



Department of  
**Education**

## GUIDELINES - GUIDELINES FOR PROSECUTION

EFFECTIVE: 2014

VERSION: 1

## **Guidelines for prosecution**

The Department of Education supports parents to take responsibility for their child's attendance at school.

Despite many offers of assistance there are times when parents will not engage with the Department or do not take up the support offered or arranged for them and/or their children. Failure of the parent to engage with the school and region or comply with agreed plans may result in the principal and/or the Regional Executive Director referring the case for consideration of prosecution. The prosecution of a parent is an action of last resort where all other efforts to engage a parent voluntarily have been unsuccessful.

### **When to prosecute**

Prosecution of a parent may be an appropriate course of action in circumstances where the parent is judged as capable of securing their child's regular attendance but is not willing to take responsibility for doing so.

Policy and legislative requirements must have been met. The Department's Student Attendance policy is reflective of the Act which requires that significant intervention must have occurred prior to prosecution being considered. This includes the parent at least being offered the opportunity for an attendance panel to be convened.

Sometimes the prospect of prosecution may lead to a significant improvement in student attendance and/or parental engagement and court proceedings may not be necessary, if it is apparent that the improvement will be sustained.

### **When not to prosecute**

Officers should take great care to ensure that referrals for consideration of prosecution are only made in instances where the principal and/or Regional Executive Director are willing and able to proceed. Prosecutions will rarely be withdrawn.

### **Using prosecution as a 'big stick'**

It is a misuse of the court process to start a prosecution with no intention to pursue the matter through to completion. In other words, the court process must not be used as a 'big stick' to threaten parents and students into compliance. The purpose of starting legal proceedings is to sanction a parent who has failed to avail him or herself of all of the opportunities given by the Department in an effort to secure compliance with the Act. This is quite different from using legal proceedings as a means of threatening parents into action.

### **Starting prosecution without sufficient evidence**

A prosecution must not be started unless there is sufficient evidence that, if accepted, would prove the alleged offender guilty of the offence. It is not appropriate to initiate a prosecution based on the belief that further evidence will come to light. The determination whether there is sufficient evidence to secure a conviction rests with the Department's Legal Services Branch and the State Solicitor's Office. Officers may be advised in some situations that the matter should not proceed.

### **Where an alternative may be more appropriate**

In some circumstances, entering into a Responsible Parenting Agreement may be effective in engaging parents with the support they require to improve their child's attendance and reducing the likelihood of offending. Principals and Regional Executive Directors may consider that encouraging a parent to engage with parenting education or counselling through a Responsible Parenting Agreement is a more appropriate course of action. Further information is available in *Guidelines in the use of education-related Responsible Parenting Agreements*.

### **Using this guideline document**

This document should be read in conjunction with the Student Attendance policy. It is designed to provide guidance to principals, Regional Executive Directors and their nominees on action to be taken where it is considered that prosecution of the parent may be an appropriate step.

Questions relating to the prosecution process should be directed to the education regional office or K-12 Coordination Branch on telephone (08) 9264 8939.

### **Delegations and sub-delegations**

The Act provides for the Minister for Education to delegate certain functions and powers to the Director General. These functions and powers may in turn be sub-delegated to other officers. This guideline document has been written with existing delegations and sub-delegations in mind. Officers referring to this guideline document and then to the Act itself, should be mindful that discrepancies in role are likely because the function and/or power has been delegated or sub-delegated to another officer in the Department. Footnotes in this document refer to the delegation or sub-delegation.

### **Prosecution under the School Education Act 1999 relating to persistent absences**

A parent of a child of compulsory school age may be prosecuted for not ensuring that their child complies with section 23 of the Act (see section 38(1) of the Act).

Section 23(1) requires students to attend the school at which they are enrolled or otherwise participate in an educational program of the school (whether at the school or elsewhere), as required by the principal, on days on which the school is open for instruction.

The penalty provided for this offence is a fine of \$1000 (section 38(1) of the Act).

### **Legitimate reasons for absences**

The legislation provides for attendance to be excused on a number of grounds. Schools and regional officers should be aware of the following provisions within the Act:

- Physical or mental incapacity
- Reasonable cause
- Absences required by a principal for health reasons
- Home Education
- Religious or cultural observance

Appendix A: Legitimate reasons for absence provides more information.

