



ISSN 2204-4779 (Print) 2204-4787 (Online)

Research Note on the Education and Training Reform Amendment (Miscellaneous) Bill 2015

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Introduced: 4 August 2015

2nd Reading: 5 August 2015

House: Legislative Assembly

Commencement: Day after Royal Assent (Part 1, section 27 and Part 3); On the earlier date of the day of Proclamation or 1 August 2016 (remaining provisions)

Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second Reading Speech can be found on the Library's [New Bills Information Links page for this Bill](#).

For further information on the progress of this Bill please visit the [Victorian Legislation website](#).

Executive Summary

This Research Note focuses on the financial oversight provisions for non-government schools in the [Education and Training Reform Amendment \(Miscellaneous\) Bill 2015](#). It provides a brief background, including an overview of the closures of Mowbray College, Acacia College and St Anthony's Coptic Orthodox College in 2012, and the response of key stakeholders at the time. Current reporting requirements for non-government schools, changes proposed by the Bill, statistics on non-government schools in Victoria and links to further resources are also included.

Introduction

The closures of three non-government schools due to financial crisis in 2012 (Mowbray College in Caroline Springs and Melton; Acacia College in Mernda; and St Anthony's Coptic Orthodox College in Frankston North) prompted debate on the financial oversight of non-government schools. In 2014, the Napthine Government sought to strengthen powers for the Victorian Registration and Qualifications Authority (VRQA) to conduct financial assessments of non-government schools under the Education and Training Reform Amendment (Miscellaneous) Bill 2014.¹ However, this Bill lapsed when Parliament expired in November 2014.

¹ The Education and Training Reform Amendment (Miscellaneous) Bill 2014 also included provisions relating to policies for child safe schools. These provisions were introduced in a separate Bill earlier in 2015 – see the Library's [Infolinks](#) on the Education and Training Reform Amendment (Child Safe Schools) Bill 2015.

On 4 August 2015, Education Minister, the Hon. James Merlino, introduced the [Education and Training Reform Amendment \(Miscellaneous\) Bill 2015](#), which re-introduces reforms aimed at enhancing the financial oversight powers of the VRQA with regard to non-government schools. In his second reading speech, the Education Minister stated:

There have been concerns regarding the VRQA's ability to monitor the financial viability of non-government schools in light of the high-profile closure of several non-government schools and the scaling back of several others in recent years ... Deficiencies identified in the current legislative framework include students and parents not being informed of the school's financial difficulties until insolvency was imminent, and following the school's closure, being unable to recover school fees paid in advance.²

The main provisions of the Bill include the ability to conduct financial assessments, impose conditions such as the establishment of fee protection schemes and share information with parents and other agencies.

The Bill also includes other amendments related to the functions and powers of school councils, the operations of Adult, Community and Further Education (ACFE) Regional councils, and other amendments. These amendments are not discussed in this Research Note.

Background

Non-government school closures

It is not common for non-government schools to collapse financially in Australia, so the sudden closures of three non-government schools in Melbourne's outer suburbs within a few months of each other in 2012 raised much concern. Questions were asked about whether existing financial regulation of non-government schools was adequate and how these closures could have been avoided. The failure of a school is more than the failure of a business — it can have a serious effect on students and families, causing stress and significant disruption to students' education. The demise of the three 'low-fee' non-government schools in 2012 — Mowbray College in Melton and Caroline Springs, Acacia College in Mernda and St Anthony's Coptic Orthodox College in Frankston North — sparked a debate on whether further financial oversight of non-government schools was needed.³

Mowbray College

Mowbray College in Melton and Caroline Springs was the first and perhaps the most publicised of the three non-government schools which collapsed in 2012. Mowbray College closed in June with debts estimated at around \$18 million.⁴ The mid-year closure caused upheaval for the more than 1200 students at Mowbray (including 276 students completing VCE or IB), who suddenly needed to find a new school, and 200 staff who were left without jobs.⁵

Established in 1983, Mowbray College experienced a number of problems in more recent years, such as industrial action over staff wages and allegations of bullying against the school board chairman in 2009.⁶ Financial concerns were first investigated in 2009 by the Australian Securities and Investment Commission (ASIC).⁷ Questions have been raised over building projects, unpaid fees and the school's

² J. Merlino, Minister for Education (2015) 'Second reading speech: Education and Training Reform Amendment (Miscellaneous) Bill 2015', *Debates*, Victoria, Legislative Assembly, 5 August, p. 2421.

