Submission to the Queensland Law Reform Commission Review of particular criminal defences: Criminal Code s 280 Domestic Discipline – Reform proposals

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1. Context

Under its terms of reference dated 15 November 2023, the Queensland Law Reform Commission (QLRC) was asked to examine selected defences and excuses in the Criminal Code, including self-defence, provocation, killing for preservation in an abusive domestic relationship, and domestic discipline.

The overall context for the QLRC's review was the report released on 2 December 2021 by the Women's Safety and Justice Taskforce (the Taskforce), chaired by the Honourable Margaret McMurdo AC, entitled *Hear her voice: Report one, Addressing coercive control and domestic and family violence in Queensland*.[1] The Taskforce was established to examine and make recommendations, inter alia, on how best to legislate against coercive control and review the need for a specific offence in relation to the commission of domestic violence. The Taskforce's report made 89 recommendations for reforms to the domestic and family violence service and justice systems, including the creation of a new offence to criminalise coercive control.

In 2022, the Queensland Government responded to the Taskforce's first report, indicating support or in-principle support for all recommendations made by the Taskforce.[2] The first legislative reforms made to strengthen Queensland's response to coercive control were introduced, and commenced on 1 August 2023.[3] Subsequently, the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023* was introduced on 11 October 2023, and received assent on 18 March 2024.[4] This Act inserted into the Criminal Code a new Part 5 Chapter 29A entitled "Coercive control", which included a stand-alone offence of coercive control (s 334C), and a range of definitions which delineated its scope and operation.[5] More broadly, the Queensland Government's Domestic and Family Violence Prevention Engagement and Communication Strategy 2016-2026 aims to shift community attitudes and behaviours relating to DFV and increase community awareness and understanding of all forms of DFV.

The Taskforce examined a range of defences and excuses in the context of coercive control and domestic and family violence. The Taskforce recommended an independent review of these defences and excuses. On 15 November 2023, the then Attorney-General Yvette D'Ath asked the QLRC to examine these provisions. **This submission is made in relation to Terms of Reference 2(d): the defence of domestic discipline**.

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[1] Women's Safety and Justice Taskforce. (2021). Hear her voice: Report 1—Addressing coercive control and domestic and family violence in Queensland. https://www.publications.qld.gov.au/dataset/womens-safety-and-justice-taskforce

[2] The State of Queensland (Department of Justice and Attorney-General). (2022). Queensland Government response to the report of the Queensland Women's Safety and Justice Taskforce, Hear Her Voice – Report One. Accessed at https://www.publications.qld.gov.au/dataset/wsjtaskforceresponse/resource/84bb739b-4922-4098-8d70-a5a483d2f019

[3] These initial reforms were directed largely towards recognising the nature of coercive control as a pattern of behaviour, and to reduce the capacity of perpetrators to inflict additional trauma on victims during judicial proceedings: Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023.

[4] Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024 (Act No. 5 of 2024).

[5] For example: s 334B(1)-(4) defines "domestic violence"; s 334A defines "economic abuse" and "harm".

2. Purpose of this document

This document is intended to provide both a concise summary of the current context, and recommendations to guide reform of s 280.

The recommended features of an optimal law are informed by multidisciplinary analysis, and legal reforms in comparable jurisdictions. This includes:

1. theoretical and bioethical analysis;
2. legal doctrinal analysis;
3. historical analysis;
4. empirical studies;
5. comparison of legal duties and policy duties;
6. comparative analysis of different legal systems and techniques;
7. systematic reviews and meta-analyses; and
8. law reform outcomes.

In addition, any reform of s 280, or any decision to leave s 280 in its current form, needs to ensure consistency with the new Chapter 29A Coercive control and its provisions and definitions. These relevant provisions appear in Appendix 1.

3. Points of departure, and key issues

3.1 Points of departure

The current context as summarised below provides useful points of departure for any consideration of reform of s 280.

1. As at 9 June 2025, 68 nation states have implemented full prohibitions of corporal punishment in all settings, and a further 27 have committed to these reforms.[6] Accordingly, 95 nation states have committed to reform.

2. In Queensland, it is currently lawful for parents and those in the place of parents to use reasonable force toward a child "by way of correction, discipline, management or control". Section 280 provides:

   > **Domestic discipline**
   > It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable under the circumstances.

3. Despite this defence, in Queensland government schools, physical punishment of children and young people has been prohibited by policy since 1995.[7]

[6] End Corporal Punishment. (2025). https://endcorporalpunishment.org/countdown/. Accessed 9 June 2025.
[7] Queensland Education. https://education.qld.gov.au/about-us/history/history-topics/corporal-punishment

4. In Queensland non-government schools, the general position is still guided by the legislation. Enrolment of a child or young person in a non-government or independent school is largely governed by the terms of the enrolment contract made between the school authority and the child or young person's parents.[8]

5. As acknowledged by the QLRC[9], this defence was based on earlier common law, and was included in the Code's original enactment in 1901. Originally the provision was premised on the concept of the use of force by way of 'correction'. However, this was amended in 1997. Since 1997, the concepts of 'discipline, management or control' have also been incorporated in the defence.