### **Certificate given under Section 42(1)**

The Act<sup>1</sup> mandates that a prosecution for an offence against section 38 is not to be started unless a certificate has been given that:

- all reasonable practicable steps have been taken to secure compliance with section 23 by the child; but
- breaches of the section have continued.

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<sup>1</sup> *School Education Act, Section 42 (1)*

The certificate under Section 42(1) is given by an Attendance Panel or by the Director General<sup>2</sup>. The certificate may be signed by the Chairperson` of an Attendance Panel or by the Director General.

When referring a matter for the consideration of prosecution, the principal and/or Regional Executive Director must be satisfied that 'all reasonable practicable steps have been taken to secure compliance with section 23' and that 'breaches of the section have continued'. In order to satisfy this requirement, it is usually necessary to show that an attendance panel has been formed to consider the matter. Alternatively, in circumstance where there has been a history of parental non-engagement, it is sufficient to formally offer parents the opportunity to take advantage of the assistance that an attendance panel might be able to give them in restoring regular attendance. If the parents do not respond, or respond negatively to the offer to form an attendance panel, it is far easier to show that all reasonably practicable steps have been taken to engage the parent.

The Student Attendance policy provides guidance on what might constitute 'reasonable steps' for the Department to take. Appendix B: Steps taken to restore attendance outlines these steps as a guide only; Regional Executive Directors or Independent Public School principals may determine that further steps should be taken before referring the matter. Original school attendance records should be viewed prior to referring the case to determine that breaches of Section 23 have continued.

The certificate is not provided to the parent.

### **Referring a case for consideration of prosecution for persistent absences**

In referring a case for consideration of prosecution, the Regional Executive Director or Independent Public School principal should advise the parent using Appendix C: Letter to parents advising of legal action and complete Appendix D: Referral for consideration of prosecution for persistent absences.

Appendix C contains an additional paragraph to be used where Regional Executive Directors or Independent Public School principals wish to afford an additional opportunity for the parent to engage. This paragraph is not required, but in some instances it may trigger engagement where this has previously not occurred.

Appendix D ensures the Department's Legal Services Branch has the required evidential information, including contact details of likely witnesses, to make a decision about the strength of the case. With local knowledge about the case, there is also opportunity for the school and region to make a comment on sentencing.

The following information should be used as a guide when completing Appendix D:

#### **1. Letter to Manager, Legal Services Branch**

This covering letter should be signed by the Regional Executive Director or Independent Public School principal, indicating the intent to pursue prosecution of a parent/s.

#### **2. Tracking Sheet**

The Regional Executive Director or Independent Public School principal should indicate the date the referral was sent. In addition to TRIM notes, this tracking sheet provides the course of progression for the prosecution file and enables monitoring of development of the case. The Legal Services Branch will commence the TRIM file for each case.

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<sup>2</sup> The term 'given' in this document means 'given to the court', not a particular person.

### **3. Student and Family Details**

Details for the student concerned and his/her parents available at a glance.

### **4. Probable Witness Details**

The Legal Services Branch requires a list of the names, addresses and telephone numbers of all potential witnesses. Possible witnesses include the principal and a network or regional officer involved in the case. The Legal Services Branch may contact officers with a view to taking a witness statement to support the case.

A witness statement is a formal account of the facts pertaining to the matter. These statements are not usually provided in court as witnesses will usually need to provide oral evidence. Witness statements are extremely useful to the Department's Legal Services Branch and the State Solicitor's Office prosecutor to learn the details of the alleged offence and determine whether there is sufficient evidence to issue a prosecution notice and commence court proceedings. The discipline of taking a written statement from a witness also clarifies what evidence a witness is actually capable of giving to a court.

### **5. Sentencing Submission**

Sentencing submissions are relevant where a person pleads or is found guilty.

For a magistrate to determine the appropriate sentence for an offence under the Act, the magistrate has to be fully informed of the circumstances of the offender and the seriousness of the offence. To facilitate this, both the State Solicitor's Office and the offender are able to make submissions to the magistrate concerning the appropriate sentence.

The State Solicitor's Office may provide information to the Court including details of any previous convictions and specifically, information about previous occasions when the offender has failed to comply with the attendance provisions under the Act.

