1. Section 280 of the Criminal Code makes it lawful for a parent or carer to use such force to a child as is reasonable in the circumstances for the purposes of correction, discipline, management or control.
2. In order to examine whether the existence of this defence is impacting on the prosecution of abusive parents, the Department of Justice and Attorney-General reviewed 198 cases accused of parent/child assaults.
3. Upon a review of the facts of each case, the matters were categorised into three general categories of assaults – child abuse; domestic violence; and excessive discipline. Of the 198 prima facie relevant cases, 29 were categorised as child abuse, 35 as domestic violence, and 134 as excessive discipline. Only the cases of excessive discipline were examined further because section 280 is not relevant to cases of child abuse or domestic violence.
4. For the excessive discipline matters, 14 could not be examined further as they were not finalised or the outcome was unknown. Of the remaining 120 excessive discipline matters: 95 accused were convicted (through either a plea of guilty or a finding of guilt); two accused were acquitted; and 23 accused had their charges discontinued by the prosecution (for a variety of reasons including credibility issues, complainant unwilling to proceed or because a prosecution was not in the public interest).
5. Where the matter was discontinued or resulted in an acquittal in only 3 cases did section 280 appear to have any bearing on the outcome. In 2 of these cases, while section 280 was mentioned as a possible relevant factor, it was clearly not the decisive issue in discontinuing the case.
6. The review failed to reveal evidence that section 280 is relied on to any significant degree or that it is impacting on the ability to charge or prosecute parents. The existing defence authorises the use of force that is ‘reasonable in the circumstances’.
7. Cabinet noted the results of the review of section 280 of the Criminal Code that demonstrate that section 280 of the Criminal Code does not provide an inappropriate defence to parents.
8. *Attachments*
* [Summary of review of section 280 of the Criminal Code](Attachments/Summary%20of%20review%20of%20s280%20of%20Criminal%20code.pdf)