



# DE MINIMIS

A newspaper for the students of Melbourne Law School. Established 1948. Revived 2012. Made officially unofficial 2015.  
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Tuesday, 26 May 2015

## THE BUMPER ISSUE!

### A THANK YOU FROM *DE MINIMIS*

As another semester draws to a close, and a pall both metaphorical and literal settles across the Law School, it's time for *De Minimis* to bid its readers farewell.

Having started this year with some trepidation as to whether we could fill an issue every week, we've been pleasantly surprised by the quantity and quality of the articles we've received.

It is our desire that this publication should continue to serve as a forum for the students of the Melbourne Law School, allowing the vent of opinions and ideas which might not otherwise be shared with the cohort.

In pursuit of this end, we'd like to reiterate: we'll publish anything of a sufficient quality. Anything. As long as it's not defamatory or truly offensive, we'll publish it. Let it be on your head.

Thankfully (for the purposes of this publication at least), law students are an opinionated—even disputative—bunch.

The sheer number of contributions we've received over the last couple of weeks demonstrate either that:  
(a) there exists a thriving culture of

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debate and self-expression at the Melbourne Law School; or  
(b) law students will do almost anything to avoid revising.

Why not both?

In recognition of the end of the semester, and the fact that I'll be buggered if I spend Swot Vac editing another issue, we've decided to cram all of these contributions into a double edition. Enjoy!

On behalf of myself and my fellow editors—Jacob Debets, Tim Matthews-Staindl, and Duncan Wallace—I'd like to say thank you to everyone who has contributed to *De Minimis* this semester, and 'welcome' to those who want to write for us next semester.

Kiss kiss,

Ed.

*Hamish Williamson* is the Chief Editor of *De Minimis*

# Events

## MEET THE COCKTAILS: A PROFESSIONAL EVENING 2015

The antechamber beckoned. The night had begun. My name was signed away. I will squeeze every last opportune moment of May dry. To the bitters end.

The vestibule had almost swallowed me whole; I was beside myself. My first cocktail, a gimlet, was consuming me, instead of I, it. It felt cool on the palm of my hand.

Beyond the entrance I noted an exclusive variety of stalls and canapés. The anteroom buzzed with 'I hate networking' 'What am I doing here—oh but I do. love. martinis, thanks'. I forgot the anteroom. All I could think about was the map. Having consulted it not for mere hours, but many days.

I approached with my best saunter. From the moment that I floated through the arches and columns impressing the hallowed halls, a hakainai-salt-rimmed margarita materialised and I was sold.

Suckling softly on the glass's rim I observed my opponents, great and small, whom by the end of the night I will have conquered. And by that I mean the cocktails.

After some encouragement from my closest compatriots, I crossed the room, gently spilling the fresh lime and rum across the floor hoping that it would incite a fall, so as to somehow ease the pain within me.

I found myself idling behind a swathe of humans waiting on mintier juleps. 'This isn't working'. I disappeared into the crowd.

'I'm glad that I went to this'. I thought. 'Because what I really want is a real job'. I leaned against the amphitheatre and surveyed the three walls as they started to shift.



Photo credit: Public domain

I thought of home. One and a half hours away. Or was it half an hour? Or was it really just here. Yes, I thought. It's here.

My first strategic move. Getting my hands on a soft and fluffy espresso martini. The gathering towards the left was bursting at the seams. I should, instead, begin at the right.

Awash with emotion, I anticipated my first conversation with G & T's. I was presented with so much gin, so much tonic, that these here drinks would serve as the shackles that would bind me to my new home for the rest of my conscious life.

I submitted to the intoxication.

My suit was so sharply cut that I couldn't run my fingers down it without feeling nauseous. Maybe it was because I was on my 17<sup>th</sup> standard; this time, an amaretto sour. I mean, by that, to say my 7<sup>th</sup> real human interaction. No fuck, I mean my 70<sup>th</sup> CV sent. Anyway.

The human resources representatives came across with another tray of cosmos. I slid my business card across the table, catching the cool residue that they left behind.

It read 'Amelia Rose Eddy - Student of the Juris Doctor'. I brimmed with

confidence; I was delighted. I came, I slid, I conquered.