³ Prior to this, in 2010, ICA Melton College in Caroline Springs and ICA Casey College in Narre Warren South closed after their owning body Independent Colleges Australia went into voluntary liquidation. See J. Topsfield (2012) 'New rules for private schools', *Sunday Age*, 28 October, p. 1.

⁴ S. Hadfield (2012) 'Closures prompt call for new rules on schools', *Herald Sun*, 3 December, p.11.

⁵ Topsfield (2012) 'New rules for private schools', op. cit., p. 1.

⁶ J. Topsfield (2012) 'The Mowbray way', *The Age*, 9 June, pp. 15, 20.

⁷ A. White (2012) 'School's \$18m debt', *Herald Sun*, 30 May, p. 19.

involvement with an international school in China.⁸ Leading up to its closure in June 2012, Mowbray College had frequent leadership changes, with six principals in five years, and media reports suggested much of this turnover followed disagreements between principals and the school board.⁹

Every school is required to send their annual report to the VRQA, which reviews financial operations of non-government schools on a five year cycle. Those schools identified as being at risk of not complying with registration requirements then receive full reviews and site visits.¹⁰ The VRQA conducted an investigation of Mowbray College in March 2012, partly in response to the high turnover of principals and board directors.¹¹ VRQA Director Lyn Glover stated, 'This assessment revealed to the VRQA the immediate financial pressures that Mowbray College was facing'.¹² The administrator brought in after the school's closure, Jim Downey, described the Mowbray College school board as 'well-meaning amateurs ... I think they were completely out of their depth'.¹³ A Supreme Court investigation later revealed that the school had around \$28 million in debt, and media reports in 2014 suggested court proceedings were continuing.¹⁴

Acacia College

Acacia College in Mernda was the second non-government school to experience financial collapse in 2012. Acacia College was a Uniting Church school with 540 students from prep to year 9, and 50 staff. In October, the Uniting Church announced it would close Acacia College at the end of the year, following 'shocking' advice that the school was not sustainable due to being 'saddled with debt'.¹⁵ Media reports suggested the debt was estimated at around \$40 million.¹⁶

Opened in February 2010, the college was originally planned to be part of a Uniting Church ministry hub which would include two congregations, a kindergarten and an aged care home.¹⁷ The total cost of the school was estimated at \$32 million and it was expected to open for years 5 to 7 in 2007.¹⁸

However, the development process experienced difficulties, including problems with the selected developer. The Uniting Church had not intended to fund the building of the school, but selected a developer to build the school so that the church could then lease the school from the developer.¹⁹ However, it became apparent that the developer was in financial difficulty, so the church provided further funding for the project. Uniting Church Moderator Isabel Thomas Dobson said 'We hit complications with the developer. Balancing that against the need to have buildings on time for students, the church became involved and ended up funding the project.'²⁰ Court documents later showed that the church had attempted to end their contract with the developer.²¹ However, in May 2012 the developer died suddenly of a heart attack while on a plane, and it was after his death that the extent of the school's financial position became known.²² It has been reported that an additional \$30 million would be needed to complete the school campus, which reportedly included \$10 million

⁸ Topsfield (2012) 'The Mowbray way', op. cit., pp. 15, 20.

⁹ *ibid.*

¹⁰ J. Topsfield (2012) 'Schools built on sand', *Sunday Age*, 28 October, p. 11.

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*

¹⁴ B. Preiss (2014) 'Mowbray liquidator hunts parents over unpaid fees', *The Age*, 10 January, p. 4. See also (2014) 'Liquidators go after directors', *Melton Weekly*, 22 July, p. 3; Re Mowbray College (in liq) [2013] VSC 565.

¹⁵ Topsfield (2012) 'New rules for private schools', op. cit., p. 1.

¹⁶ (2012) 'Private schools probe', *Australian Financial Review*, 3 December, p. 24.

¹⁷ Topsfield (2012) 'Schools built on sand', op. cit., p. 11.

¹⁸ *ibid.*

¹⁹ S. Gosper (2012) 'Catholics could be school's saviour', *The Australian*, 19 October, p. 8.

