

STATES OF JERSEY



DISCIPLINARY AND GRIEVANCE HEARINGS: RIGHT TO A FRIEND (P.112/2011) – COMMENTS

**Presented to the States on 5th July 2011
by the Minister for Social Security**

STATES GREFFE

COMMENTS

The Proposition asks members to agree that the Employment (Jersey) Law 2003 be amended to provide that an employee is entitled to be represented by any person of their choice in a disciplinary or grievance hearing on the grounds that *“it is possible that the Employment (Jersey) Law 2003 may no longer be Convention-compliant. This follows recent cases which have held that.”*

Legal advice confirms that the Employment (Jersey) Law 2003 remains human rights compliant and need not be amended in light of the court judgment referred to in the Proposition. English law has not been amended in consequence of the court judgment because it is not necessary for the purpose of human rights compliance.

Further to this, the Court of Appeal decision referred in the Deputy’s accompanying report – the case of *Governors of X School v G* – was reversed on 29th June 2011 by the Supreme Court.

The effect is that employees whose employment is subject to approval by an authority or body, such as teachers, will no longer be able to argue that they are entitled to legal representation at internal disciplinary proceedings on grounds of the potential for the authority to be influenced by the outcome of those proceedings.

I have received strong comments in opposition to the Proposition from the Jersey Advisory and Conciliation Service, the Chamber of Commerce, Law at Work and the Chartered Institute of Personnel and Development. It is my understanding that Unite, the Institute of Directors and the Employment Lawyers’ Association are also opposed to the Proposition. Generally, opposition is on the following grounds –

- The States debate on such a significant amendment must be postponed to allow stakeholders to be consulted; an amendment to the Employment Law would be a significant departure from other jurisdictions.
- Bringing a legalistic framework to internal hearings will increase costs for all parties and elongate the process generally; the Proposer appears not to have considered the potentially significant financial and resource implications for the public sector and the private sector.
- Appropriate representatives for disciplinary and grievance hearings have knowledge of the workplace and an interest in maintaining good employment relations. Other representatives, such as family members, might personalise the issue and are inappropriate.

I encourage members to oppose part (a) of the Proposition on the grounds that Article 78A of the Employment (Jersey) Law 2003 remains human rights compliant and the Employment Law does not need to be amended in light of the Court of Appeal judgment, particularly as that decision has been overturned by the Supreme Court since the Deputy lodged his Proposition.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

Due to the lengthy States meeting, it was necessary to reschedule the States Employment Board meeting and the Comment was approved by the Board on Friday afternoon. The Minister wished to await the Board's views before making his own Comment.