I am alone. I am an island. An island rearing to hustle. An old fashioned appears. I am done here.

I so look forward to meeting more cocktails tomorrow.

*Amelia Eddy—2nd year JD student and LSS Women's Officer—was, despite evidence to the contrary, not actually in attendance at said professional evening.*

### DE MINIMIS IS...

**Chief Editor**  
Hamish Williamson

**Managing Editor**  
Duncan Wallace

**Co-Editor & Secretary**  
Jacob Debets

**Equity Uncle & Treasurer**  
Tim Matthews Staindl

# Economics

## BUDGET 2015: HIGHER TAXES, AD HOC CUTS

The Government's first budget last May predicted that the deficit last year would be \$26 billion.

This estimate proved way off, the deficit instead coming in at \$41.1 billion.

The Government's second budget, released last week, predicts the deficit this year will come in slightly lower, at \$35.1 billion. It doesn't see revenue exceeding spending any time soon, though the gap is supposed to shrink to just under \$7 billion by 2018-19.

This will largely be due to an increase in revenue: receipts are due to rise by 1.6% of GDP between now and 2018-19, whereas spending is predicted to fall by just 0.6%. 80% of the increase in receipts will come from "bracket creep" – as inflation lifts people's nominal wages, more people will enter higher tax brackets.

This will mean that, in real terms, people on lower incomes will be hit with an increase in taxes: the average income tax will rise from 21.7% to 27.4% over the next decade.

In contrast, corporate tax is rising slowly. Whereas taxes on individuals will grow 8.5% in 2016, receipts from companies are expected to grow just 0.3%.

The increase in taxes for those on lower incomes follows huge tax cuts for those on higher incomes over the last decade.

Research by *The Australia Institute* has shown that between 2005 and 2012, tax cuts cost the budget bottom line a total of \$170 billion, 42% of the cuts benefitting the top 10% of income earners.

The bottom 80% of income earners got only 38% of the cuts. Without this loss of revenue government debt

in 2012 would have been \$60 billion rather than \$230 billion.

What about the budget's treatment of tertiary education? The title of an article in *The Australian's* budget special more or less sums it up: 'University sector hit by ad hoc fund cuts'.

Research funding has been cut in various ways, the Government even deeming it necessary to cut its \$1 million yearly grant to the website *The Conversation*.

There's also bad news for indebted students: there'll be no escaping HECS debts by moving overseas any-