The magistrate will also be informed of the importance of compliance with the Act and the maximum penalty for the offence to which the accused has pleaded (or has been found) guilty.

If a parent is being prosecuted under section 38(1) of the Act, the maximum penalty that may be imposed is a fine of \$1000.

It is only in rare cases that a magistrate will impose the maximum penalty provided for an offence. For a first offence by an offender, the starting point for most magistrates would be approximately 10% to 15% of the maximum.

However, a magistrate is not restricted to fining a parent. Under the Sentencing Act 1995 a magistrate has the option of imposing no penalty, a fine or a Conditional Release Order (CRO). A CRO is designed to prevent an offender from re-offending. A magistrate, when issuing a CRO, may require an offender to lodge money with the court which will be forfeited if the offender commits a further offence during the term of the CRO. The offender may also be re-sentenced to the original offence if they commit a subsequent offence during the term of the CRO.

A court can also impose requirements on the offender to ensure good behaviour under a CRO. These requirements must relate to the offending behaviour and assist the offender to prevent such behaviour. Any requirements must not require supervision, direction or instruction by a community corrections officer. However, a court can order the offender to re-appear before the court so that the court can ascertain whether the CRO has been complied with under section 50 Sentencing Act 1995.

The State Solicitor's Office may wish to make submissions in relation to any proposed requirements under a CRO. For example, if it is clear from the brief that there are reasons

for the non-compliance of the parent with the Act and there are programs that may assist the parent, the State Solicitor's Office should make submissions to the court that the parent be ordered to attend the particular program. The State Solicitor's Office should consider whether they need to make a submission that the offender should re-appear before the court to ascertain if the CRO has been complied with.

If the school or region is aware of any program or requirement that may be of use to the offender, this information should be provided, including how it relates to the offending behaviour. Program details and whether places are available should be advised. In many instances, particular programs may have been recommended but not accessed by the parent. The officer preparing Appendix D should consult with appropriate colleagues to ensure this information is provided, if relevant.

A parent may also apply for a spent conviction order, i.e. an order of the court that the parent will not be obliged by law to disclose the conviction. This section does not have to be completed. However, where the school or region does provide information relevant to a sentencing submission it will be explored further with the Department's Legal Services Branch and the State Solicitor's Office.

#### **6. Certificate given under Section 42(1)**

The certificate is signed by the chairperson of an Attendance Panel or by the Director General.

#### **7. Copy of birth certificate**

Only if available (sometimes a copy is taken on enrolment).

#### **8. Family Court Orders**

If relevant, a copy of any Family Court Orders which indicate the accused has day to day responsibilities for the care, welfare and development of the child.

#### **9. Enrolment Form**

The original enrolment form signed by the parent (N.B. not the application for enrolment); and SIS enrolment details, showing the date of enrolment and that the child is currently enrolled at the school.

#### **10. Attendance records**

SIS Lesson Attendance records (or similar) showing the student's attendance and absence history to the present day (each day and code recorded to demonstrate whether the absence was authorised or unauthorised) should be included. Whilst the prosecution notice will allege the offence was committed on a date or dates around the time of the issuing of the certificate of non-compliance, attendance records from the previous 6-12 months may assist in showing a pattern of persistent absences.

#### **11. Recommendation for consideration of legal action - referral to Regional Executive Director**

Appendix B: Steps taken to restore attendance is completed by the principal and, where this is required, is forwarded to the Regional Executive Director

#### **12. Correspondence**

All correspondence to the parent from the school and region relevant to the matter and records of meetings and plans developed, including (but not limited to):

- Letters from school and principal, including any plans developed and a summary of interventions attempted;

- Letter to parent from principal informing of consultation with relevant network or regional officer;
- Summary of contact and interventions from any relevant network or regional officers;
- Letter to parent from principal requesting a formal meeting with the parent;
- Record of outcome of formal meeting, including any plans or Responsible Parenting Agreement developed;
- Letter to parent from Regional Executive Director or Independent Public School principal informing of the Department's intent to pursue prosecution.

### **Preparation of the prosecution brief**

On receipt of Appendix D: Referral for consideration of prosecution for persistent absences, the Department's Legal Services Branch will gather the required evidence, including witness statements and prepare a prosecution brief.

