

**STAGE 2 LEGAL STUDIES  
ASSESSMENT TYPE 2: INQUIRY**

**Student Name:**

**SACE No:**

**Question:** Do proposed South Australian euthanasia laws achieve social cohesion?

**Applicable Assessment Criteria:**

KU1 – Knowledge and understanding of relevant influences on the Australian legal system

KU2 – Knowledge and understanding of legal principles, processes and structures

I1 – Location, selection, documentation, and application of relevant sources

I2 – Critiquing of legal processes and structures, with informed and considered recommendations for change

AE2 – Analysis of principles, processes and structures

AE3 – Evaluation of legal issues or concepts through discussion and illustration of opposing arguments to reach an informed conclusion

C1 – Accuracy and coherence in communication of informed observations and opinions on contemporary legal issues and debates, using different forms

C2 – Use of legal terminology, indicating understanding

C3 – Appropriate acknowledgment of sources

**On balance grade awarded:**

**B-**

## Do proposed South Australian euthanasia laws achieve social cohesion?

### Introduction

#### Knowledge and Understanding Analysis and Evaluation

This is an effective explanation of the issues pertaining to social cohesion. There is knowledge and understanding as well as considered evaluation of the legal principles relating to euthanasia law. This is reflected in the astute judgments about the tensions involved in making a law that reflects the values of society and also sets acceptable standards of behavior (KU1, AE2).

The term 'euthanasia' comes from the Greek for 'good death' and refers to ending an individual's life painlessly with their consent, to relieve suffering from an incurable illness (English Dictionary, 2013). A proposed law, including proposals to legalise euthanasia, must achieve social cohesion; in particular, they must reflect societal values and protect human rights, as well as set acceptable standards of behaviour for society (Bailey, 2005). In regards to this first aspect, the need to reflect societal values, it is clear that acceptance has grown within society for the idea that it is cruel to prolong a life of pain and suffering if that person does not wish to live anymore. That seems straightforward, but whether or not the right to die is a human right is debatable because it contradicts with the fundamental right to life; it may be that euthanasia bills reflect societal values but fail to adequately protect a fundamental human right. The second component, whether the bill succeeds in setting acceptable safeguards, is where most of the controversy lies and is often the reason why euthanasia bills are rejected by Australian parliaments. This paper examines some of the competing arguments as to whether a euthanasia bill can possibly achieve the abovementioned aspects of social cohesion.

### Background

#### Knowledge and Understanding

This shows detailed and well-considered understanding of the function of law as well as how euthanasia law relates to the division of powers under the Constitution - including the example of how the Commonwealth overruled the 1995 NT legislation (KU2).

From a legal perspective in most countries, including Australia, euthanasia is illegal and if performed can lead to a manslaughter or murder charge and a prison sentence. Laws relating to both health and criminal law are generally residual powers of the states and currently euthanasia is illegal all throughout Australia. It has only been legal once in the Northern Territory by the *Rights of the Terminally Ill Act (1995)* but this was over turned by the Australian Federal Government due to section 122 of the constitution, which gave the Parliament the power to make laws in regard to any territories (Parliament of Australia, 2013).

## Bill Proposals

### Knowledge and Understanding

This demonstrates detailed knowledge and well-considered understanding of the range of influences that impact on the development of euthanasia laws - eg the impact of laws passed in other jurisdictions, the influence of individual MPs and pressure groups (KU1).

Overall, there have been sixteen attempts in the past ten years to legalise euthanasia in South Australia (Rebecca, 2013). Nine of those attempts have been by Bob Such who is the member for the seat of Fisher in the South Australian House of Assembly. He has been a major advocate for legalising euthanasia in South Australia. the *Ending Life with Dignity Bill 2013* intends to provide legislation for the administration of medical procedures to assist the death of a terminally ill patient who is suffering unbearably and who have expressed a desire for the procedure (Ending Life with Dignity Bill, 2013). New South Wales has also had a recent reform attempt on 2 May 2013 where Greens MLC Cate Faerhmann introduced the *Right of the Terminally Ill Bill*. Similarly to South Australia, currently the law in NSW states that giving assistance to someone who wishes to commit suicide is an offence under section 31C of the *Crime Act 1990 NSW* (Sarah Condie, 2013). The Intention of this new NSW bill is to offer those who are terminally ill the legal opportunity to request and receive support to end their life if they intentionally wish to do so. Tasmania has also had a recent euthanasia bill put forward, the *Voluntary Assisted Dying Bill 2013*, which will be provided for patients who are out of medical options to relieve intolerable suffering (Andrew Darby, 2013). The bill was co-authored by Premier Lara Giddings and Green's leader Nick McKim.

