

Feasibility of organ donation following voluntary assisted dying in Australia: lessons from international practice

IN REPLY: We thank Cavazzoni and colleagues for their contribution on the legal aspects of voluntary assisted dying (VAD) and organ donation after circulatory death (DCD)¹ in response to our article.²

Although it was true traditionally that no property existed in the dead body, the law has evolved, particularly in Australia concerning tissue donation, whereby property rights are now vested in relatives, for example with ownership of sperm from a dead body.³ Thus, contrary to the claim of Cavazzoni and colleagues,¹ Australian law does indeed deal with the subject of ownership of procured tissues, which would extend to organs and would come into effect on the death of the person undergoing autonomous VAD.

To support their argument that property rights over a dead body do not exist, Cavazzoni et al cite generally Quigley,⁴ with no specific detail. However, Quigley concluded that tissue or sperm obtained

from dead bodies belongs to relatives.⁴ Moreover, in an article underpinning her book, Quigley concluded that “Recent legal decisions have seen a move towards the tentative explicit recognition of some property rights to biomaterials vesting in the source of the materials”.⁵ Thus, the traditional doctrine of “no property in the dead body” is outmoded and undergoing change.

We believe it would be imprudent to ignore the rights of relatives from a legal point of view. From an ethical point of view, the rights of relatives — who, after all, have the duty to bury or cremate their loved one — must be considered. The relatives should be involved, as is the practice in the Netherlands with combined VAD and DCD, and in Australia with DCD. The last thing the whole process of organ donation needs is a legal challenge over organ procurement against the wishes of relatives. Difficult as it may be, those formulating guidelines should incorporate the consent of relatives into a guideline for combined VAD and DCD.

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- 2 Bollen J, Hempton C, Bhatia N, Tibballs J. Feasibility of organ donation following voluntary assisted dying in Australia: lessons from international practice. *Med J Aust* 2023; 219: 202-205. <https://www.mja.com.au/journal/2023/219/5/feasibility-organ-donation-following-voluntary-assisted-dying-australia-lessons>
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- 5 Quigley M. Propertisation and commercialisation: on controlling the uses of biomaterials. *Modern Law Rev* 2014; 77: 677-702. ■