The purpose of the prosecution brief is to ensure there is a clear and concise case to be brought before the Court. It is also designed to provide all relevant information to the State Solicitor's Office.

The matter is referred to the State Solicitor's Office on behalf of the relevant Regional Executive Director or Independent Public School principal.

### **Signing the prosecution notice**

The State Solicitor's Office prepares all legal paperwork required to commence the prosecution and forwards the documents to the Department for signature. Signing the prosecution notice indicates the start of a prosecution against a parent. The Director General signs all prosecution notices and the parent is then served the relevant documents.

### **Progress of the case**

The State Solicitor's Office provides representation for the Department in the prosecution of parents and will liaise directly with the school and region regarding the matter.

### **The court system**

Prosecutions under the Act for persistent absences will be conducted by officers from the State Solicitor's Office. Matters will proceed in the relevant Magistrates Court.

### **Magistrates Courts**

The Magistrates Courts commenced operation on 2 May 2005 and were established pursuant to the Magistrates Courts Act 2004.

The Magistrates Courts is an amalgamation of the former Courts of Petty Sessions, Local Courts and Small Claims Tribunals.

The Magistrates Courts have jurisdiction to deal with two principal areas:

- criminal or offence-based matters; and
- civil matters which include claims for debt or damages and non-offence based matters such as extraordinary driver's license applications.

A magistrate is required to approach each case, as far as is humanly possible, with an open mind and remain undecided on his/her verdict until all the evidence has been heard. The magistrate must be satisfied that the prosecution has proved beyond reasonable doubt, all the elements that constitute the offence. If the magistrate is not satisfied that this has been proven, a defendant is entitled to the benefit of the doubt and to have the charge dismissed. Magistrates are responsible for the orderly conduct of the Court's business. While they are bound by rules of evidence, procedure and etiquette, invariably they have their own

idiosyncrasies and run the Court in their own style. It assists the Court if the prosecutor understands what each magistrate requires and expects in the Court.

The following prosecutions are conducted in the criminal jurisdiction of Magistrates Courts:

- failure of the parent to ensure a child is properly enrolled (section 9(2) of the Act); and
- failure of a parent to ensure a child attends school pursuant to section 23 of the Act (section 38(1) of the Act).

The appropriate procedure for initiating and prosecuting a parent for a child's persistent absences is provided for in the Criminal Procedure Act 2004 which sets out all procedural requirements of a Magistrates Court sitting in its criminal jurisdiction.

## **Appendix A: Legitimate reasons for absence**

### **Physical or mental incapacity**

A student is excused from attendance where the student has a temporary physical or mental incapacity (section 25(2)(a)(i) of the Act).

For a student to be excused for incapacity, a responsible person for the child (for example, a parent/carer, child over the age of 18 years, independent minor or person listed as a responsible person in the child's enrolment form) must notify the principal as soon as practicable and within three school days from when the absences commenced.

Absences will only be excused if, where the principal requests, the responsible person provides a medical certificate to authenticate the reason for the absence (section 25(2)(c) of the Act).

### **Reasonable cause**

A student is excused from attendance where there is a reasonable cause for the absence (section 25(2)(a)(ii) of the Act).

For a student to be excused for reasonable cause, a responsible person for the child (for example, a parent/carer, child over the age of 18 years, independent minor or person listed as a responsible person in the child's enrolment form) must notify the principal as soon as practicable and within three school days from when the absence commenced.

### **Home education**

A student is excused from attendance if the parent/carer of the student has applied, or intends to apply, to be registered as the student's home educator (section 25(4)(a) of the Act).

Absences will only be permitted if the parent/carer has notified the principal in writing of the application or intended application as soon as practicable and within three school days from when the absence commenced (section 25(4)(b) of the Act).

### **Absences required by a principal for health reasons**

A student does not need to attend on any day on which the student, or any other student at the school, is suffering from a medical condition that, on the advice of the Executive Director of Public Health or a registered medical practitioner, the principal considers may be infectious, contagious or otherwise harmful to the health of persons attending pursuant to section 23 of the Act (section 27 of the Act).

The principal will give notice to a responsible person (for example a parent/carer, child over the age of 18 years, independent minor or person listed as a responsible person in the child's enrolment form) for the child that attendance is not required (section 27(3) of the Act).