6. The common law defence of 'lawful correction' was historically understood as a consequence of a parent's duty to protect and educate their child. Parental authority to discipline a child could be delegated to a schoolmaster, so that a parent or schoolmaster could lawfully use 'moderate and reasonable corporal chastisement,' on a child who was 'capable of [cognitively] appreciating the punishment'. Yet, the force used could not exceed the bounds of moderation 'either in the manner, the instrument or the quantity of the punishment'.[10]

7. The normative and theoretical case for abolishing parental rights of what amounts to physical assault of their children – through acts such as smacking, spanking, and the like - is well-established.[11]

8. The empirical case for abolishing parental rights in relation to these types of assault is also well-established.[12]

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[8] Butler, D., & Mathews, B. (2007). Schools and the Law. Federation Press, Sydney.

[9] Queensland Law Reform Commission. (2023). Review of particular criminal defences Domestic discipline information sheet. https://www.qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences/review-publications

[10] Ibid.

[11] See, for example: Havighurst, S. S., Mathews, B., Doyle, F. L., Haslam, D., Andriessen, K., Cubillo, C., Dawe, S., Hawes, D. J., Leung, C., Mazzucchelli, T.G., Morawska, A., Whittle, S., Chainey, C., & Higgins, D.J., (2023). Corporal Punishment of Children in Australia: The Evidence-Based Case for Legislative Reform. Australian & New Zealand Journal of Public Health, 47(3), 100044. See also: United Nations Committee on the Rights of the Child. (2006). General comment number 8: The right of the child to protection from corporal punishment and other cruel and degrading forms of punishment. Geneva; The Royal Australasian College of Physicians. (2013). Position statement: physical punishment of children. Sydney: The Royal Australasian College of Physicians; Greeff, L.-A. (2022). Corporal punishment in New South Wales: a call for repeal of section 61AA. Alternative Law Journal, 47(1), 30–35; Greeff, L.-A. (2021) Corporal punishment: law reform lessons for Australia from South Africa and New Zealand. Comparative and International Law Journal of Southern Africa, 54(2), 35; and see generally Dallaston, E. (2024). Prohibition of corporal punishment and alternative justifications for the lawful use of force against children in Australia. Australian Journal of Social Issues, 59(3), 637-647.

[12] See for example: Afifi, T. O., Ford, D., Gershoff, E. T., Merrick, M., Grogan-Kaylor, A., Ports, K. A., et al. (2017). Spanking and adult mental health impairment: the case for the designation of spanking as an adverse childhood experience. Child Abuse & Neglect, 71, 24–31; Cuartas, J., McCoy, D. C., Grogan-Kaylor, A., & Gershoff, E. (2020). Physical punishment as a predictor of early cognitive development: Evidence from econometric approaches. Developmental Psychology, 56(11), 2013–2026; Cuartas, J., Weissman, D. G., Sheridan, M. A., Lengua, L., & McLaughlin, K. A. (2021). Corporal punishment and elevated neural response to threat in children. Child Development, 92, 821–32; Gershoff, E. T. (2002). Corporal punishment by parents and associated child behaviors and experiences: a meta-analytic and theoretical review. Psychological Bulletin, 128, 539–79; Gershoff, E. T., Goodman, G. S., Miller-Perrin, C. L., Holden, G. W., Jackson, Y., & Kazdin, A. E. (2018). The strength of the causal evidence against physical punishment of children and its implications for parents, psychologists and policy-makers. American Psychologist, 73(5), 626–638; Gershoff, E. T., & Grogan-

9. The Community Attitudes Survey conducted in relation to this QLRC review found that "The community support alternatives to criminal prosecution where parents use minimal force to discipline children".[13]

10. The Community Attitudes Survey also found that the community supports teachers' ability to use force for the purpose of management or control, but not for discipline or correction.[14]

11. In sum: the defence in s 280 is one of several categories of physical interaction which Queensland's criminal law recognises as being lawfully permissible, in circumstances which would otherwise constitute criminal assault.[15] A range of offences related to assault and more severe application of force are set out in Chapter 30. These include: common assault (s 335); assault occasioning bodily harm (s 339); and grievous bodily harm (s 317).