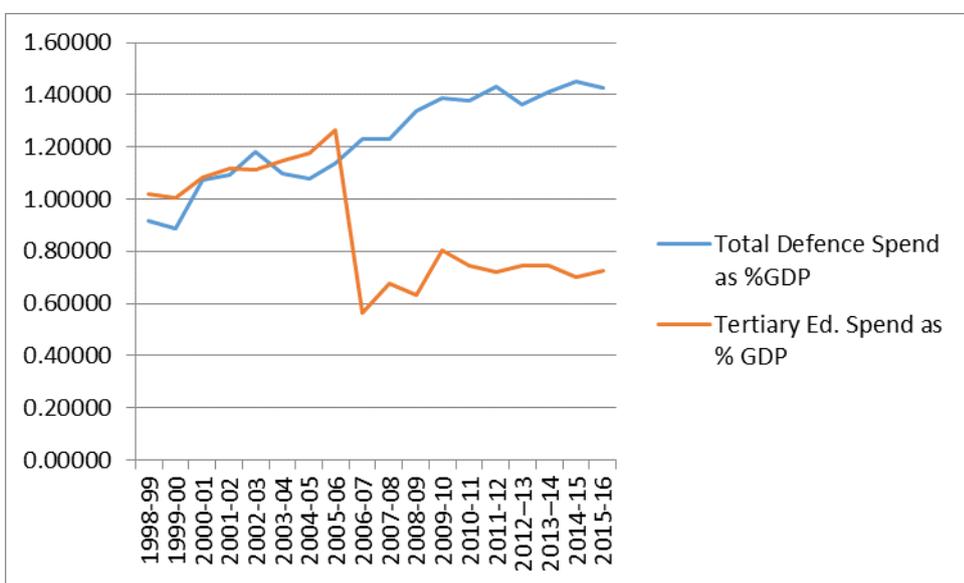
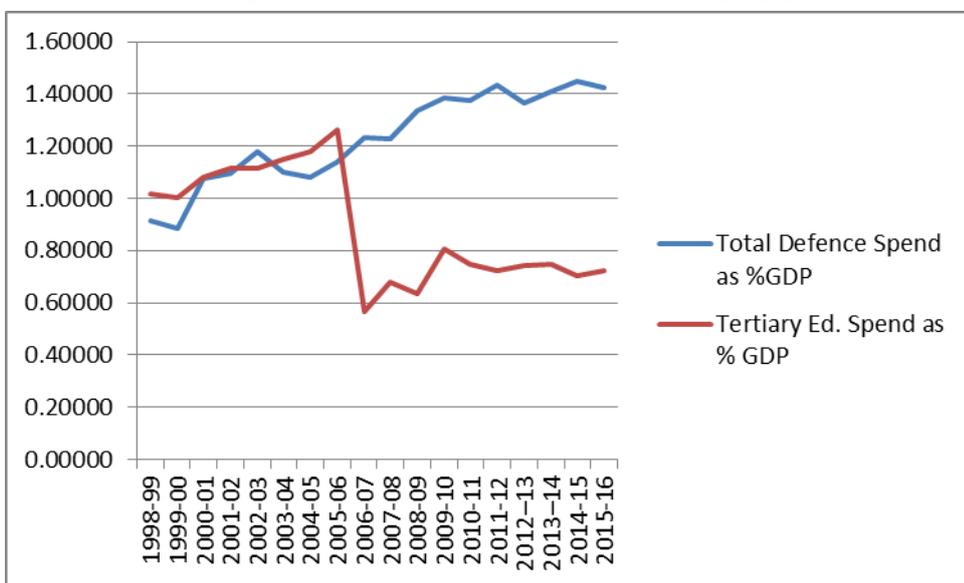
more. \$26 million is forecast to be recovered over the next four years from overseas HECS debtors, though it will cost the Government \$3 million in implementation costs to do it.

Understandably defence is a winner. The price of freedom is eternal vigilance, and vigilance is useless without weaponry.

In dangerous times like these, it's important that the State maintains the capacity to arm itself, even if this involves sacrificing, say, the education of its citizenry.

**Duncan Wallace** is a second-year JD student, and the Managing Editor of *De Minimis*.

(figures below for the years up to 2013-14 are taken from the ABS. 2014-15 and 2015-16 figures are estimates from this year's budget papers)



# Wellbeing

## A GUIDE TO GETTING THROUGH EXAMS

We're heading into the stressful period of swot vac and exams. To help you get through it, I offer the following advice:

### Support Networks

#### *Friends*

If a friend messages or calls during this time, don't answer.

If you run into a friend they will probably be a law student because you will be in the library. Make sure to tell them about how much work you are doing but how you are still very stressed.

Don't ask them how they are doing because their answer might psych you out.

#### *Family*

Depending on your relationship, family can be the perfect object on which to unload your general unhappiness. Communicate with family members passive-aggressively or aggressive-aggressively.

#### *Lovers*

Being mean to someone can be a good way of easing stress. Boy-friends and girlfriends are a good target.

If they are not a law student, it's important to tell them that they don't understand what you're going through. If they don't react well to your behaviour, just remember: if they can't handle you at your worst they don't deserve you at your best.

#### Time Management

Design a study schedule that is gruelling and almost unachievable. Consult it frequently and especially when you're distressed to see how far behind you are with your study.

#### Food

You might lose your appetite if you are really anxious. This is good, it means that you won't get distracted by food and will lose weight.

If you don't lose your appetite, just eat whatever food is closest in proximity. This might be something from a vending machine, that's fine.

If you're at home you might want to consider buying some loaves of bread and eating lots of toast which can be any type of meal or snack depending on what you put on it.

Make sure to get enough sugar and caffeine.

Quick tip—cooking is a waste of time.

#### Exercise

Can wait till after exams.