²⁰ *ibid.*

²¹ K. Bice (2013) 'Church, builder \$23m row', *Herald Sun*, 2 February, p. 5; Topsfield (2012) 'Schools built on sand', op. cit., p. 11.

²² Topsfield (2012) 'Schools built on sand', op. cit., p. 11.

sought by the local council for infrastructure works.²³ In October 2012, the Uniting Church announced their decision to withdraw financial support and close the college.²⁴

This decision caught some by surprise. 'Acacia was not on our radar at all', Independent Education Union (IEU) Victoria and Tasmania General Secretary Debra James stated.²⁵ The VRQA also did not know that the Uniting Church had decided to withdraw financial support for Acacia College. 'Acacia College, while operating with a deficit, had the financial backing of the Uniting Church until last week', VRQA Director Lyn Glover said.²⁶ An Education Department spokesperson stated that 'Acacia College is not closing due to financial mismanagement, it is closing due to the fact that the Uniting Church has made a decision to cease funding, which was previously provided to the school'.²⁷

This school closure raised further concerns about whether financial oversight was adequate. The IEU Secretary Debra James stated 'We are beginning to lose confidence in the systems and processes in place, whether school authorities are properly reporting their financial situations and, if they are, whether issues are being picked up by those to whom reports are made'.²⁸ Uniting Church Moderator Isabel Thomas Dobson stated 'We did conduct due diligence on the process to build the school, but in hindsight ... perhaps we weren't diligent enough'.²⁹

St Anthony's Coptic Orthodox College

The third of three non-government schools to close in 2012 was St Anthony's Coptic Orthodox College in Frankston North, which appointed an administrator in November of that year. IEU Secretary Debra James stated that the school was owed '\$750,000 in fees'.³⁰ In addition to unpaid school fees, declining enrolments and a decrease in donations were other factors contributing to the school's closure.³¹ School director Father Athanasius Attia stated 'We basically didn't have the finances to take the college through 2013 onwards'.³²

Established in 1995, St Anthony's Coptic Orthodox College had around 300 students from prep to year 12 at the time of its closure in 2012.³³ In 2011, the school had 29 students in Year 12 and employed 13 secondary teachers and eight primary teachers.³⁴ Ninety-eight per cent of students attending the school came from families who speak a language other than English.³⁵

Following the closure of St Anthony's, Independent Schools Victoria (ISV) Chief Executive Michelle Green stated that a similarity between these three non-government school collapses was a difficulty 'balancing the aspirations of parents with the amount that the parents were able to pay and were prepared to pay'.³⁶ She also noted a reluctance on the part of the schools to chase parents for fees.³⁷ Ms Green also stated that a contributing factor in the failures of all three non-government schools was that new schools starting out in developing areas can also face high costs from local councils to develop infrastructure, which can add further financial pressure.³⁸

²³ A. Devic, A. White, A. Thompson & F. Hudson (2012) 'Due diligence fails', *Herald Sun*, 19 October, p. 5.

²⁴ Topsfield (2012) 'New rules for private schools', op. cit., p. 1.

²⁵ B. Preiss (2012) 'Queries on school finance reporting', *The Age*, 23 Oct 2012, p. 6.

²⁶ Topsfield (2012) 'Schools built on sand', op. cit., p. 11.

²⁷ Preiss (2012) 'Queries on school finance reporting', op. cit., p. 6.

²⁸ *ibid.*

²⁹ Topsfield (2012) 'Schools built on sand', op. cit., p. 11.

³⁰ Hadfield (2012) 'Closures prompt call for new rules on schools', op. cit., p.11.

³¹ W. Hosking & L. Clifton-Evans (2012) 'School wants parents to cough up despite closure of St Anthony's Coptic Orthodox College in Frankston North', *Herald Sun*, 28 November.

³² R. Baxendale (2012) 'Another private school forced to shut down', *Australian*, 28 Nov 2012, p. 8.

³³ *ibid.*

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ Hadfield (2012) 'Closures prompt call for new rules on schools', op. cit., p. 11.

³⁷ *ibid.*

³⁸ *ibid.* See also Topsfield (2012) 'Schools built on sand', op. cit., p. 11.