3.2 Key issues

3.2.1 Consensus on the need for reform

Although a minority of the Australian community still supports disciplining of children by smacking or similar acts of physical striking or force, there is general consensus that these types of acts are not required to raise a child. This consensus is growing, as shown by younger age groups being even more likely to reject the need for physical punishment of children. Both within and beyond Australia, it is now uncontroversial to oppose these types of

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Kaylor, A. (2016). Spanking and child outcomes: old controversies and new meta-analyses. Journal of Family Psychology, 30, 453–69; Heilmann, A., Mehay, A., Watt, R. G,, Kelly, Y., Durrant, J. E., van Turnhout, J, et al. (2021). Physical punishment and child outcomes: a narrative review of prospective studies. Lancet, 398, 355–64.

[13] Boxall, H., Fitz-Gibbon, K., Bartels, L., & Ruddy, R. (2024). Community attitudes to defences and sentences in cases of homicide and assault in Queensland: Report. https://www.qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences. Key finding 6 appears at p. xv. A recent national survey also found 73.6% of Australians do not believe corporal punishment is necessary to raise a child, and people aged under 45 were even more likely to believe it was unnecessary: Haslam, D.M., Malacova, E., Higgins, D., Meinck, F., Mathews, B., Thomas, H. et al. (2024) The prevalence of corporal punishment in Australia: Findings from a nationally representative survey. Australian Journal of Social Issues, 59, 580–604.

[14] Boxall et al., p. xv (Key finding 7).

[15] Chapter 26 sets out a range of defences or excuses to assaults and violence to the person generally, including s 280. Under the Criminal Code, an assault is *defined* as follows (s 245):

> (1) A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called an assault.
> (2) In this section—applies force includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.

An assault is *made unlawful* by s 246:

> (1) An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.
> (2) The application of force by one person to the person of another may be unlawful, although it is done with the consent of that other person.

acts, and legal reforms to prohibit them are aligned with majority community norms, as well as with science and ethics. Widespread legal prohibitions of the use of physical force against children by way of punishment or correction have been acted over the last several decades, in diverse societies including those with similar socio-cultural characteristics and legal histories to ours. The case for reform is compelling.

3.2.2 Technical requirements of reform: beyond simple abolition

However, the reform of Queensland's law is not as simple as concluding s 280 should be repealed. Although many legal reforms elsewhere have been rightly focused on prohibiting what is commonly referred to as "corporal punishment", the nature and scope of s 280 is not limited to acts of corporal punishment. The precise terms of Queensland's legislative provision are not simply limited to permitting parents to inflict punishment by what would otherwise be assault. There are in fact several key concepts within the provision, which raise a number of issues that need to be considered. The provision states (author's emphasis):

> **280 Domestic discipline**
> It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, *by way of correction, discipline, management or control,* towards a child or pupil, under the person's care *such force as is reasonable under the circumstances*.

Diverse concepts: "correction, discipline, management or control". Accordingly, Queensland's provision is not simply concerned with drawing the boundaries of lawful physical punishment. Section 280 is not only about smacking, or even "corporal punishment", which is generally understood as the use of physical force with the intention to cause pain, but not injury, for the purpose of correcting or controlling a child's misbehaviour.[16] Similarly, and notably, s 280 is entitled "Domestic discipline", rather than "corporal punishment". Rather, s 280 is about a range of acts, grouped under different concepts - *correction, discipline, management or control*, as employed *in a reasonable manner in the relevant circumstances* - which are operationally translated into actions in real world situations. For the purposes of s 280 these diverse concepts are grouped for convenience under the umbrella concept of "domestic discipline".

These concepts require statutory interpretation in order to discern their scope. As just one example, the provision would, legitimately, permit appropriate physical contact to manage or control a child through encouragement, teaching of a physical skill, or maintain order.[17] Especially with younger children, parents and caregivers frequently need to engage in physical interaction to manage or control a child's conduct. In some instances, this may be required so that the child does not injure another child or person, or themselves. Parents in some situations will in fact have a duty in the law of tort to restrain a child, or to control or manage them, in order to prevent the child inflicting injury on another.

[16] Donnelly, M., & Straus, M. A. (2005). Corporal punishment of children in theoretical perspective. New Haven: Yale University Press.
[17] Horan v Ferguson [1995] 2 Qd R 490. An example provided was of a teacher guiding children into rooms.

Punishment or correction. In contrast, common law approaches to the defence tend to be constrained to the imposition of physical force specifically for the purpose of punishment.[18] In such jurisdictions that have enacted reform, the reformed provisions were historically framed using concepts of "punishment" (Scotland, Wales), or "correction" (New Zealand).

3.2.3 The key issue, and two public policy objectives

In its current form, s 280 enables acts by parents against children, including acts of striking, that would otherwise constitute assault. Some of these acts breach social norms and ethical principles, pose additional risks to the child (such as heightening the risk of physical and emotional abuse), and both model violence for the child and foster a climate in which domestic and family violence is deemed normal and acceptable.