## Advantages

According to a public opinion poll of South Australians the general public believe that euthanasia should now be permitted, 80% being in support of euthanasia (Such, 2012). The public opinion pole is persuasive evidence that society thinks the right to die does exist, which shows that a euthanasia bill does reflect the societal value. Concerning the aspect of the second component, whether or not the bill will set acceptable standards of behaviour for society is something that has been seriously considered within the South Australian Bill, *Ending Life with Dignity 2013* and is usually the reason why a euthanasia bill does not get passed. The *Ending Life with Dignity bill 2013* includes appropriate safeguards such as a government board, which will monitor the Act to ensure that the bill is working as intended. People will not have to seek permission to be euthanized from this board. Another regulation of the

### **Inquiry**

There is evidence of considered and critical location of relevant sources throughout, for example in paragraph 4. There is a reasonably broad range of sources used, mostly relevant and reputable. Quotations are generally used to good effect (I1).

bill is that there will be two people to witness the procedure who are over eighteen and not related, or benefit from the individuals being assisted to die. This aspect of the bill is also proposed in the NSW Bill, which also protects those providing assistance (Gareth Griffith and Leny Roth, 2013). Bob Such said about the *Ending Life with Dignity Bill 2013* he helped propose that "It (the Bill) only allows someone who is in a mental state, who is not suffering from clinical depression, to make a conscious decision that their pain is unbearable and that they want their life to end" (Such, 2013), which is a safe guard to make sure a person making this decision is in the right state of mind. The Tasmania proposal *The Voluntary Assisted Dying Bill 2013* had a strict procedure which included a ten-day process where two medical practitioners assessed the patient, a requirement of two oral requests by the patient were needed as well as one written request and another referral by a different doctor. This was to make the process as safe as possible for all involved by having more regulations. To protect the values of the people involved either the patient or health professional at any time could withdraw from the process and there were also going to be penalties in place for anyone found pressuring patients into requesting the treatment (Lanai Scarr, 2013). All these regulations and processes involved in all three proposals are to ensure the bills reflect societal values and protect human rights, and so the bills succeed in setting acceptable standards of behaviour.

### **Disadvantages**

### **Knowledge and Understanding**

There is awareness of the role of various pressure groups such as 'Doctors opposed to euthanasia' and how such groups impact on the formulation of proposed laws (KU1).

Rachel Sanderson, representing the seat of Adelaide in the South Australian House of Assembly for the Liberal Party, found after extensive research into both arguments for and against euthanasia that the concern for those who are opposed is that there will be no records and statistics in regards to it not being recorded on the death certificate, that cause of death was euthanasia (Sanderson, 2013). This shows that parts of society are not comfortable with the proposal, determining that not everybody considers euthanasia as a societal value. Senior South Australian Neurologist, Dr Timothy Kleinig, The chair of Doctors Opposed to Euthanasia (DOE) also does not agree with the proposed *Ending Life with Dignity Bill 2013*, mostly because there are not enough safeguards in place and there are too many amendments needed for the bill to make sure it will be consistent with social

**Analysis and Evaluation**

The report explores the competing arguments about the introduction of euthanasia laws in SA and makes a thoughtful evaluation of these. The conclusion reached is informed (AE3).

cohesion (Russell, 2013). One of the regulations in Such's Bill is that a doctor can refuse to comply with the euthanasia request by their patient but they must refer them to another doctor who will be willing to do the procedure. DOE says that this still forces doctors who are morally opposed to euthanasia to permit the procedure under pressure (Smith, 2013). Four South Australian MPs; Leesa Vlahos, Dennis Hood, Martin Hamilton-Smith and Tom Kenyon, are firmly opposed to euthanasia and Such's *Ending Life with Dignity Bill 2013* because of many reasons, one being because only one doctor must certify that the patient has a terminal illness. They said the doctor could, and most likely would be, a strong advocate for euthanasia (Russell, 2013). The existence (or lack thereof) of safeguards are something that cause the most controversy when it comes to a euthanasia bill as well as being certain that the bill will protect the undermining human right to life.