### **Religious or cultural observance**

A student is excused from attendance on days or during a period which is recognised as having religious or cultural significance for the student or the student's parents/carers (section 30(1) of the Act).

The principal must be notified by a responsible person (for example, a parent/carer, child over the age of 18 years, independent minor or person listed as a responsible person in the child's enrolment form) prior to the day or the beginning of the period of religious or cultural observance that the student will not attend or participate (section 30(2) of the Act). If that is

not reasonably practicable, notice must have been given as soon as practicable (section 30(5) of the Act).

There are two ways in which a day or a period can be accepted as having appropriate religious or cultural significance:

- The day or period may be specified in the School Education Regulations 2000 (section 31(1) of the Act). At present no dates have been provided for.
- The Minister, Director General and principals may, on request of a responsible person (for example, a parent/carer, child over the age of 18 years, independent minor or person listed as a responsible person in the child's enrolment form), approve a day or period for a particular student (section 30(2) of the Act).

It should be noted that this provision of the Act relates to public schools only.



## APPENDIX B: Steps taken to restore attendance

(Confidential notification to Regional Executive Director, where this is required )

### Student details

Student name:	
Date of birth:	
Year level:	
School enrolled:	
Parent 1 name:	
Parent 2 name:	
Address:	

### School details

Principal's name:	
Telephone number:	
Email:	

### Actions taken

Action (Refer to <i>Student Attendance</i> policy)	Comment on outcome and evidence available
<input type="checkbox"/> Parent correspondence and contact following absences from school without acceptable explanation.	
<input type="checkbox"/> Parent/teacher meeting/s	
<input type="checkbox"/> Case conference	
<input type="checkbox"/> <u>Attendance intervention checklist</u>	
<input type="checkbox"/> Documented plan/s	
<input type="checkbox"/> Engagement with school based supports and other agencies (as appropriate)	



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<i>(guideline)</i>	
<input type="checkbox"/> Consultation with appropriate network or regional officer/s <input type="checkbox"/> Attendance Improvement Plan revised. <input type="checkbox"/> Parent sent letter advising of consultation and revised plan.	
<input type="checkbox"/> Formal meeting <input type="checkbox"/> Parent sent letter asking them to attend formal meeting. <input type="checkbox"/> Responsible Parenting Agreement? <input type="checkbox"/> Parent advised that should absences persist, the next step is to convene an Attendance Panel	
<input type="checkbox"/> Consultation with Regional Executive Director or nominee	
<input type="checkbox"/> Referred to <i>Guidelines for Attendance panels and Guidelines for prosecution</i>	

<b>Principal's signature:</b>	<b>Date:</b>
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## Appendix C: Letter to parents advising of legal action

[Title] [Parent 1] and [Title] [Parent 2]  
[Address 1]  
[SUBURB] WA [POSTCODE]

Dear [Title] [Parent 1] and [Title] [Parent 2]

**RE: PERSISTENT ABSENCES OF [CHILD'S FIRST NAME] [CHILD'S SURNAME], DOB: [INSERT DATE OF BIRTH]**

I am writing regarding the attendance of your son/daughter, [Student Name] at school.

I have been informed that the principal of [School Name], [Principal's Name] has written to you many times about concerns for [Student Name]'s attendance and your legal obligations under the *School Education Act 1999*. You were also invited to attend a formal meeting to develop strategies to improve the situation and ensure you had an opportunity to talk about any issues that might be preventing [Student Name]'s attendance. (Amend for IPS)

Alternative paragraph (IPS schools)

I have written to you many times about concerns for [Student Name]'s attendance and your legal obligations under the *School Education Act 1999*. You were also invited to attend a formal meeting to develop strategies to improve the situation and ensure you had an opportunity to talk about any issues that might be preventing [Student Name]'s attendance.

It's important that children attend school regularly and the school be provided with acceptable explanations for absences.

You have previously been informed that parents who fail to ensure that their children attend school regularly or who fail to provide satisfactory explanations for absences may be guilty of an offence. The maximum penalty is \$1 000 for each offence.

[Student Name]'s attendance continues to be an issue and despite many offers of assistance, you have not worked with the Department sufficiently to improve the situation.

