



Changes to Mediation Process

In regards to the Mediation process the Amendment Act provides:

- that at the request of a party the Mediator may speak to that same party without the representative present
- terms of settlement may be signed off by minors aged 16 and over
- that parties may agree in writing for the Mediator to make a written recommendation on the matter which if not expressly declined by one or both of the parties by an agreed date, will become final and binding

Comment

Under the existing provisions the Mediators already have an ability to speak to one of the parties without their representative present. The change makes it clear that this can only be done where the party concerned requests that this be done. Practically, this should not arise in the normal course of events for our members. However if an Organiser has any concerns in this regard it may be appropriate before the Mediation to confirm with the member that any discussions with the Mediator will be with the Organiser present. This is especially important given the new recommendation powers as referred below.

A recommendation will only be made by the Mediator where both parties have agreed in writing. The written agreement must also contain a specified date by which the recommendation will become final and binding unless written notice is received from one or both parties stating that the recommendation is declined. Therefore silence may constitute consent.

It is unclear as to how often a recommendation will be sought by parties. It is unlikely that it will be in a member's interest to seek a written recommendation unless it is clear that the Mediator is inclined to provide what is deemed to be a reasonable remedy. In such a situation it is highly improbable the employer would agree to a written recommendation, if they are unprepared to settle on such terms.

Organisers should not under any circumstances feel obliged to rush into a written agreement for a Mediator recommendation. If a written recommendation proposal is on the table, the Organiser should seek an adjournment of the Mediation so that further advice may be taken **prior** to any decision being made as to whether or not the recommendation process is appropriate.