**Reform**

**Analysis and Evaluation**

The report explores the competing arguments about the introduction of euthanasia laws in SA and makes a thoughtful evaluation of these. The conclusion reached is informed (AE3).

The Tasmanian *Voluntary Assisted Dying Bill 2013*, was defeated in October by 2 votes, 13 against and 11 in favour, with all Liberal MPs and three Labor members opposing it (Smiley, 2013). Ultimately, out of the three Proposed Bills discussed *The Voluntary Assisted Dying Bill 2013* had the most regulations in the proposal to ensure the most safe and dignified death possible. Greens Leader, Nick McKim said, 'the bill picks out the best elements of other euthanasia legislation around the world'. One of these pieces of euthanasia legislation is Oregon's *Death with Dignity Act 1997*. To improve the SA Bill to ensure it best reflects societal values and is setting an acceptable standard of behaviour, it should make amendments to include components from the Tasmania proposal. The Tasmanian proposal did reflect societal values according to Barbara Harling, a 71-year-old Queenslander suffering from a degenerative motor neurone disease, who says she would move to Tasmania if the bill passes to request to have the procedure (McCutcheon, 2013). She also says that it should be her human right to die, saying "It's all fine for those people who disagree with it, but why should their vote affect what I want to do. I should be able to say the type of death I want." All this being said, if a proposal for euthanasia is to be accepted it must both reflect societal values, human rights and set an acceptable standard of behaviour.

## Inquiry Bibliography

**Communication**  
There is a  
considered and  
critical location of a  
variety of relevant  
sources (C3).

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#### **Additional Comments**

##### **Grade: B-**

This Inquiry Report sits mainly within the B Band. The Report provides evidence of 'detailed knowledge' and 'well-considered understanding' of the relevant influences on the laws relating to euthanasia. The Report demonstrates the same level of knowledge and understanding of how euthanasia law relates to the division of powers under the Constitution and refers appropriately to the fate of the Northern Territory's 1995 legislation (KU 1 and 2).

A broad range of sources is used and most are highly reputable and relevant. Quotations are used to good effect (I1). The critique of legal processes and structures in the evaluation of whether or not the Bill should be passed is however 'competent' rather than 'convincing' which reflects C Band achievement. The recommendation for change is 'considered' (I2).

There is a 'considered' rather than 'well-considered' analysis of the legal principles and processes relating to euthanasia laws and this also reflects C Band achievement (AE2). The Report is effective in considering the competing arguments regarding euthanasia laws and presents a 'thoughtful evaluation' of these culminating in an 'informed conclusion' (AE 3).

The written expression throughout is 'mostly accurate and coherent' and there are some 'well-informed observations and opinions' (C1). Legal terminology is appropriately used and shows some depth of understanding. The referencing is 'mostly consistent' - there are some references missing from the reference list but acknowledged in the text. There is some inconsistency in the in-text referencing (C 2 and 3).



