's Code, but then the executive government said 'we'll have that'. I call the Premier's Code the 'credit card code' because our Deputy Clerk had it printed on a card the size of a credit card, to show how limited it is.

However, the Premier's Code was extremely popular with members of Parliament, because no one actually wanted a code of conduct anyway. The code that we eventually adopted comes down to six points—it was originally five points, but a sixth point was added, and this is the one that I wanted to talk about. It is actually a useful point. It talks about the fact that we are members of Parliament and members of parties. It says:

It is recognised that some members are non-aligned and others belong to political parties. Organised parties are a fundamental part of the democratic process, and participation in their activities is within the legitimate activities of members of Parliament.

That, for us, has solved the ever-present problem, which we always had, of what is legitimate parliamentary or legislative use, and what is political party use. Our resources are meant to be for legitimate legislative or parliamentary purposes. That really means that you are very limited on what you can use your travel vouchers for, what you can use your stamps for, what you use even your stationery for. Having had that point added, it is now clear that if we want to catch the train to Goulburn in winter for a country conference, then that is part of our work and not just wanting to go to Goulburn for a weekend in winter—which, for some reason, people always thought we were doing for fun.

That, I think, was a very good aspect of the code. When we grappled with the idea of what you could do with parliamentary resources in the upper house code, we've actually used the expression 'parliamentary resources are not to be used for private financial benefit.' We've been quite happy with that, because we didn't want to get into the distinction between what is political and what is parliamentary.

When we asked our distinguished public witnesses, the people who were giving evidence to our committee, what they felt was parliamentary and what they thought was political, we got very odd answers. In fact our auditor-general, who is an interesting character, was of the view that anything you did to get yourself re-elected was private gain, because you were getting your wage again, which of course was private gain. His view was that if you used the parliamentary conference room to have a press conference where you talked about how good you were, then that was using it for private gain, because that might get you re-elected and you therefore got money out of it. Basically that meant that you couldn't walk around Parliament House, because that would have been private gain. So there were differing views, and they have been cleared up and I'm very pleased about it.

What do I see as the real issue? The real issue for backbench members of Parliament is exactly what I was talking about—it is private gain from public office. It is never as clear as, say, conflict of interest. It's those little, low-grade actions that members of Parliament take quite often, and don't even think about. For example, it could be a member demanding an upgrade at the airport; or ringing up the Sydney Cricket Ground and saying, 'I'm Joe Bloggs, Member of Parliament, can I park under the stadium for today's match?' Or it could be a member of Parliament going down to the local police station and saying, 'I'm the local member, that's my nephew you've got in there, get him out.' It could be a member writing to the council on his letterhead objecting to the neighbour's noisy cocky. It's those sorts of behaviours that create the grey areas that members on the whole are not very clear about. I've discussed this for the last four or five years. Every time I talk to a member of any parliament in Australia, I start talking about these issues. I get so many different responses, it's extraordinary. Some people think it's OK to write to the council on their own letterhead to complain about something that is in fact a private issue. I was so proper about it, that when I had an issue with the restaurant behind me I only ever approached the independent member of the council about it, because I felt too embarrassed to actually talk to the Labor Party members, because it might look as if I was using my political position.

On the whole, members are not corrupt—they are confused. This goes right up to the leadership. When I was trying to get my version of the code of conduct accepted, the leader of the ethics committee in the lower house and I went to see the three leaders of the major parties, and the responses I got from them made me realise that, if that was the leadership response, it was no wonder the members themselves don't actually know what I'm talking about on ethical issues.

When I was speaking at a seminar in Western Australia on ethical issues, I asked the Deputy Premier, HENDY COWAN from the National Party, what he did about the grey areas, and he said that there were no grey areas—there were standing orders, and there was the criminal law. And most members of Parliament actually believe that. They think the standing orders say you can't call someone a liar, and the criminal law says you can't murder your wife, and in between that there is no such thing as a grey area. I get grey areas all the time.

A friend was telling me that he had done a routine immigration case for a constituent. He later went to a restaurant which he had no idea was owned by that constituent, and when it came to the end of the meal, the constituent said that he mustn't pay. It was an embarrassing and difficult situation. I asked how he solved it, and he said that he solved it by letting them give him the meal, but that he never went back to that restaurant again because he was too embarrassed. He was afraid it would happen again.