#### Sleep

Similar to exercise but you might need to do it a bit. If you are too jacked up to sleep, get some sleeping pills.

#### Having breaks

People say that you should have breaks because your brain can't concentrate for long, continuous periods. However, there is absolutely no scientific evidence to support this.

Good luck everyone, and work hard! As they say in the US Marines Corps, 'nobody ever drowned in their own sweat'.

*Sophie Charles is a second-year JD student.*

## Don't like the content? Write your own!

*De Minimis* is written by, and for, the students of Melbourne Law School.

We welcome any and all quality writing that might interest our readers.

If you have insights into the student experience, the legal industry, events on campus, politics, movies, or even fashion, send an email to the editor:

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# Law and society

## WHO'S AFRAID OF THE WOOLF REFORMS?

*Jasmine Ali discusses criticism of ADR in its wider social context.*

There is no doubt that Hazel Genn's critical appraisal of Alternative Dispute Resolution (ADR) is a sobering reality-check.

Genn shows us that championing ADR as a panacea to costly court processes is not only empirically troublesome, but also compromises the foundational principles of the modern judicial system.

As Genn demonstrates, compelling parties to undertake ADR, which is often a confidential process, rather than allowing parties to have their rights vindicated in public, norm-setting institutions of the courts, has big implications for access to justice, and the development of the common law itself.

In doing so, she offers a much needed critique to the present-day push by policy-makers (and some members of the judiciary) diverting cases away from the courts.

But Hazel Genn's answers to the questions of 'why Woolf Reforms', 'why ADR', and 'why now', are rather unsatisfactory. Genn argues that the significant motivations behind recent policy announcements boil down to the curse of postmodernism, and its radical scepticism of facts, objectivity and truth.

Whilst I share Genn's dislike for postmodernism, it was quite surprising to find such a strong argument, willing to reduce such major changes to the influence of this particular strand of thinking.

I don't doubt that post-modernism has been influential as an anti-court discourse, but the underlying crisis of the civil justice system seems to



Riot police form a line to push back protesters and media, Baltimore, 28 April 2015. (Photo by Victoria Macchi/VOA News; public domain).

have deeper and more material roots than Genn suggests.

The problems of cost, complexity and delay in the civil justice are, after all, not novel. Justice Chief Martin noted in a speech delivered last year that concern about the accessibility to the courts was an issue as far back as 1905.

So to lay the blame with postmodernism, as Genn does, is a red herring in my view. It mistakes symptoms for causes.

What is about the nature of the court system, and the society in which judicial decisions are meted out, that has undermined trust in judicial institutions? Why does an anti-court discourse elicit such sympathy and acceptance today? In what respect is it qualitatively similar or different to previous times?

These questions point to something more fundamental than a mere intellectual fad. Inquiry into these questions, I believe, would reveal a lot more about what's really going on in the civil justice system and judicial system more generally.

To my mind, Genn overlooks that fundamental presumption of the entire debate in civil justice system more generally, the political and economic environment in which these

changes have taken place - namely neoliberalism.

This doctrine, both in theory and practice, was a response to global economic crisis in the 1970s. Neoliberalism as a theory is often synonymous for free-market or *laissez faire* economic policy, deregulation and 'user pays'.

One key ideological element of Neoliberalism is that a 'big government', is a distortion the so-called smooth efficiency of the market.

What is interesting about Australia's experience with this doctrine, is that despite the doctrine's acceptance amongst the political and economic class, the welfare state has grown over the last 30 years, and at a faster rate than in most of the developed world.

It is clear that neoliberalism has profoundly affected every facet of public institutions, from education, healthcare, transport, so why not the courts?

Cost arrangements typify neoliberal reforms in the civil justice system. Contingency fees and litigations funders are further markers of neoliberal funding arrangements, whilst legal aid budgets are continually whittled away, and increased court fees have

*Continued on page 7...*

# Events

## PERSONAL STATEMENT CONSULTATION SESSION: A prelude to the curriculum review?

The LSS, as part of its new Advocacy program, last week gathered together and summarised student feedback regarding the recent decision to remove the personal statement from JD selection criteria.

The student feedback was presented to the JD Committee, which included various admin staff, academics, and the Associate Dean.