I am now referring this matter to the Department's solicitors to consider legal action.

Additional paragraph if relevant:

Please contact [Title] [Name of relevant officer] by [Date] on telephone (08) [direct line] to discuss this situation and how we may avoid your prosecution.

Yours sincerely

[Regional Executive Director's/ Independent Public School principal's Name]  
Regional Executive Director/Principal  
[Name of Region/Name of school]

[Date]

# Appendix D: Referral for consideration of prosecution for persistent absences

## 1. Letter to Manager, Legal Services

The Manager  
Legal Services Branch  
Department of Education  
151 Royal Street  
EAST PERTH WA 6004

### **PROPOSED PROSECUTION OF [PARENT FULL NAME] - SECTION 38(1) SCHOOL EDUCATION ACT 1999 (WA)**

Please find enclosed a referral for consideration of prosecution for [parent full name] for consideration by the Department's Legal Services Branch.

Please do not hesitate to contact me on [contact details] should you require any further information.

[Signature]

[Regional Executive Director's/ Independent Public School principal's Name]  
Regional Executive Director/Principal  
[Name of Region/Name of school]

[Date]

Enc.

## 2. Tracking Sheet

DATE RECEIVED	POSITION	TASK	SIGNATURE	DATE SENT
	Regional Executive Director or Independent Public School principal	Completion of referral		
	Legal Services Branch	Acknowledgement of receipt to region		
		Quality assurance of referral		
		Advises Deputy Director General, Schools		
		Preparation of prosecution brief		
		Arranges certificate for the Director General's signature under S42(1)		
	Legal Services branch with Regional Executive Director/Independent Public School principal	As <i>Instructing Officer</i> , the Regional Executive Director or Independent Public School principal requests the State Solicitor's Office prepare paperwork to commence prosecution		
	State Solicitor's Office	Examines the prosecution brief and prepares <i>Prosecution Notice</i> and <i>Court Hearing Notice</i>		
	Legal Services Branch with Regional Executive Director or Independent Public School principal  [briefing prepared by the Legal Services Branch following consultation with relevant Regional Executive Director or Independent Public School principal]	As <i>Instructing Officer</i> , seeks briefing from Legal Services Branch regarding the case prior to requesting the Director General sign the necessary paperwork to commence prosecution		
	Director General	Legal Services Branch facilitates the signing of required documents		
	Legal Services Branch	Returns documents to State Solicitor's Office to be served to parent		

### 3. Student and Family Details

#### PARENT DETAILS

<b>Parent 1</b>	[SURNAME] [GIVEN NAME/S]
Relationship to student:	
Full residential address:	
Phone numbers:	Home: Work: Mobile:
Full alternative address (e.g. place of work):	
Are there any Family Court Orders in place for this student?	[DETAILS]
<b>Parent 2</b>	[SURNAME] [GIVEN NAME/S]
Relationship to student:	
Phone numbers:	Home: Work: Mobile:
Full alternative address (e.g. place of work):	
Known siblings of compulsory school age (name and school):	
Other government agencies supporting the family (if known):	

## STUDENT DETAILS

SURNAME	
GIVEN NAME/S	
Also known as:	
Date Of Birth:	
Age in years and months ____ Y ____ M	Gender: <input type="checkbox"/> M <input type="checkbox"/> F Year level: _____
Background:	<input type="checkbox"/> Aboriginal/Torres Strait Islander <input type="checkbox"/> Language background other than English <input type="checkbox"/> Other
Full residential address:	
School:	
Date enrolled:	

### 4. Probable Witness Details

<b>Witness name:</b>	
Availability:	
Phone number (direct line):	
Mobile:	
Email:	
Work Address:	

<b>Witness name:</b>	
Availability:	
Phone number (direct line):	
Mobile:	
Email:	
Work Address:	

<b>Witness name:</b>	
Availability:	
Phone number (direct line):	
Mobile:	
Email:	
Work Address:	

**5. Sentencing Submission**

**6. Certificate given under Section 42(1)**

To be added at a later date.

**7. Copy of birth certificate**

Attach copy if available.

**8. Family Court Orders**

Attach copy if relevant.

**9. Enrolment Form**

**10. Attendance records**

**11. Appendix B: *Steps taken to restore attendance***

**12. Correspondence**