The critical issue is the need to recast s 280 so that it achieves two public policy objectives, and does so in a manner consistent with fundamental rule of law principles, including clarity and sufficient certainty. First, the provision needs to protect children's rights and interests by appropriately limiting the lawfulness of acts of punishment by physical assault by parents and caregivers. Second, the provision should ensure that the normatively acceptable range of required physical interactions between parents and children for management and control is not made unlawful.

In order to achieve these coexisting objectives, the key is arguably to distinguish between concepts of, on the one hand, punishment or correction (which can legitimately be the subject of abolition), and on the other, management or control (which need to be retained). Examples of legislative reform can offer further guidance in relation to this task.

4. Examples of reform

Scores of nations around the world have enacted reforms in this area. Several reform models from comparable jurisdictions are instructive for a consideration of reform in Queensland. These are: New South Wales, New Zealand, Scotland, and Wales.

4.1 Specific acts of correction made unlawful - New South Wales

New South Wales is the Australian jurisdiction to have engaged most significantly in legislative reform in order to clearly restrict the scope of permissible parental physical conduct. The defence of lawful correction is maintained: Crimes Act 1900 s 61AA(1). However, an express provision clarifies that specific acts are outside the scope of what is lawful: s 61AA(2). These acts are non-exhaustive, but expressly include acts "to any part of the head or neck of the child" beyond those that are trivial or negligible in the circumstances, or to any other part of the child's body "in such a way as to be likely to cause harm to the child that lasts for more than a short period."

As relevant, the Crimes Act 1900 s 61AA states:

[18] See, for example, Cattanach v Harrison [2016] ATCSC 60; R v G, DM (2016) 124 SASR 544; R v Terry [1955] VLR 114; R v Hughes [2015] VSC 312.

61AA Defence of lawful correction

(1) In criminal proceedings brought against a person arising out of the application of physical force to a child, it is a defence that the force was applied for the purpose of the punishment of the child, but only if—
(a) the physical force was applied by the parent of the child or by a person acting for a parent of the child, and
(b) the application of that physical force was reasonable having regard to the age, health, maturity or other characteristics of the child, the nature of the alleged misbehaviour or other circumstances.

(2) The application of physical force, unless that force could reasonably be considered trivial or negligible in all the circumstances, is not reasonable if the force is applied—
(a) to any part of the head or neck of the child, or
(b) to any other part of the body of the child in such a way as to be likely to cause harm to the child that lasts for more than a short period.

(3) Subsection (2) does not limit the circumstances in which the application of physical force is not reasonable.

(4) This section does not derogate from or affect any defence at common law (other than to modify the defence of lawful correction).

(5) Nothing in this section alters the common law concerning the management, control or restraint of a child by means of physical contact or force for purposes other than punishment.

(6) In this section—
child means a person under 18 years of age.
parent of a child means a person having all the duties, powers, responsibilities and authority in respect of the child which, by law, parents have in relation to their children.
person acting for a parent of a child means a person—
(a) who—
(i) is a step-parent of the child, a de facto partner of a parent of the child, a relative (by blood or marriage) of a parent of the child or a person to whom the parent has entrusted the care and management of the child, and
(ii) is authorised by a parent of the child to use physical force to punish the child, or
(b) who, in the case of a child who is an Aboriginal or Torres Strait Islander (within the meaning of the Children and Young Persons (Care and Protection) Act 1998), is recognised by the Aboriginal or Torres Strait Islander community to which the child belongs as being an appropriate person to exercise special responsibilities in relation to the child.
Note. "De facto partner" is defined in section 21C of the Interpretation Act 1987.

(7) This section does not apply to proceedings arising out of an application of physical force to a child if the application of that force occurred before the commencement of this section.

(8) The Attorney General is to review this section to determine whether its provisions continue to be appropriate for securing the policy objectives of the section. The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this section. A report on the outcome of the review is to be tabled in each House of Parliament within 6 months after the end of the period of 3 years.

For present purposes, a key provision in the NSW law is s 61AA(5). This clearly distinguishes between the different concepts, which from the bases for physical interaction, and retains the parent's power to manage, control or restrain the child through reasonable physical contact or force. However, other parts of s 61AA, namely s 61AA(1), preserve the parental power to inflict physical force for the purpose of punishment.

4.2 Prohibiting the use of physical force for correction, and specifying circumstances of permissible parental control – New Zealand

In New Zealand, the Crimes (Substituted Section 59) Amendment Act 2007 made it unlawful for a parent to use physical force for the purpose of correction. Section 4 of the amending Act stated: "The purpose of this Act is to amend the principal Act to make better provision for children to live in a safe and secure environment free from violence by abolishing the use of parental force for the purpose of correction". Previously, the Crimes Act 1961 s 59 had made it lawful for parents to use physical force by way of correction.[19]

Significantly, the New Zealand provisions are framed within the concept of "parental control", and are implicitly premised on two objectives. First, acts of physical force for the purpose of correction are prohibited (s 59(2)); and second, specified circumstances are set down in which use of physical force is lawful (s 59(1)).