The Committee provided comments (which can be found here)\*, and further agreed to a JD Student Forum which was held last week on Wednesday.

Around forty students attended the forum, and after a short introduction by the Associate Dean, students were allowed to raise their concerns with the Dean and the Associate Dean.

Questions from students focused on three things:

First, there were questions regarding comments made by the Associate Dean that the personal statement had not been accorded as much weight in the past as the other selection criteria.

Students felt that they had been misled; that they had been given the impression that all three selection criteria would be given equal weight.

Information provided to prospective students had stated that the criteria would be assessed holistically, and a pie chart split into three equal parts gave the impression one criteria was not necessarily more important than another.

The Dean agreed that this was perhaps misleading, and that more information needed to be provided to prospective students than previously thought.



Second, there were concerns that selection was becoming too mechanical. Questions highlighted the important place that lawyers hold in society, and the fact that Melbourne Law School acts as one of the principle feeders of the profession.

As such, it was argued, qualitative factors should be an important part of the selection process, analogous to the selection process for the Melbourne Medical School, which includes assessment of non-academic qualities such as cultural sensitivity, maturity, collaboration, reliability and communication skills.

The Dean stated that it was unclear how useful the personal statement was for incorporating such qualitative factors in the selection-process, and that it would be difficult to justify expending resources on implementing an alternative when the benefits of doing so are uncertain.

Third, students raised the issue of accessibility. A student commented that she knew of people who had only heard about the Graduate Access Melbourne Scheme (GAMS) as result of an academic contacting them after reading their personal statement.

The Dean replied that being contacted about GAMS - a program which allows circumstances that have affected a prospective student's tertiary study to be taken into account during the selection process

- was sometimes received badly.

It was better that the Law School continue its efforts to raise awareness about the availability of GAMS than have academics raise the issue ad hoc on the basis of a personal statement.

Students' comments and questions were thoughtful and well-developed, the Dean commenting on one or two occasions that points raised hadn't been thought about when the changes to the selection criteria were being made.

The number of students who turned up was also a mark of the interest students have in engaging with the Law School. It can only be hoped that, in the future, the Law School consults with students *before* decisions have been made, rather than after.

A perfect opportunity for this would be the curriculum review coming up next semester.

The LSS should be congratulated on the work it did to ensure students had an opportunity to be heard.

**Duncan Wallace** is a second-year JD student, and Managing Editor of De Minimis.

\* [http://mulss.com/images/uploads/PS\\_%E2%80%93\\_93\\_Student\\_Feedback\\_and\\_JDC\\_Comments\\_\(Updated\).pdf](http://mulss.com/images/uploads/PS_%E2%80%93_93_Student_Feedback_and_JDC_Comments_(Updated).pdf)

## WHO'S AFRAID OF THE WOOLF REFORMS?

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made costs prohibitive for much of the Australian public.

But how have we not managed to connect all the procedural changes in the courts system over the last thirty years to this very powerful idea that has transformed public and policy landscape?

How has the impact of these changes transformed ideas about the role of the courts in judicial decision-making, and changes such as greater judicial management further alienating effects to its users, and observers?

Current debates about ADR and the impacts of the Woolf reforms are flawed in another way - narrowing of the debate between only the two poles of litigation and ADR.

These are presented as the two most effective ways to resolve disputes, relegating all others processes as undesirable. Writing on dispute resolu-

tion, Christopher Moore outlined how non-conventional actions, such as protest or withdrawal of labour power (strike) from a work place during a dispute, can be a means, and often are a very effective means of resolving dispute.

But in many circumstances, these are the best and most effective for "resolving a dispute", by forcing a change in laws, or winning justice.

When Malcom Fraser attempted to extinguish one of fundamental social protections in this country, through proposing to cut Medibank in Australia in 1976, a general strike involving 1.6 million workers forced the government to back away.

This action—not the courts, and not ADR—defended the right to universal access to the health care system.

Escalating a dispute can be the fatal blow to fighting and winning justice. Anyone who knows of 'Selma', and Martin Luther King's march to defy court injunctions, will have seen the importance of thinking beyond the binaries and limitations of the court system. Bad laws are made to be broken.

