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

To the Editor: Australia's voluntary assisted dying (VAD) laws are rapidly coming into effect, and Bollen and colleagues discuss VAD practice, organ and tissue donation, and the law.[1] The authors recommend that national guidelines be developed containing four essential elements, including a requirement for "consent of the closest relative".

We wish to clarify that the individual seeking VAD and then, having made this decision, organ and/or tissue donation, is the person who must provide consent for both procedures. There is no legal or ethical basis for requiring relatives to provide consent for donation in this context.

The authors cite the Organ and Tissue Authority's national guideline for donation after circulatory determination of death, which in fact states that the patient may themselves provide consent for donation in the rare situation that they are conscious and competent during their own end-of-life care.[2] This usually occurs with individuals dependent on mechanical ventilation who choose to forgo this treatment and proceed with end-of-life care. This is analogous to the circumstances of donation following VAD in terms of the competent and conscious person making fully informed choices and respecting their autonomy to do so.

Contrary to the authors' statement that common law property rights over deceased bodies vest in close relatives, the longstanding position throughout the common law world is that there is no property in deceased bodies or body parts.[3] While courts have made some exceptions to this principle in specific contexts, the law in this area is far from settled, with continued debate over how biomaterials become property and who the owner should be.[3,4] Further, state and territory Human Tissue Acts prioritise individual consent, with family consent or lack of objection only required if the individual's decision is unknown.[5] The Acts also prohibit donation where it is known the individual objected, leaving little room for family consent in the VAD context.

While clear policy on VAD and donation would be welcome, a consent requirement for close relatives is legally unnecessary and ethically problematic given the importance of informed and autonomous patient decision making underlying the entire practice of VAD.

Elena Cavazzoni[1]
Maeghan Toews[2]
Helen I Opdam[3,4]

1 Sydney Children's Hospitals Network, Sydney, NSW.
2 Adelaide Law School, University of Adelaide, Adelaide, SA.
3 Austin Health, Melbourne, VIC.
4 Australian Organ and Tissue Authority, Canberra, ACT.

elena.cavazzoni@health.nsw.gov.au

Competing interests: No relevant disclosures. ■

doi: 10.5694/mja2.52207

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1 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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