Those are the sorts of issues that parliamentarians deal with daily, and yet there has been no support for us putting out a more prescriptive code, one which says: in this situation you can do this, in that situation you can do that.

In America they have produced an ethics manual which is very comprehensive, and includes things such as, if a lobbyist offers you a glass of water you cannot accept it—you cannot accept a *thing* from a lobbyist. Mind you, in America it's a lot more

difficult for backbenchers because there is no party voting system, so every vote is for sale—and it's *literally* for sale. I've always felt, in Australia, that tight party voting protects backbenchers, particularly, enormously. We say, 'Don't even bother to talk to me about that, Caucus will decide', and then I just put my hand up. And it does mean that lobbying in that American sense doesn't actually happen to us. But over the years, I've decided that what we do need is a case book, where cases are put to members and then the correct ethical action, or way of dealing with it, is put forward, because there are just so many differing views on what is ethical and what isn't.

The other thing that we were meant to do, of course, is to have ongoing education. I'm no longer responsible for the ongoing education of members of Parliament about ethics, because I'm no longer the Chair of the Ethics Committee. However, as President, the Speaker and I decided to put on a compulsory induction for all members of Parliament about their responsibilities under the various acts—the Ombudsman's Act, the ICAC Act—and I would have thought it would have been pretty important and that people would have responded. We asked that Parliament be held up for an hour and a half so that this seminar could take place, and we did that specifically because we wanted everyone to be in the building so that they would all come to the seminar. We were actually refused the right by executive government to hold up Parliament for an hour and a half, so we had to put it on before Parliament started, and we didn't get a terribly good roll up. We refused to let the press attend, mainly because I was terrified they would report that less than half the politicians turned up.

So, not only do we have a problem with it being a much more complicated area than most people think—it is not black and white, there is this huge area in the middle. I always say to members when they ask, 'If something came out tomorrow in the press, would you be able to say: yes, I did that, and I stand by it?' That's a good rule of thumb to use.

At the moment we don't actually have an outside ethics adviser. The same ad hoc advice systems go on, and they're all totally inappropriate. You can ask your own Whip—who may be a very wise person and give you good advice, but I tell you what, the media isn't going to accept that as an excuse. You can ask the clerks—the media think that's alright, but the clerks hate it, because there's a sense in which they are your servants, and then they are also having to tell you that no, you can't do that, so they get into trouble from the members of Parliament. You can ask Pat in the Printing Office—you say, 'Can I use my crest for this?' And some poor, lowly person in an office has to make a totally inappropriate decision, and feels very put upon by it. You can ask the presiding officers—well, my experience after two or three months as a presiding officer is that no one has asked me anything, and I wouldn't know the answer anyway. Also, I don't think that members from the opposite party would feel comfortable about that. So who knows? Some of my more formal friends say they just send everything they're going to do to ICAC, and ICAC has to give a response to it, which is a strange way of going about things.

So, at the moment we have a situation where it's all ad hoc, nothing much is working, and we have to come to some sort of decision and stick to it.

The compromise conflict of interest commissioner that we ended up with isn't even a statutory appointment—it's someone who's appointed by a motion of both chambers of the Parliament, and it's just not working well at all. In fact at the moment we don't have one.

Those are all the issues that I wanted to raise, and I would be really interested in questions.



Question — Given that you seem interested in the idea of an ethics commissioner, do you think that there's a possibility that the politicians—if they had an ethics commissioner to ask advice of, rather than accepting responsibility for their actions—would then move that responsibility to the ethics commissioner, much in the same way as the Canadian ethics commissioner operates at the national level? Instead of saying, 'Yes I take responsibility for having taken this action', they say, 'I sought advice from the ethics commission, they thought it was OK.' The Canadian ethics commissioner for the government is actually required to support action taken by a minister if their advice supported that. What I am suggesting is that there may be some shifting of responsibility from the individual member of Parliament to the ethics commissioner. Do you think that's a real problem?