## Performance Standards for Stage 2 Legal Studies

	Knowledge and Understanding	Inquiry	Analysis and Evaluation	Communication
<b>A</b>	<p>Comprehensive knowledge and perceptive understanding of relevant influences on the Australian legal system.</p> <p>Comprehensive knowledge and astute understanding of legal principles, processes, and structures.</p> <p>Perceptive recognition and understanding of ways in which the Australian legal system responds to diverse groups in the community.</p>	<p>Astute and critical location, selection, documentation, and application of relevant sources.</p> <p>Incisive critique of legal processes and structures, with well-informed and well-considered recommendations for change.</p>	<p>Comprehensive analysis of the Australian legal, constitutional, and justice systems.</p> <p>Perceptive analysis of principles, processes, and structures in legal systems.</p> <p>Perceptive evaluation of legal issues or concepts through discussion and illustration of opposing arguments to reach an informed conclusion.</p>	<p>Consistently accurate and coherent communication of highly informed observations and opinions on contemporary legal issues and debates, using different forms.</p> <p>Appropriate and astute use of legal terminology, indicating in-depth understanding.</p> <p>Consistent and appropriate acknowledgment of a diverse range of sources.</p>
<b>B</b>	<p>Detailed knowledge and well-considered understanding of relevant influences on the Australian legal system.</p> <p>Detailed knowledge and well-considered understanding of legal principles, processes, and structures.</p> <p>Thoughtful recognition and understanding of ways in which the Australian legal system responds to diverse groups in the community.</p>	<p>Considered and critical location, selection, documentation, and application of relevant sources.</p> <p>Convincing critique of legal processes and structures, with informed and considered recommendations for change.</p>	<p>Detailed analysis of the Australian legal, constitutional, and justice systems.</p> <p>Well-considered analysis of principles, processes, and structures in legal systems.</p> <p>Thoughtful evaluation of legal issues or concepts through discussion and illustration of opposing arguments to reach an informed conclusion.</p>	<p>Mostly accurate and coherent communication of well-informed observations and opinions on contemporary legal issues and debates, using different forms.</p> <p>Appropriate and well-considered use of legal terminology, indicating some depth in understanding.</p> <p>Mostly consistent and appropriate acknowledgment of a range of sources.</p>
<b>C</b>	<p>Appropriate knowledge and considered understanding of relevant influences on the Australian legal system.</p> <p>Appropriate knowledge and considered understanding of legal principles, processes, and structures.</p> <p>Considered recognition and understanding of ways in which the Australian legal system responds to diverse groups in the community.</p>	<p>Considered location, selection, documentation, and application of relevant sources.</p> <p>Competent critique of legal processes and structures, with some informed and considered recommendations for change.</p>	<p>Informed analysis of the Australian legal, constitutional, and justice systems.</p> <p>Considered analysis of principles, processes, and structures in legal systems.</p> <p>Considered evaluation of legal issues or concepts through discussion and illustration of opposing arguments to reach a conclusion.</p>	<p>Generally accurate and coherent communication of informed observations and opinions on contemporary legal issues and debates, using different forms.</p> <p>Appropriate and considered use of legal terminology, indicating competent understanding.</p> <p>Mostly appropriate acknowledgment of sources.</p>
<b>D</b>	<p>Some recognition and awareness of one or more influences on the Australian legal system.</p> <p>Some awareness of legal principles, processes, or structures.</p> <p>Some recognition of ways in which the Australian legal system responds to diverse groups in the community.</p>	<p>Some thought given to the location, selection, documentation, and/or application of sources.</p> <p>Basic consideration of some legal processes and structures, with simple recommendations for change.</p>	<p>Some consideration of analysis of the Australian legal, constitutional, and justice systems.</p> <p>Superficial consideration of principles, processes, and structures in legal systems.</p> <p>Some consideration of legal issues or concepts through discussion and description of some arguments.</p>	<p>Some accuracy in communication of basic observations or opinions on contemporary legal issues or debates, in one or more forms.</p> <p>Some use of legal terminology, indicating awareness of the need for appropriate use.</p> <p>Some inconsistent acknowledgment of sources.</p>
<b>E</b>	<p>Limited awareness of influences on the Australian legal system.</p> <p>Limited awareness of any legal principles, processes, or structures.</p> <p>Emerging awareness of one or more ways in which the Australian legal system responds to diverse groups in the community.</p>	<p>Attempted location, selection, documentation, or application of sources that may be relevant.</p> <p>Limited awareness of legal processes or structures.</p>	<p>Brief description of an aspect of analysis of the Australian legal, constitutional, and justice systems.</p> <p>Brief description of one or more principles, structures, or processes in legal systems.</p> <p>Limited consideration of a legal issue or concept through observation of a discussion.</p>	<p>Limited accuracy in communication through a selected form, with few observations or opinions on contemporary legal issues.</p> <p>Restricted use of legal terminology, indicating limited awareness of the need for appropriate use.</p> <p>Limited acknowledgment of sources.</p>