> Crimes Act 1961 (NZ) s 59
> **59 Parental control**
> (1) Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of—
> (a) preventing or minimising harm to the child or another person; or
> (b) preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or
> (c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or
> (d) performing the normal daily tasks that are incidental to good care and parenting.
>
> (2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction.
>
> (3) Subsection (2) prevails over subsection (1).
>
> (4) To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.

Accordingly, the New Zealand law goes beyond the situation in New South Wales, by removing any capacity for parents to use physical force by way of correction.

There are other notable similarities between the New Zealand provisions and those in New South Wales. Similar to NSW s 61AA(8), in New Zealand, s 6 required the Chief Executive to monitor effects of the Act and advise the Minister on its effects, including the extent to which it was achieving its purpose. A review was required after two years.

[19] Originally the Crimes (Abolition of Force as a Justification for Child Discipline) Substituted Section 59 Amendment Act 2005. Bill 271-1 introduced 9 June 2005, introduced 27 July 2005; second reading 21 February 2007. The Crimes Act 1961 s 59 originally provided:
Domestic discipline
(1) Every parent or person in the place of a parent, and every schoolmaster, is justified in using force by way of correction towards any child or pupil under his care, if the force used is reasonable in the circumstances.
(2) The reasonableness of the force used is a question of fact.

4.3 Abolition of defence of reasonable chastisement - Scotland

In Scotland, the Children (Equal Protection from Assault) (Scotland) Act 2019 abolished the statutory defence of "reasonable chastisement".[20] As relevant, the provisions state:

> **1 Abolition of defence of reasonable chastisement**
>
> (1) The rule of law, that the physical punishment of a child in the exercise of a parental right or a right derived from having charge or care of the child is justifiable and is therefore not an assault, ceases to have effect.
>
> (2) Section 51 (physical punishment of children) of the Criminal Justice (Scotland) Act 2003 is repealed.
>
> **2 Duty of Scottish Ministers to raise awareness**
>
> The Scottish Ministers must take such steps as they consider appropriate to promote public awareness and understanding about the effect of section 1.

The former s 51 was premised on the concept of "punishment". It stated:

> **51 Physical punishment of children**
>
> (1) Where a person claims that something done to a child was a physical punishment carried out in exercise of a parental right or of a right derived from having charge or care of the child, then in determining any question as to whether what was done was, by virtue of being in such exercise, a justifiable assault a court must have regard to the following factors—
> (a) the nature of what was done, the reason for it and the circumstances in which it took place;
> (b) its duration and frequency;
> (c) any effect (whether physical or mental) which it has been shown to have had on the child;
> (d) the child's age; and
> (e) the child's personal characteristics (including, without prejudice to the generality of this paragraph, sex and state of health) at the time the thing was done.
>
> (2) The court may also have regard to such other factors as it considers appropriate in the circumstances of the case.
>
> (3) If what was done included or consisted of—
> (a) a blow to the head;
> (b) shaking; or
> (c) the use of an implement,
> the court must determine that it was not something which, by virtue of being in exercise of a parental right or of a right derived as is mentioned in subsection (1), was a justifiable assault; but this subsection is without prejudice to the power of the court so to determine on whatever other grounds it thinks fit.
>
> (4) In subsection (1), "child" means a person who had not, at the time the thing was done, attained the age of sixteen years.

[20] The Act received Royal Assent on 7 November 2019, and came into force on November 7, 2020.

4.4 Abolition of defence of reasonable punishment - Wales

In Wales, the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 came into force on 21 March 2022. The Act prohibited the physical punishment of children in Wales by abolishing the common law defence of reasonable punishment. The Act received assent on 20 March 2020, but only came into force two years later, on 20 March 2022. This period of time was dedicated to ensuring connected strategic endeavours including an awareness-raising campaign and support for parents were put in place to enable a smooth transition.[21] The Act was accompanied by complementary supportive measures.[22] The legislation had been first announced on 18 May 2016, when the First Minister indicated the government's intention to repeal the defence.[23]

"Physical punishment" was effectively defined as any battery of a child carried out as a punishment, and was referred to in the Act as "corporal punishment" (s 1(4)). As relevant, the Act states:

1 Abolition of common law defence of reasonable punishment

(1) The common law defence of reasonable punishment is abolished in relation to corporal punishment of a child taking place in Wales.
(2) Accordingly, corporal punishment of a child taking place in Wales cannot be justified in any civil or criminal proceedings on the ground that it constituted reasonable punishment.
(3) Nor can corporal punishment of a child taking place in Wales be justified in any civil or criminal proceedings on the ground that it constituted acceptable conduct for the purposes of any other rule of the common law.
(4) For the purposes of this section, "corporal punishment" means any battery carried out as a punishment.