More recently, the Dean of the Law School at the University of the District of Columbia urged students to take part in community protests in Baltimore.

The protests erupted in the wake of recent death of black man Freddie Gray in custody of Baltimore Police. Citing community and police relations as 'the civil rights issues of our time', the Dean stated that law school leaders want to be part of the 'energy and commitment' of the protests.

The Dean even offered to defer an exam to those who would help with legal advice on the protests. Making ADR and litigation the benchmarks for dispute resolution stops us from seeing that the law is not a harbinger for justice—quite often it's contrary.

Going beyond Woolf and even Genn allows us to see the limitations of the debate and the courts themselves in their capacity to deliver justice.

*Jasmine Ali is a first-year JD student.*

## Events

### THE WOMEN AND MENTORING PROGRAM

With the doom of exams impending I've found myself questioning exactly why I decided to embark on a law degree. Well this week, I attended an event, which brought me back to reality and reminded me exactly why I'm here.

As part of Law Week, the Woman and Mentoring program (WAM) ran a seminar to promote their services and discuss the issues facing women who are involved in the justice system. The program seeks to pair first-time female offenders with a female mentor, who can support and guide them through the system.

The panellists speaking at this event ranged from former Attorney-

General Rob Hulls, to magistrate Lesley Fleming, to Dean McWhirter, the Victoria Police Assistant Commissioner.

What became very clear from their discussion was that this program not only helps women at a basic level to navigate what is a confusing and intimidating system, but that it also addresses the broader issues of domestic and family violence, the cyclical nature of incarceration, and the strain that repeat offenders place on our justice system

The program is small. Over the last few years, off a small budget and all volunteer staff, they have helped around 37 women.

However, their statistics show that of these 37 women, 95% did not re-offend, and 97% avoided jail time. These are impressive statistics, even for such a small program. Factoring in that the cost of housing a prison inmate 7 for 12 months

is over \$90,000, the cost-benefit analysis comes out pretty positive.

In discussing the importance of this program for women, all of the panelists stressed that the compound issues that instigate offending needed to be understood and addressed. They outlined that the public generally associate people with their crime, rather seeking to understand why the crime had been committed and how it could have been stopped. Rob Hulls called this the 'collective bypass of compassion, when victims become perpetrators'.

He stated that generally, these women come from backgrounds of foster homes, domestic violence, substance abuse, mental health issues and homelessness, but that somehow, none of these factors were considered relevant as soon as they made a mistake.

*Continued on the next page...*

## THE WOMEN AND MENTORING PROGRAM

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A mentor and mentee spoke at the beginning of the seminar, and their conversation highlighted to me just how important this program is.

One example that stood out to me involved the participant of the program being required to give evidence as a witness. Through the mentor's help and guidance had done so via video link, rather than in the court room.

The participant found the whole ordeal of giving evidence very stressful and overwhelming, but with the support of her mentor she had been able to do it in a manner which gave her more control over the situation.

The option of giving evidence via video link may have never been presented to the participant, and as

someone new to the justice system, she wouldn't have known to ask.

What was incredibly interesting was that all of the panellists agreed that while more work needed to be done, the attitudes amongst politicians, the judiciary and the police force were changing for the better.

Assistant Commissioner Dean McWhirter said Victoria Police had made a conscious cultural shift towards providing more support to women in need, and had utilised WAM when they could.

WAM is hoping to expand their program—they have identified areas in which they can viably extend the program, and are hoping to start in Shepparton soon.

In assisting women in dealing with their first engagement with the justice system, the program creates genuine change, and has the potential to create a cultural shift in society's understanding of what it means to break the law.

I found the seminar pretty inspiring, here I was presented with people who were trying to create change and were doing it within the justice system, from varied backgrounds all connected with the law.

This is why I chose law, I believe it has the capacity to put me in a position where I can help create change, even if it's just one woman, in one circumstance, who just needs a bit of help.

If anyone is interested in working with WAM or donating to the program, head to [womenandmentoring.org.au](http://womenandmentoring.org.au) or call them on 9417 2210.

**Clara Harper** is a second-year JD student.



*Photo credit: Public domain*