Meredith Burgmann — I think that, in 90 percent of the decisions you make, you wouldn't bother to put them to an ethics commissioner because you know what's right and what's wrong. For that other 10 percent, it's an enormous help to be able to ask an appropriate person. I tend to ask my Clerk, which is quite mean, because if ever he says no to me he feels terrible.

Under the Saskatchewan model, if the commissioner gave you advice, which you then took and subsequently got into trouble legally, you are not covered. But all the members of Parliament were quite sure that you would have been covered in an area that they saw as more important, which was the media—that the media had faith in the person who was the commissioner, and the media wouldn't have judged you as wrong. But it didn't give you indemnity from legal attack. And to most politicians, the law isn't the issue—the issue is what the *Daily Telegraph* is going to do with it.

Question — I'm really interested in the use of the verb 'help' in terms of your answer. You said you considered it a major help to have some assistance in forming your opinion on ethics matters. That suggests to me that while you are asking an ethics commissioner about a particular problem, the responsibility for the ultimate decision on how you act still resides with you. Do you as the individual politician in this particular example see the ethics commissioner's responsibility as being to assist in the formulation of a decision, not to actually make that decision on a politician's behalf?

Meredith Burgmann — Yes. Presumably, if you asked an ethics adviser, 'Can I employ this person who is my wife?' and they said no and you still did it, then the building doesn't fall down. But then if the media find out about it and attack you for it, you can't say that you asked the ethics adviser and he said yes. The decision is still yours, but I think you'd be very silly to go against the advice of an ethics adviser,

because you have no comeback then when the final arbiter, which is the media and the public, find out about it.

As I said, politicians do a lot of things that are unethical, but they don't see it as unethical or corrupt. They actually think it's all right to ask for an upgrade. No wonder only twelve percent of the public like us.

Question — The small card that you had with regard to a code of ethics from the Parliament, and then the massive one you referred to, presumably that big one is a Federal USA code and not a state one?

Meredith Burgmann — It's called the House Ethics Manual. It's the lower house American one. The states also have them like that.

Question — The small card you had, and the code of ethics written into that—is that good enough, would that have stopped the Metherall/Greiner affair?

Meredith Burgmann — You'd have to pull a long bow, but probably not, no. The essence of the Greiner affair was that they created a public service job and did not use proper public service procedures in order to put someone into it, out of which they gained another liberal vote, that is, they got Metherall out of Parliament and put someone else in who was another vote for them. You need a fairly prescriptive code. This is a totally aspirational code. This is a 'be good and eat your greens code', into which you can read almost anything.

I actually don't accept that there's right and wrong. To me there are all these areas in the middle. I know I myself need guidance on it all the time. It's very difficult. What gifts do you accept? Now, in our code we struggled with the issue of a private organisation saying, we really want you to see this tunnel that we have in Hong Kong, because we think that's the tunnel you should vote to have in Australia. If they then send you up to Hong Kong, is that a junket or a bribe, or is that a fact-finding tour to see if it's a good tunnel or not? We sat down with our committee, and said, if you go for a specified number of days and you don't take your wife and kids and you don't stay on afterwards etcetera, etcetera, then it's a fact-finding tour. We actually wrote down what's considered an acceptable gift of travel. I would find something like that enormously helpful. If there was a guideline there, I'd read it through and I would stick to it. Whereas now, people say, should I have taken that? I think you need an ethics manual like that.

Use of letterhead is one situation which I angst about all the time—it never occurs to a lot of other members of Parliament, they use their letterhead for everything. It got Geoff Prosser into a lot of trouble, didn't it? He wrote on his ministerial letterhead to the local council about beautifying his street. That got him into a lot of trouble.

In America they have a system where they have four different sorts of stationery. The first is the totally official one that says Senator Bob Bloggs, US Congress, etc, for totally official stuff; then you have one that says Senator Bob Bloggs, but doesn't say US Congress; then you've got one that says Bob Bloggs, etc—there are four different grades of stationery. I would find that pretty useful. I have just been travelling, and part of what I was doing was totally official, and part was totally private. I kept

thinking, should I be handing out my President cards, maybe I should have had a card that says ‘Meredith Burgmann, MLC’, not ‘Meredith Burgmann, President, Legislative Council’, because I was visiting as someone who was interested in Southern Africa, rather than as the President. So those sorts of issues arise daily. I would have an ethical issue five times a day, and most members would.

