Australian state government speeds up dismissal procedures for teachers

Erika Zimmer
13 October 2006

With little media coverage and virtually no opposition from the teachers' union, the Labor government in New South Wales (NSW) has introduced legislation streamlining the sacking of public school teachers. More than 50,000 government teachers, including principals and Technical and Further Education (TAFE) teachers are affected.

By giving the education department sweeping powers to dismiss teachers labelled "under-performing", the new legislation takes a major step toward eliminating job security. It also removes established procedures relating to dismissals, conferring unprecedented and arbitrary powers on the department's director-general.

State Premier Morris Iemma and Education Minister Carmel Tebbutt sought to cover up the bill's true intent by asserting it was about giving "paramount importance" to the "rights of children". They linked "poor performance" with misconduct, including matters relating to sexual assault, and claimed the measures would affect only a "small number of teachers".

But legislation already exists to dismiss teachers guilty of misconduct, including sexual misconduct. In fact, the Labor government has already made substantial use of existing laws in its efforts to whip up fears about child abuse to further its political agenda. A decade ago, as school budgets were slashed, the government orchestrated a witchhunt against teachers under the banner of weeding out "paedophiles". Hundreds of teachers faced charges of sexual misconduct, frequently based on the flimsiest of evidence. The "paedophile" campaign ruined many teachers' lives and careers, created a climate of fear inside schools and set a wedge between teachers, students and parents.

The real motivation behind the latest legislation was revealed by opposition Liberal MP John Ryan. Speaking in parliament in support, Ryan declared: "We have to face the fact that our public education system has to compete with the private system (where teachers) are appointed by the principal, someone who knows the person they are employing, who watches the teacher's performance and who is in a position to remove that person from the school if their performance is not up to scratch."

In other words, the threat of "poor performance" will be used as a whip over all public school teachers to raise "performance benchmarks". "Satisfactory" performance will consist of whatever it takes to make a school competitive with other public and private schools. Work practices deemed to make the school "non-competitive" will be targeted.

The law abolishes safeguards designed to prevent teachers being victimised by principals or school executives. Previously, teachers whose annual performance review indicated they were "inefficient" underwent informal and formal programs of assistance, with ongoing support for not less than 20 weeks. Teachers judged to have made no improvement during that time then faced dismissal.

These procedures were a concession to the strongly held view within the profession that "performance" was the outcome of factors often beyond the individual's control. Working in socio-economically disadvantaged schools, large class sizes, allocation to difficult-to-teach classes, and inexperience, let alone personal difficulties, ill health or victimisation by a principal were all factors that could lead to a teacher being labelled "inefficient" despite years of academic study.

The new legislation gives the director-general the power to determine not only how often a teacher's

performance is reviewed but what criteria will determine "satisfactory performance". If the director-general decides a teacher has not performed satisfactorily, the teacher must participate in a performance improvement program, "on such terms, and ... implemented for such period, as the Director-General considers appropriate." The procedural guidelines are subject to change at any time by the director-general.

The measures also take a more punitive approach. For example, in disciplinary cases, the department can suspend teachers without pay while an investigation is underway, a process that could take years. Twelve specified categories of disciplinary breaches have been replaced with a more arbitrary category called "misconduct". Furthermore, "an incident or conduct" that occurred before a teacher's appointment can also be subject to investigation.

The new legislation is the latest in a series of measures by the state Labor government aimed at overturning teachers' job security and working conditions. In 1997, the NSW education minister, John Aquilina, told a secondary principals' conference that a new system was necessary to deal with under-performing teachers and to lift the credibility of public education in the face of increasing competition from the private sector.

The next year, premier Bob Carr announced a plan to set up a Teaching Standards Board, including new procedures to reduce the minimum time required to remove "incompetent teachers" from 20 weeks to 10.

In 1999, Aquilina demanded that the NSW Teachers Federation (NSWTF) sign off on proposals to ensure teachers "not up to standard" could be dismissed in a minimum of 10 weeks. According to its journal *Education*, the union was "prepared to finalise" the government's proposal, but teacher hostility prevented its implementation.

In 2004, federal education minister Brendan Nelson unveiled legislation that required greater powers to be given to school principals to hire and fire staff, as a condition of funding by the federal government. That same year, the NSW government adopted laws to allow public school principals to be dismissed for failing to meet performance criteria.

The following year, an agreement between the NSW government and the NSWTF gave expanded powers to school principals to select teachers, breaking down the system of statewide appointment.

Also in 2005, the NSW education director-general, Andrew Cappie-Wood, listed new dismissal procedures in a letter to the NSWTF, including the proviso that "time spent on an improvement program [was] to be limited to ten weeks with the possibility of one six-week extension if the teacher has shown some improvement."

Having apparently drawn the conclusion that the union could not "sell" the measure to its members, the government proceeded to legislate, confident that the union would not lift a finger to oppose the bill.

As anticipated, the NSWTF has bent over backwards to assist, with the result that few teachers are aware of the legislation's introduction, let alone its implications for their working conditions. *Education* virtually ignored the bill and the subject was not even included on the union's annual conference agenda last July. Asked why, a union spokesperson stated: "What would be the point? It was all over, done and dusted." The union's chief grievance was only that the government failed to consult beforehand.

On the basis of their experiences over the past several years, it should now be crystal clear to all teachers that the NSWTF has no fundamental opposition to the assault being launched by both the state Labor and federal Liberal governments. That is why it has no interest whatever in mounting any serious defence of teachers' rights.