2 Promoting public awareness of the coming into force of section 1

The Welsh Ministers must take steps before the coming into force of section 1 to promote public awareness of the changes to the law to be made by that section.

3 Reporting requirements

(1) The Welsh Ministers must prepare two reports on the effect of the changes to the law made by section 1.
(2) The first report must be prepared as soon as practicable after the expiry of the period of 3 years beginning with the coming into force of section 1.
(3) The second report must be prepared as soon as practicable after the expiry of the period of 5 years beginning with the coming into force of section 1.

[21] See Welsh Government. (2020). Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020: Explanatory Memorandum Incorporating the Regulatory Impact Assessment and Explanatory Notes. https://www.gov.wales/children-abolition-defence-reasonable-punishment-wales-act-2020-explanatory-memorandum

[22] For example, as reported by the Government of Wales' Minister for Children and Social Care, extensive resources were developed and distributed prior to the commencement of the law. In addition, from April 2022 to March 2025, local authorities have received over £2m to fund out-of-court parenting support. These funds underpin a rehabilitative approach in which parents are encouraged to develop and adopt positive parenting skills, while simultaneously affirming that physical punishment of children is unacceptable. See: Bowden, Minister Dawn S. (2025). Written Statement: Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 Post-implementation Review. https://www.gov.wales/written-statement-children-abolition-defence-reasonable-punishment-wales-act-2020-post

[23] Explanatory Memorandum, p. 9, para 3.1. The initial announcement was reiterated a year later, and again in January 2018, at which time consultations on the proposal were also announced. The bill was introduced on 25 March 2019.

(4) The Welsh Ministers must, as soon as practicable after preparing a report under this section—(a) lay the report before the National Assembly for Wales, and (b) publish the report.

The Act did not define actions by parents towards their children which would or would not be acceptable once the defence is removed. It was stated in the Explanatory Memorandum that removing the defence would not undermine principles of the common law acknowledging that a parent can engage in necessary physical interactions, for example, to keep a child safe from harm, or help with daily health and care activities.[24]

5. Recommendations for reform

5.1 Achieving two aims of public policy

The overall purpose of s 280 should achieve two aims: first, it should protect children's rights and interests by appropriately limiting the lawfulness of acts of physical assault by parents and caregivers; second, it should ensure that the normatively acceptable range of required physical interactions between parents and children is not made unlawful.

In order to achieve these coexisting objectives, it is important for any reformed provision to distinguish appropriately between concepts of punishment or correction (which can legitimately be the subject of abolition), and management or control (the lawfulness of which needs to be preserved). In sum, s 280 can be recast to:

- clearly permit physical acts and interactions done for the purpose of management and control; and
- clearly prohibit physical acts of assault done for the purpose of punishment, discipline or correction.

An optimal approach to the reform of s 280 would achieve these two objectives, and would draw from the best features of a range of models as outlined above. From an overarching perspective, the current New Zealand model likely provides the best example of how to implement legislative reform in Queensland, although features of the other models considered here are also useful. In addition, several other features of the reform to the provision should be incorporated, as well as other features to accompany the reform.

[24] Ibid. The Explanatory Memorandum also. made it clear that the defence had previously been clearly restricted by legislation, namely the Children Act 2004 (UK) s 58. This provision stated that the defence was never available in relation to criminal law charges of wounding or causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons under 16, or in relation to civil law charges for battery of a child causing actual bodily harm.

5.2 Recommendations for reform: features of an optimal law

Recommendation 1: **Defining a child**. A child should be defined as all individuals under the age of 18.

Recommendation 2: **Defining a parent.** Parents and parent-like caregivers should be appropriately defined, and should be limited to adults who are properly in loco parentis. The NSW provision provides an excellent example (s 61AA(6)).

Recommendation 3: **Prohibiting the use of physical force for the purpose of punishment**. The provisions should expressly prohibit the use of physical force by parents for the purpose of punishment or correction. It is important to clearly prohibit acts of physical assault done to discipline or punish children for perceived or actual misbehaviour. The New Zealand provision is an excellent example (s 59(2)).

Recommendation 4: **Preserving parents' power and duty to manage and control the child**. The provisions should expressly preserve the parent's power to manage, control or restrain the child through reasonable physical contact or force. It is important to clearly permit acts done for the purpose of management or control in order to protect parents and caregivers from liability for normatively legitimate physical interactions, both to prevent harm to the child or others, and to promote healthy parental care and parent-child interaction. The New Zealand provisions are good examples (s 59(1)(a) and (d)).