Question — My interest is in the blurring of the lines between what is parliamentary and what is party political. What I’ve noticed in the last couple of years is the extent to which the Remuneration Tribunal and the other law makers tend to prescribe things which previously members and senators used to do which were inappropriate or not covered, and which are now being covered by the law. You suggested that getting oneself re-elected is a good thing. The Taxation Commissioner took that decision some years ago and everyone seems to be following it with some enthusiasm. If you’re not totally 100 percent a politician every minute of the day, and I suspect most politicians are, where else do you draw the line with respect to the lawmakers, in those positions of Remuneration Tribunal people? The party system seems to have run over all of the separation that used to be exercised by independent authorities. Do you see that happening with the ethical questions?

Meredith Burgmann — I think that’s why, in the end, we just said, you can’t get private financial benefit out of the use of parliamentary resources, because it is almost impossible to say what’s a parliamentary and what’s a political activity. I was elected by four and half million electors, or I was elected by the left of the Labor party who put me there. So it’s a question of who are your electors.

I think you probably are a politician all the time, which is why you never get to behave badly. One of the questions we asked, I think of the Ombudsman, was ‘When is a politician not a politician?’ Like ‘When is a policeman not a policeman?’ The Ombudsman said, ‘Look, I’m always the Ombudsman, I’m not even allowed to push in in a queue.’ And it’s true—you actually have to behave properly at all times.

Another issue, which is one that no one will look at, is having a big fundraiser and charging the local businesses \$200 a head to come and meet the Minister for Planning, or the Treasurer, or something. Is that ethical? Everyone does it. Do you get around it by saying, come and meet Joe Bloggs; he’s a nice man—rather than Joe Bloggs, Finance Minister? I have half a dozen of those little questions every day. I’d love there to be something written out that gives proper guidance on it all. That’s what we set out to do with our code, and everyone laughed at it, because they didn’t think they needed to have advice on what was an acceptable gift.

Was it right for Bronwyn Bishop to get the services of a member of staff from the health insurance funds when she was the shadow Minister for Health? We actually sat down and wrote out ‘The use of staff as a gift’. We wrote down guidelines. And nobody wanted to know about it, because politicians, especially in leadership, believe that the ultimate judge is the public. And my view is that the public is only the judge when they know about it, which comes back to transparency. If Bronwyn Bishop had announced to the world that one of her staff members was being paid for by the health insurance companies, then that’s probably fine, because then she would have been judged on it. But no one knew. I suppose it’s a bit like John Laws—if he’d said, ‘I’m being paid a million dollars by the banks’, then it wouldn’t have been an issue.

Question — You started off with the problem that most of the country thinks you're a bunch of crooks. Do you think the country trusts you to set up your own ethics process? And how do you move to the next stage, of validating and gaining confidence in your ethics process?

Meredith Burgmann — I don't think they trust us, but they certainly want us to do it. What has amazed me is that no member of the media has had a go at this. Journalists' ethics is another story. They don't trust us to do it ourselves, but they want us to do it, so we're going to have to do it, and do it a bit better than we're doing it at the moment.

Even though I'm sad at what's happening in New South Wales, we're still well ahead of most other parliaments. I'm shocked to discover that they have stalled in other parliaments.

In Queensland they're *obsessive* about use of travel, that's the only thing they think ethics is about. They're not in the slightest bit interested in the noisy cocky or what sort of stationery to use. They're obsessive about travel. But of course—half their previous ministers ended up in jail over use of their travel. So, they're stalled on travel.

In Western Australia they just don't believe there's such a thing as a corrupt politician, so they just send them to jail.

In New South Wales we've battled on quite well. One of the sad things is that one of the few people to have been caught in some ethical problem was Brian Langton, who was basically doing nothing which helped himself. There, but for the grace of God, would have been me. When I was asked if I could lend my travel warrants to one of the shadow ministers, the only thing that saved me was that I'd been such a good little hardworking MLC and I'd used all my warrants, so I didn't have any to hand over. So the one person that's caught under the so-called 'travel rorts affair' is a bloke who simply used someone else's travel warrants to get his job done as shadow minister. As far as I can see there's a lot more unethical stuff going on than that.