Stakeholder responses

The financial collapse of these non-government schools in 2012 elicited a response from both the state and federal government. The then Education Minister, the Hon. Martin Dixon, expressed a desire to introduce legislation or regulations the following year to enhance oversight of non-government schools.³⁹ He stated:

The closure of a school is a devastating thing. I'm concerned it's happening and I'm also concerned that the incidences we've seen have been sudden announcements that no one really saw coming. I think that's a key deficiency in the arrangements at the moment.⁴⁰

Mr Dixon stated that he had asked the VRQA to advise him on appropriate action.⁴¹ He pointed out that the VRQA had more financial oversight powers in regard to vocational education and training providers than schools:

They've got the sort of powers where they can ask for information and act on information far more readily and also to intervene than they have got with non-government schools. There may be elements of those powers that could be used in terms of the monitoring of non-government schools.⁴²

However, Mr Dixon acknowledged that most non-government schools operated under sound financial governance. He stated 'We don't want to over-regulate [non-government schools] but we need to have a compromise whereby the financial health of non-government schools is easily assessed'.⁴³

At that time, the federal government also expressed a desire to establish national regulations for the financial oversight of schools. The then Federal Minister for School Education, the Hon. Peter Garrett, stated, 'We need a comprehensive, national approach'.⁴⁴ In August 2012, the states and Commonwealth agreed to work on stricter regulations for non-government schools, including 'minimum requirements for ongoing viability'.⁴⁵

The proposed project to be led by the Commonwealth would include -

- a clear definition of how schools are required to use public funds;
- joint state and federal investigations of schools;
- a national definition of the requirement that private schools are not-for-profit; and
- minimum requirements for ongoing financial viability to prevent closures.⁴⁶

It was intended that the Ministers would meet again to agree on a way forward before a public consultation took place.⁴⁷ However, a change in federal government following the 2013 federal election meant this national project did not continue in this form.

Several stakeholders voiced their support for strengthened financial oversight of non-government schools. IEU (Victoria, Tasmania) Secretary Debra James stated 'Why is it the regulatory authority is

³⁹ (2012) 'Private schools probe', op. cit., p. 24.

⁴⁰ Topsfield (2012) 'Schools built on sand', op. cit., p. 11.

⁴¹ *ibid.*

⁴² Topsfield (2012) 'New rules for private schools', op. cit., p. 1.

⁴³ (2012) 'Private schools probe', op. cit., p. 24; Topsfield (2012) 'New rules for private schools', op. cit., p. 1.

⁴⁴ Topsfield (2012) 'Schools built on sand', op. cit., p. 11.

⁴⁵ Topsfield (2012) 'New rules for private schools', op. cit., p. 1; See 'Harmonisation of Regulatory Frameworks for Non-Government Schools' in Standing Council on School Education and Early Childhood (2012) *Communique*, SCSEEC meeting, Sydney, 3 August, p. 3.

⁴⁶ Topsfield (2012) 'New rules for private schools', op. cit., p. 1.

⁴⁷ *ibid.*; See 'Harmonisation of Regulatory Frameworks for Non-Government Schools' in Standing Council on School Education and Early Childhood (2012) *Communique*, SCSEEC meeting, Adelaide, 7 December, p. 3.

just about the last to know if a school is about to fall over? If there was some tougher regulatory authority on schools, I would welcome it.’⁴⁸ Professor of Post-Compulsory Education and Training, Richard Teese from the University of Melbourne also argued in favour of further financial regulation, stating that there must be accountability to state and federal governments for the public money invested in schools.⁴⁹ He also said that parents are paying school fees with the assumption that schools are subject to adequate financial oversight.⁵⁰

Other stakeholders did not see the need for further financial regulation of non-government schools. Chief Executive of Independent Schools Victoria, Michelle Green stated that non-government schools already have to comply with a range of state and federal requirements.⁵¹ She also emphasised that most non-government schools are financially stable and stated that the schools which have folded for financial reasons represent ‘a tiny fraction’.⁵²

Current situation

Non-government schools are required to meet a number of financial reporting obligations to state and federal authorities in order to fulfil registration requirements and receive government funding. Federal government requirements include completing a financial questionnaire under the *Australian Education Act 2013*, in order to receive federal government funding.⁵³ At the state level, the VRQA works with the Department of Education and Training and the Catholic Education Commission, which are the review bodies for government and Catholic schools respectively.⁵⁴ All schools are required to submit an annual report to the VRQA, which conducts reviews of non-government schools on a five-year cycle. Those schools considered at risk of not complying with registration standards receive full reviews and site visits. In the 2014 cycle, the VRQA began reviews of 39 schools. Five of these schools were identified as requiring a site visit by a review team, and 34 schools required a desk audit.⁵⁵ The VRQA identified two schools as requiring a financial health assessment.⁵⁶

