

## Aiding suicide: s 311

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### Legislation

#### s 311 *Aiding suicide*

*Any person who –*

- (a) procures another to kill himself or herself; or*
- (b) counsels another to kill himself or herself and thereby induces the other person to do so; or*
- (c) aids another in killing himself or herself;*

*is guilty of a crime, and is liable to imprisonment for life.*

### Commentary

It is an offence to procure, counsel or aid in the commission of the suicide of another.

Authorities relating to s 7 may provide some assistance to trial judges as to the meaning of:

- “procure” (see *R v F; ex parte A-G* [2004] 1 Qd R 162; [\[2003\] QCA 70](#) at [33]-[34]; *R v Hawke* (2016) 259 A Crim R 114; [\[2016\] QCA 144](#) at [59]);
- “counsel” (see *R v Georgiou* (2002) 131 A Crim R 150; [\[2002\] QCA 206](#) at [78]); and
- “aid” (see *R v Sherrington & Kuchler* [\[2001\] QCA 105](#) at [12]).

However, it is to be borne in mind that, as was explained in *R v Georgiou* (2002) 131 A Crim R 150, [79], such words are ordinary English terms which will not necessarily require explanation and, if explanation is given, truly synonymous words should be used.

The offence at s 311(c), of aiding another in killing himself or herself, was considered by the Court of Appeal in *R v Morant* [\[2020\] QCA 135](#). Sofronoff P, with whom Mullins JA agreed, concluded that, as with s 7(1)(c), it is an implicit requirement of s 311(c) that the aiding be done knowingly: at [10]-[15]. Questions about the likelihood of the deceased killing himself or herself are thus irrelevant (at [17]) and the focus should be upon whether the accused’s acts were intended to aid the deceased in killing himself or herself and whether those acts did in fact aid the deceased in killing himself or herself: at [19]. Sofronoff P reasoned at [20]:

“The elements of the offence in s 311 are:

- (a) The accused did an act;
- (b) The accused did that act intending thereby to aid the deceased in killing herself;
- (c) The deceased killed herself; and
- (d) The accused’s acts did aid the deceased in killing herself.”

## **Direction (s 311(c))**

**Our law provides that any person who aids another in killing himself/herself is guilty of a crime known as aiding suicide.**

**Proof of this offence requires not only that the accused did an act which in fact aided the deceased to kill himself/herself but that in committing that act the accused intended that it would aid the deceased in killing himself or herself.**

**In order to prove the offence the prosecution must prove four elements or ingredients of the offence beyond a reasonable doubt, namely:**

- 1. the accused did the act/s alleged by the prosecution;**
- 2. the accused did that act/those acts intending thereby to aid the deceased in killing himself/herself;**
- 3. the deceased killed himself/herself; and**
- 4. the accused's act/s did aid the deceased in killing himself/herself.**

**As to the first element, the prosecution allege that the accused [insert the particular act or acts alleged by the prosecution]. It is for you to decide whether the accused did in fact act as alleged. [Where this is an issue, discuss the factual issue or issues which the jury should consider.] If you are not satisfied beyond reasonable doubt that the accused acted as the prosecution allege, then you would acquit the accused. If you are so satisfied, it would remain for you to consider whether you are persuaded beyond reasonable doubt of the other elements.**

**As to the second element, it can only be proved if you are satisfied beyond a reasonable doubt that at the time the accused committed the act/s as alleged by the prosecution, the accused intended to thereby aid the deceased in killing himself/herself. It is not enough that the accused's action did in the end result aid the deceased to commit suicide. It is essential that at the time the accused acted as he/she did, he/she intended that what he/she did would aid the deceased in killing himself/herself. In considering whether at the time of his/her act/s the accused intended that what he/she was doing would aid the**

deceased in killing himself/herself, you will be drawing an inference from facts which you find established by the evidence concerning the accused's state of mind. Intention may be inferred or deduced from the circumstances in which the accused acted and from the accused's conduct before, at the time of and after the accused's actions. Of course, whatever the accused has said about his/her intention may also be considered for the purposes of deciding whether the accused held the requisite intention at the time he/she acted as alleged. [Discuss the main issues of fact relevant to the issue of intent in this case.] **If you are not satisfied beyond reasonable doubt that the accused had the requisite intention at the time of the accused's alleged act/s, then you would acquit the accused. If you are so satisfied, it would remain for you to consider whether you are persuaded beyond reasonable doubt of the other elements.**

**As to the third element, that the accused killed himself/herself, if the deceased caused his/her death, directly or indirectly by any means whatever, then the deceased will have killed himself/herself. In that regard, it does not matter that death did not immediately result from the actions of the deceased. If the actions of the deceased caused his/her own death then the deceased will have killed himself/herself, however long it took for death to occur after the deceased's fatal actions. [Consider adding the following if it is in issue whether the deceased committed suicide. While the actions of the deceased need not have been the only contributing cause of his/her death, the deceased's actions must have been a substantial or significant cause of death or have contributed substantially to the death. [Enlarge upon any relevant factual issues in the particular circumstances of this case.] If you are not satisfied beyond reasonable doubt that the deceased killed himself/herself, then there will not have been a suicide and the accused therefore could not have aided a suicide and you would acquit the accused. If you are so satisfied, it would remain for you to consider whether you are persuaded beyond reasonable doubt of the other elements.]**

**The fourth element requires you to be satisfied beyond reasonable doubt that the accused's act/s did aid the deceased in killing himself/herself. It is important to appreciate it is not enough for the prosecution to prove that the accused did an act/s which were intended to thereby aid the deceased in killing himself/herself. It is also necessary the accused's act/s did in fact aid the deceased in killing himself/herself. If the accused's actions did not actually assist or help the deceased in killing himself/herself, then the accused could**

**not be guilty of having aided suicide.** [Here identify the way in which it is alleged the accused's actions aided the deceased's commission of suicide and the factual issues relevant thereto. Where the aiding relied upon by the prosecution is aiding through encouragement (see for example *R v Beck* [\[1990\] 1 Qd R 30](#) in a s 7 context) more elaboration may be required.] **If you are not satisfied beyond reasonable doubt that the accused's act/s did aid the deceased in killing himself/herself, then you would acquit the accused. If you are so satisfied, then, and only if you are satisfied beyond reasonable doubt of all the other elements, you would convict the accused.**