

Cruelty to children under 16: s 364

Legislation

364 Cruelty to children under 16

- (1) A person who, having the lawful care or charge of a child under 16 years, causes harm to the child by any prescribed conduct that the person knew or ought reasonably to have known would be likely to cause harm to the child commits a crime.

Maximum penalty—7 years imprisonment.

- (2) In this section—

harm, to a child, means any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing, whether temporary or permanent.

prescribed conduct means—

- (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; or
- (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; or
- (c) deserting the child; or
- (d) leaving the child without means of support.

Commentary

Meaning of 'harm'

'Harm' means any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing, whether temporary or permanent: s 364(2).

Meaning of 'prescribed conduct'

Adequate food (or clothing, medical treatment, accommodation or care) must have been available to the defendant from his or her own resources for the defendant to be liable for a failure to provide.

Where the defendant does not have the resources to provide adequate food (or clothing, medical treatment, accommodation or care) the charge is one of failing to take all lawful steps to obtain it.

Other forms of prescribed conduct under s 364(2) are deserting the child and leaving the child without means of support.

Suggested Direction

The prosecution must prove that:

- 1. The defendant had the lawful care or charge of the child, who was under 16 years.**
- 2. The defendant caused harm to the child by failing to provide the child with adequate food (or clothing, medical treatment, accommodation or care).**
- 3. The defendant was able, from his or her own resources, to provide food.**
- 4. The defendant knew, or ought reasonably to have known, that failing to provide the child with adequate food would be likely to cause the child harm.**