In 2013–14, the VRQA placed conditions on the registrations of two schools and these conditions were still active as at 30 June 2014.⁵⁷ In November 2014, the VRQA indicated it would cancel the registration of Macedon Grammar School, due to governance, financial and enrolment issues.⁵⁸ The school was closed in December 2014.⁵⁹

For further information, see Victorian Registration and Qualifications Authority (2015) ‘[Minimum standards and other requirements](#)’, VRQA website; and Independent Schools Victoria (date unknown) ‘[Financial](#)’, ISV website.

⁴⁸ Topsfield (2012) ‘[Schools built on sand](#)’, op. cit., p. 11.

⁴⁹ Preiss (2012) ‘[Queries on school finance reporting](#)’, op. cit., p. 6.

⁵⁰ *ibid.*

⁵¹ Topsfield (2012) ‘[New rules for private schools](#)’, op. cit., p. 1.

⁵² *ibid.*

⁵³ See Independent Schools Victoria (2014) ‘[Financial questionnaire \(FQ\)](#)’, ISV website.

⁵⁴ Victorian Registration and Qualifications Authority (2014) *Annual Report 2013-14*, Melbourne, VRQA, p. 2. Seventh Day Adventist Schools (Vic) Ltd was also approved as a school review body. See also Victorian Registration and Qualifications Authority and Catholic Education Commission of Victoria (2013) ‘[Memorandum of Understanding](#)’, VRQA website.

⁵⁵ Victorian Registration and Qualifications Authority (2014) *Annual Report 2013-14*, Melbourne, VRQA, p. 18.

⁵⁶ *ibid.*

⁵⁷ *ibid.* See also K. Marshall (2014) ‘[State agency puts two independent schools on watch list over governance problems](#)’, *The Age*, 20 February, p. 10.

⁵⁸ A. Crawford (2014) ‘[Macedon Grammar’s fate decided](#)’, *Midland Express*, 30 December, p. 3.

⁵⁹ *ibid.* For further information, see articles in ‘Further resources’ section on page 9.

What the Bill proposes

The main provisions of the [Education and Training Reform Amendment \(Miscellaneous\) Bill 2015](#) strengthen VRQA powers to provide financial oversight of schools. Proposed section 4.3.1A enables the VRQA to conduct financial assessments of schools and impose conditions such as the establishment of fee-protection schemes (i.e. a trust). This provision addresses one of the problems families faced after the collapse of previous non-government schools – loss of fees. In this way, the Bill seeks to protect students and families as consumers of education services (see proposed section 4.2.2(1)(na)).

Another significant element of the Bill is the provision enabling the VRQA to report to parents on their school's financial assessment (see 3(a) of proposed section 4.3.1A). This appears to address parents' calls for further transparency and accountability regarding school finances following the collapse of Mowbray College, Acacia College and St Anthony's Coptic Orthodox College. The VRQA would also be enabled to share information with other agencies — the Secretary of the Department of Education, public sector bodies or Commonwealth Government Departments (see proposed section 5.5.26).

For further information on the Bill's provisions, see the [Bill](#) and [Explanatory Memorandum](#).

Statistics

In Victoria, 31 per cent of schools are non-government schools. In other words, 700 of the 2,228 schools in Victoria are non-government.⁶⁰ 207 schools (or 9 per cent) are independent schools and 493 (or 22 per cent) are Catholic schools (see Figure 1).⁶¹

In terms of full-time-equivalent (FTE) students, non-government schools, which represent 31 per cent of Victorian schools, teach 37 per cent of FTE students in Victoria.⁶² That is 339,151 students out of a total 915,159 Victorian FTE students attend non-government schools.⁶³ 131,965 students (or 14 per cent) attend independent schools and 207,185 students (or 23 per cent) attend Catholic schools (see Figure 2).⁶⁴

Figure 1: Victorian schools by sector, February 2015 (%)⁶⁵

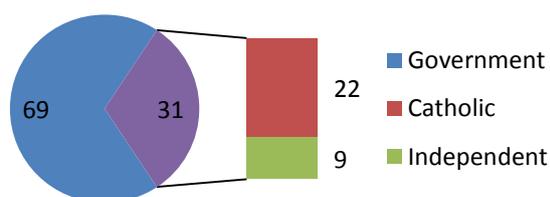


Figure 2: Proportion of (FTE) students in Victoria by school sector, February 2015 (%)⁶⁶



⁶⁰ Department of Education & Training (2015) *Summary Statistics for Victorian Schools – March 2015*, DET website.