Recommendation 5: **Legislative examples**. The provisions should make extensive strategic use of textual examples to demonstrate examples of interactions that are and are not permissible. This is an important legislative tool which can remove doubt in numerous circumstances, by specifying in concrete terms how the abstract concepts in the provisions translate to lived experience. For example:
(1) acts such as (i) striking the head, face, or neck, (ii) shaking, and (iii) striking any part of the body with an implement, should be specified as never being lawful;
(2) acts such as smacking, spanking, and slapping, should also be specified as never lawful;
(3) acts such as holding a child, grasping their hand, or restraining a child, should be specified as permissible when done reasonably in a range of specified circumstances.

Recommendation 6: **Residual discretion**. Residual discretion should be expressly retained for police and prosecutors, so that acts of physical contact or force that are minor, trivial, negligible, or innocuous, taking into account all the circumstances, are not unreasonably subject to the prohibition. The New Zealand provision is a good model (s 59(4)).

Recommendation 7: **Prospective application**. The provisions should be applied prospectively, and should not have retrospective force. The New South Wales provision is an exemplar (s 61AA(7)).

Recommendation 8: **Preservation of other parental duties**. The provisions should preserve other parental duties under law.

Recommendation 9: **Monitoring and review**. The provisions should include a requirement for monitoring and review, and appropriate discussion and publication of the review. The New South Wales provision (s 61AA(8) and the Wales provision (s 3) are good models.

Recommendation 10: **Information campaigns**. Connected mechanisms should facilitate public information campaigns and support for parents. The Wales provision (s 2) and Scottish provision (s 2) are good models.

Recommendation 11: **Diversionary support**. Connected mechanisms should facilitate diversionary support for parents who have technically breached the law.

Recommendation 12: **Police education and training**. Connected mechanisms should facilitate education and training for police, in order to support appropriate responses.

Recommendation 13: **Other professional education and training**. Connected mechanisms should facilitate education and training for other professional groups who work with children and young people, such as teachers and early childhood education and care workers, in order to support appropriate responses.

Recommendation 14: Prosecutorial guidelines should be revised as necessary.

5.3 Proposed amended version of s 280

The proposed model law below incorporates features of an optimal law as outlined above in Part 5.3.

280 Parental management or control

(1) Every parent of a child and every person acting for a parent of the child is justified in using physical force in relation to the child if the force used is reasonable in the circumstances and is for the purpose of management or control of the child in order to—
(a) prevent or minimise harm to the child or another person; or
(b) perform normal tasks that are incidental to good care and parenting in relation to the child.

(2) Nothing in subsection (1) or in any rule of common law justifies the use of physical force for the purpose of discipline or correction.

(3) Subsection (2) prevails over subsection (1).

(4) To avoid doubt:
- (a) acts including: (i) striking the head, face, or neck of the child, (ii) shaking the child, and (iii) striking any part of the child's body with an implement, are not justified acts of physical force and are unlawful;
- (b) acts including smacking and spanking are not justified acts of physical force and are unlawful;
- (c) acts such as holding a child, grasping a child's hand, or restraining a child, are justified when done reasonably in circumstances where management or control is required, including those specified in ss (1)(a);
- (d) whether an act is done reasonably in circumstances where management or control is required as relevant to subsection (4)(c) depends on all the circumstances, including but not limited to the child's age, the child's personal characteristics, the

acts done, the circumstances in which the acts were done, and any effect the acts had on the child.
Examples of circumstances that will, and will not, constitute justified management or control can be added here

(5) To further avoid doubt, it is affirmed that the police have the discretion not to prosecute complaints against a parent of a child, or a person in the place of a parent of a child, in relation to an offence involving the use of force against a child, where the application of physical force is considered to be so negligible or trivial that there is no public interest in proceeding with a prosecution.

(6) In this section—
child means a person under 18 years of age.
parent of a child means a person having all the duties, powers, responsibilities and authority in respect of the child which, by law, parents have in relation to their children.
person acting for a parent of a child includes a person—
(a) who is a step-parent of the child, a de facto partner of a parent of the child, a relative (by blood or marriage) of a parent of the child; or
(b) who is an adult otherwise acting in loco parentis; or
(c) who is recognised by the community to which the child belongs as being an appropriate person to exercise special responsibilities in relation to the child.

(7) This section does not apply to proceedings arising out of acts of physical force to a child that occurred before the commencement of this section.

(8) The Attorney General must take steps before commencement of these provisions to promote public awareness of the changes to the law that are made by them.

(9) The Attorney General is to review this section to determine whether its provisions continue to be appropriate for securing the policy objectives of the section. The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this section. A report on the outcome of the review is to be tabled in Parliament within 6 months after the end of the period of 3 years.

6. Appendix 1 Chapter 29A Coercive control

Chapter 29A Coercive control

334A Definitions for chapter
In this chapter—
coercive control means the offence mentioned in section 334C.
domestic violence see section 334B.
economic abuse means behaviour by a person (the first person) that is coercive, deceptive or unreasonably controls another person (the second person)—
a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or
(b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or a child.
emotional or psychological abuse means behaviour by a person towards another person that torments, intimidates, harasses or degrades the other person.
harm, to a person, means any detrimental effect on the person's physical, emotional, financial, psychological or mental wellbeing, whether temporary or permanent.

