

A close-up portrait of a middle-aged man with short, light brown hair, smiling slightly and looking off-camera to the right. He is wearing a dark pinstriped suit jacket over a light blue and white striped shirt and a pink and white striped tie. The background is blurred, showing vertical lines of a building.

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# Duncan McConnel

President of the Law Council of Australia

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**D**uncan McConnel commenced the presidency for the Law Council of Australia on the 1<sup>st</sup> January 2015. Megan Lawton conducted this interview asking the big and not so big questions about what we can expect with a Territorian in the role.

### What have been the issues you have been advocating so far?

The two main issues that I have been advocating are firstly issues around the data retention Bills and Indigenous imprisonment.

The concerns about the data retention Bills involve issues of proportionality and rights of access. The Law Council of Australia has been advocating in parliamentary committee hearings for limits to be placed on the proposals and for those limits to be contained in the legislation rather than at the behest of the Minister. For things like:

- The length of time that data is to be retained, there has been no case made that two years is the appropriate time;
- The minimum period of time that data is retained, you should only retain data if it is going to be of value, and
- It should only be acceptable to retain data for serious crimes, not for crimes like Centrelink fraud.

The second thing we have been advocating on is Indigenous imprisonment. In February I spoke about the crisis of Indigenous imprisonment on a panel with the Chief Justice of the Western Australian Supreme Court and the Chief Executive of the Aboriginal Legal Services of Western

Australia at the WA *Summer School*. My presentation was about new approaches, looking at issues of justice reinvestment and those sorts of trials that have been starting to get some currency. We are also calling on the Commonwealth Government to include justice targets as part of the closing the gap annual reporting.

### What do you see as the big challenges for your presidency and what do you hope to achieve?

The Law Council has identified a number of things including:

- The ongoing problem of Legal Aid funding. The Law Council is proposing a national campaign to bring attention to the problem and the consequences of not providing adequate funding for Legal Aid. We hope to draw attention to the costs to the Courts and the justice system.
- Progressing work on the National Attrition and Re-engagement Study (NARS). I hope that the Law Council will identify a number of tangible practical initiatives that can be applied in the profession to try and re-engage with women but also with other people who are marginalised to some extent and try and have them re-engage and find fulfilment with working in the law.

- There are a number of issues that have been thrown up by the *Productivity Commission: Access to Justice Report*. These are big structural issues that go to things like:

- Should there be an unbundling of legal services so that lawyers are hired to only perform specific tasks instead of having carriage of the whole matter?
- Should non-lawyers be able to work in certain specialised fields or for certain stages of the matter?
- Should court staff be able to give legal advice to unrepresented litigants?
- To what extent do we let legal advice be procured from offshore?
- Can we commoditise legal services in that way?
- Do we look at the introduction of contingency fees?
- Do we regulate litigation funders?

One of the most critical issues in the report is this idea of seeking full cost recovery for the use of Courts—which goes against the fundamental principles of the rule of law. People should be able to access the courts and apply the law for the resolution of their legal issues and the enforcement of their rights and it has never been the case that the Court system should be a user pays system.



**Most Australian legal practitioners are in small practices and you are a barrister what insights do you have to the challenges faced by small firms?**

I spent the first 15 years of my career as a solicitor working in a small firm, in that time I saw a change in emphasis from the delivery of a professional service to turning law firms into high profit practices. I saw the introduction of time recording, and of IT managed operating systems. I have seen the growth of national firms and the impact they have had in smaller communities like Darwin. I have been a partner in a small firm with offices in Darwin and Alice Springs so I have experienced first-hand the marginal state of legal practice particularly in regional areas. I have also experienced the challenge of attracting and retaining skilled staff in a regional practice. I think the issue was compounded in the Northern Territory because it was not just a small firm in a regional area but in a regional area that is thousands of kilometres away from anywhere else.

**Reform in the regulation of the legal profession seems to be forever on the table, what do you think of the benefits of a unified national profession?**

I think the fundamental benefit is greater mobility for lawyers who want to practice their profession of Australian law in the place of their choosing. It is still, in this day and age, not possible to simply move interstate and start practicing. It is even more difficult at the Bar where some jurisdictions have quiet onerous bar entrance exams that have to be undertaken regardless of your experience.



**Health and wellbeing are big issues for the profession how have you maintained a healthy balance noting your busy schedule?**

I have a little bag that I pack into my suit case that contains a pair of runners and some gym gear and whenever I can I try and get to the gym.

**Do you think health and wellbeing or a healthy lifestyle are important?**

Yes. I drink plenty of water and I try and get a lot of sleep. I believe it is important to be physically fit because you need a lot of energy to be able to do this job.

**Do you have interests outside the law?**

I do.

I have a family that I love very much and I like to spend time with them. I still play Aussie rules football and so I try and get out to training as often as I am in town and I have even played a few games this season.

**Is work in the law family friendly?**

It is increasingly family friendly. I was very encouraged to see the recent practice direction come out of the New South Wales Supreme Court to facilitate practitioners who have childcare commitments by making sure the Court sittings don't go over time. I think that there is a far greater recognition of the requirements for people to attend to their family responsibilities and I think that is an enormous breakthrough for men in the profession as well as for women. I think that we are getting there.

For a profession that from time to time requires a lot of concentration (and in those moments it's not very family friendly) the objective is getting the balance right. I worry that in some areas of practice the imperative to achieve high billings means that you are more or less constantly in that state (of intense concentration).

### What are your 5 tips for young lawyers? What advice would you give to your younger self?

- 1 | Spend your younger years getting exposure to as many areas of practice as possible, even if that meant changing jobs every 3-4 years. Seek out experience across all areas of law, criminal law, family law, civil litigation even commercial law. Get broad exposure to all the different areas of law as a young lawyer before you settle into the area of practice that you will pursue in the longer term.
- 2 | Have interests outside of the law, particularly interests that will broaden your mind like music, theatre and philosophy. Read widely.
- 3 | Regularly check to make sure that the balance is slightly in your favour in the 'fun stakes.' In other words, critically examine your life from time to time and make sure, on balance, you would rather be doing what you are doing than anything else.
- 4 | Only ever write anything that you would be comfortable to see in an affidavit.
- 5 | Believe you can do anything.



**Left:** Duncan McConnel, **Above:** Duncan McConnel presenting at the Law Council of Australia President's Medal 2014.

### We all have bad days. What is your inspirational self-talk for when you are really up against it?

When it's really tough; the first thing I tell myself is that giving up won't solve the problem. The second thing that I do is think about what I can do to try and get out of my problem and map out a strategy. The third thing I do is face up to the prospect that what I am going to have to do will be really hard work. But it will only be for a short time (to get through the particular situation). That way I try and energise myself so that I can throw myself into the work, knowing that if I get through and achieve the best, that I will feel very rewarded.

### Where do you go for professional support?

If I have an ethical dilemma I will usually consult a senior person in the

profession that I trust. If I have a legal problem I will often just pick up the phone and ring someone. All lawyers should feel that they can ring their colleagues and ask for help, it is not a sign of weakness. I would expect that all lawyers would be ready and willing to help others and that they should let people know.

### Most Law Society's like the Northern Territory have things like LawCare, have you used LawCare or would you encourage people to use those services?

How you reach out and what assistance you seek is very personal. I think that it is a fantastic thing that Law Society's' including LSNT have recognised the value in offering a service like that. If only one lawyer uses it, in my view it is worth having. ●