⁶¹ *ibid.*

⁶² Based on total number of FTE students, see Department of Education & Training (2015) 'Table 1. Numbers of schools, students and teachers', *Summary Statistics for Victorian Schools – July 2015*, DET website.

⁶³ *ibid.*

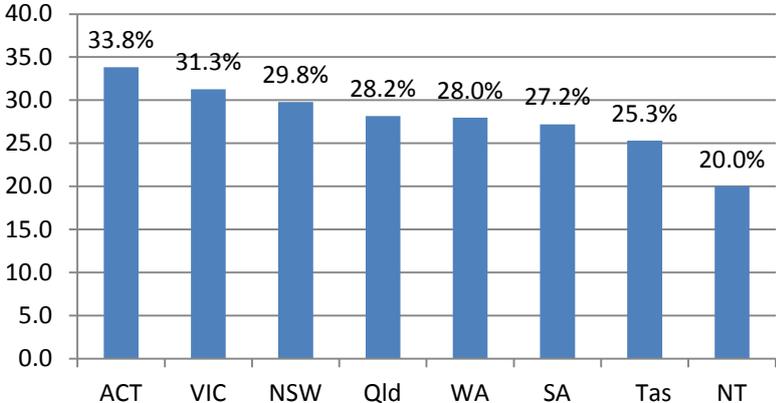
⁶⁴ *ibid.*

⁶⁵ Based on Department of Education & Training (2015) 'Table 1. Numbers of schools, students and teachers', *Summary Statistics for Victorian Schools – July 2015*, DET website.

⁶⁶ Based on total number of FTE students, see Department of Education & Training (2015) 'Table 1. Numbers of schools, students and teachers', *Summary Statistics for Victorian Schools – July 2015*, DET website.

When compared with the other Australian states and territories in August 2014, Victoria had the second-highest proportion of non-government schools behind the ACT (where 34 per cent of schools are non-government, see Figure 3).

Figure 3: Proportion of schools which are non-government, August 2014 (%)⁶⁷



⁶⁷ Based on Department of Education & Training (2015) 'Table 19. Number of schools by sector, August 2014', *Summary Statistics for Victorian Schools – July 2015*, DET website.

Further resources

Newspapers, Books, Reports

- (2012) 'Private schools probe', *Australian Financial Review*, 3 December, p. 24.
 - (2014) 'Grammar set to go?' *Macedon Free Press*, 8 July, p. 1.
 - (2014) 'Liquidators go after directors', *Melton Weekly*, 22 July, p. 3.
 - (2014) 'Macedon school's future in doubt', *Bendigo Advertiser*, 25 November, p. 5.
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 - Topsfield, J. (2012) 'The Mowbray way', *The Age*, 9 June, pp. 15, 20.
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 - Topsfield, J. (2012) 'School bells ring again on Mowbray campuses', *The Age*, 16 October, p. 5.
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- See [News Archive](#) or the [Library catalogue](#) for further resources.

TV/Radio

- *3AW Drive*, 1 June 2012
- *3AW Mornings*, 18 October 2012
- *ABC 774 Drive*, 6 June 2012
- *ABC Radio World Today*, 6 June 2012
- *ABC TV News*, 1 June 2012
- *ABC TV News*, 18 October 2012
- *ABC TV News*, 28 November 2012
- *ATV 10 News*, 18 October 2012
- *GTV 9 News*, 1 June 2012
- *HSV 7 News*, 1 June 2012
- *HSV 7 News*, 18 October 2012

See the [Broadcast News](#) database for further TV/Radio items.

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Author

Alice Jonas
Research & Inquiries Officer
Victorian Parliamentary Library & Information Service
Department of Parliamentary Services

Enquiries:

Jon Breukel
Coordinator, Research & Inquiries
Victorian Parliamentary Library & Information Service
Parliament House
Spring Street, Melbourne
Telephone (03) 9651 8633
Email: research@parliament.vic.gov.au