334B What is domestic violence
(1) Domestic violence means behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a domestic relationship that—
(a) is physically or sexually abusive; or
(b) is emotionally or psychologically abusive; or
(c) is economically abusive; or
(d) is threatening; or
(e) is coercive; or
(f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.

(2) Behaviour mentioned in subsection (1)—
(a) may occur over a period of time; and
(b) may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening, coercive or causes fear in a way mentioned in that subsection; and
(c) is to be considered in the context of the relationship between the first person and the second person as a whole.

(3) Without limiting subsection (1) or (2), domestic violence includes the following behaviour—
(a) causing personal injury to a person or threatening to do so;
(b) coercing a person to engage in sexual activity or attempting to do so;
(c) damaging a person's property or threatening to do so;
(d) depriving a person of the person's liberty or threatening to do so;
(e) threatening a person with the death or injury of the person, a child of the person, or someone else;
(f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;

(g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;
(h) unauthorised or unreasonable surveillance of a person;
(i) unlawfully stalking, intimidating, harassing or abusing a person;
(j) making a person dependent on, or subordinate to, another person;
(k) isolating a person from friends, relatives or other sources of support;
(l) controlling, regulating or monitoring a person's day-to-day activities;
(m) depriving a person of, or restricting a person's, freedom of action;
(n) frightening, humiliating, degrading or punishing a person.

334C Coercive control

(1) A person who is an adult commits an offence (a ***coercive control offence***) if—
(a) the person is in a domestic relationship with another person (the ***other person***); and
(b) the person engages in a course of conduct against the other person that consists of domestic violence occurring on more than 1 occasion; and
(c) the person intends the course of conduct to coerce or control the other person; and
(d) the course of conduct would, in all the circumstances, be reasonably likely to cause the other person harm.
Maximum penalty—14 years imprisonment.
(2) An offence against subsection (1) is a crime.
(3) For subsection (1)(c), the prosecution is not required to prove that the person intended each act of domestic violence that constitutes the course of conduct, when considered in isolation, to coerce or control the other person.
(4) For subsection (1)(d), without limiting the circumstances for the purpose of the subsection, those circumstances include the behaviour of the person and the other person in the context of their relationship as a whole.
(5) In relation to the domestic violence that constitutes the course of conduct—
(a) the prosecution is not required to allege the particulars of any act of domestic violence constituting an offence that would be necessary if the act were charged as a separate offence; and
(b) the jury is not required to be satisfied of the particulars of any act of domestic violence constituting an offence that it would have to be satisfied of if the act were charged as a separate offence; and
(c) all the members of the jury are not required to be satisfied about the same acts of domestic violence.
(6) A person may be charged with—
(a) the coercive control offence; and
(b) 1 or more other offences of domestic violence alleged to have been committed by the person against the other person during the course of conduct for the coercive control offence.
(7) The offences mentioned in subsection (6)(a) and (b) may be charged in the 1 indictment.
(8) The person charged as mentioned in subsection (6) may be convicted of and punished for any or all of the offences charged.
(9) However, if the person is—
(a) charged as mentioned in subsection (6); and
(b) sentenced to imprisonment for the coercive control offence and for the other offence or offences;

the court imposing imprisonment may not order that the sentence for the coercive control offence be served cumulatively with the sentence or sentences for the other offence or offences.
Note—
See the *Penalties and Sentences Act 1992*, section 155 (Imprisonment to be served concurrently unless otherwise ordered).
(10) It is a defence for the person to prove that the course of conduct for the coercive control offence was reasonable in the context of the relationship between the person and the other person as a whole.
(11) It is not a defence to a charge for a coercive control offence that the person believed that any single act of domestic violence that formed part of the course of conduct for the coercive control offence, or each of the acts of domestic violence that constituted the course of conduct when considered in isolation, was reasonable in the context of the relationship between the person and the other person as a whole.

334D What is immaterial for coercive control
(1) For section 334C(1)(b) and (c), it is immaterial whether the domestic violence that constituted the course of conduct against the other person was carried out in relation to another person or the property of another person.
(2) For section 334C(1)(d)—
(a) it is immaterial whether the course of conduct actually caused harm to the other person; and
(b) if an act of domestic violence that formed part of the course of conduct was unauthorised or unreasonable surveillance or economic abuse of the other person, it is immaterial whether the other person was aware of the act.
(3) Despite particular matters being immaterial for section 334C(1) as mentioned in subsection (1) or (2), nothing in this section prevents evidence being adduced about the matters.
(4) In this section—
other person see section 334C(1)(a).