

123. Cruelty to Children under 16: s 364

123.1 Legislation

[Last reviewed: September 2024]

Criminal Code

[Section 364](#) – Cruelty to children under 16

123.2 Commentary

[Last reviewed: September 2024]

The Defendant must have:

- (1) Had lawful care or charge of a child under 16;
- (2) Caused harm to the child by prescribed conduct, being either
 - (a) failing to provide the child with adequate food, clothing, medical treatment, accommodation or care when it is available to the person from his or her own resources;
 - (b) failing to take all lawful steps to obtain adequate food, clothing, medical treatment, accommodation or care when it is not available to the person from his or her own resources;
 - (c) deserting the child; or
 - (d) leaving the child without means of support;
- (3) Knowing, or having ought reasonably to have known, that the prescribed conduct would be likely to cause harm to the child.

'Harm' is defined in s 364(2) to mean any 'detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing, whether temporary or permanent'.

123.3 Suggested Direction

[Last reviewed: September 2024]

The prosecution must prove that:

- 1. The Defendant had the lawful care [or charge (as the case may be)] of the Complainant, who was under 16 years.**

- 2. The Defendant caused harm to the Complainant by failing to provide the Complainant with [adequate food, clothing, medical treatment, accommodation or care (set out according to the circumstances of the case)].**
- 3. The Defendant was able, from [his/her] own resources, to provide [adequate food, clothing, medical treatment, accommodation or care].**
- 4. The Defendant knew [or ought reasonably to have known (as the case may be)] that failing to provide the complainant with [adequate food, clothing, medical treatment, accommodation or care] would be likely to cause the Complainant harm.**