



# THE GLOBAL FOOD DONATION POLICY ATLAS

## Executive Summary: Australia

***More than enough food is produced to feed every person, yet one-third of all food is wasted. Redirecting safe, surplus food is an effective and compassionate solution, but it can be complicated because food is a heavily regulated product.***

To help address the most pressing and universal legal and policy questions surrounding food recovery and donation, the **Harvard Law School Food Law and Policy Clinic (FLPC)** and **The Global FoodBanking Network (GFN)** have collaborated to create The Global Food Donation Policy Atlas. This innovative partnership maps the laws and policies affecting donations in countries across the globe. The project aims to identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation, and share best practices and recommendations for overcoming these barriers.

### AUSTRALIA FOOD LOSS AND WASTE

Each year, approximately 7.6 million tons of all food in Australia is either lost or wasted along the supply chain, costing an estimated \$36.6 billion in Australian dollars (AUD), or USD\$26.13 billion per year to the economy. At the same time, between 4-13% of the population is moderately to severely food insecure. Further, 652,000 Australians are receiving food assistance each month, and 27% of those recipients are children, while food insecurity among indigenous people range from 22-32%.

The Australian government has prioritized hunger reduction and food security as part of its national policy agenda. In 2017, the National Food Waste Strategy was released by what is now the Department of Agriculture, Water and the Environment (DAWE), which has set a goal to cut Australia’s food waste in half by 2030. Part of this strategy involved the development of Stop Food Waste Australia in 2020, a partnership including representatives of the entire food supply chain and all levels of government that will lead food waste reduction initiatives. The Australian government invested a total of AUD\$4 million over four years to support this work. To provide more granularity on the possibility of achieving the target of the National Food Waste Strategy, the Australian government contracted Food Innovation Australia Limited (FIAL) to conduct a feasibility study. The 2021 study found that the goal of reducing food waste by 50% is in fact possible in 6-7 years if significant but plausible investments are made in innovation, fiscal incentives, strict regulation, voluntary commitment programs, citizen engagement, and industry involvement. In addition to government-led responses to food loss and waste, private sector actors, including food banks such as Foodbank Australia, are actively promoting food rescue and donation of surplus food to mitigate hunger and food insecurity.

#### Australia by the Numbers

- Population: 25,466,000
- GDP: AUD\$1.915 trillion
- Poverty Rate: 12.40%
- Prevalence of Moderate to Severe Food Insecurity: 4 to 13%
- Food Security Index: 81.4
- Food Loss & Waste (FLW) Estimates: 7.6 million tons/year

## AUSTRALIA FOOD DONATION POLICY HIGHLIGHTS

**DATE LABELING:** Australia's date labeling scheme is set out in Section 1.2.5 of the *Australia New Zealand Food Standards Code 2014* (FSC) and is enforced at the state and territory level. Consistent with the 2018 update to the *Codex Alimentarius'* General Standard for the Labelling of Prepackaged Foods, the FSC imposes a dual date labeling scheme on most food items, with the exception of bread. Specifically, the labeling scheme distinguishes between safety-based and quality-based date labels, requiring manufacturers to affix either a safety-based date, expressed as "Use By" only for food that is considered a potential risk to consumers, "because of health or safety reasons," or a "Best Before" date after which food may still be perfectly safe to consume, except for food that is two or more years old or ice cream.

**ACTION OPPORTUNITY:** To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption, sale, or donation, the Australian government should **standardize and clarify date labels**, requiring that manufacturers or retailers who choose to affix date labels on foods use only one of two prescribed labels that are based on whether the product is labeled to indicate a decline in quality versus a safety risk. The Australian government should **amend the date labeling law to expressly permit the sale and/or donation of food past its quality-based date**. Finally, the Australian government should **promote consumer and business education and awareness on the meaning of date labels** once the labels are standardized.

**LIABILITY PROTECTION FOR FOOD DONATIONS:** While liability protection has not been enacted at the federal level, **each state and territory in Australia has enacted laws to provide protection from civil liability to food donors. Food recovery organizations in New South Wales, South Australia, and Tasmania receive express liability protection for food donation**. However, Queensland, Victoria, Western Australia, the Northern Territory, and the Australian Capital Territory expressly exclude organizations that distribute food donated by others from civil liability protection. This means that food recovery organizations would not receive protection in these jurisdiction. Without such protections, food donors and intermediaries may refrain from food donation and recovery, fearing potential liability should a beneficiary claim they were harmed after consuming donated food. Although there have been no lawsuits in Australia related to the consumption of donated food, businesses are reticent to donate food. Global corporations, in particular, are wary of exposing themselves to potential litigation.

**ACTION OPPORTUNITY:** To dispel concerns of food donors and food recovery organizations regarding potential liability for food donations, the Australian government should adopt national legislation that **establishes clear liability protection for food donors and food recovery organizations** when the donated food is in compliance with all applicable laws and regulations. The protection should presume good faith on behalf of the food donor or food recovery organization. In order to balance the interest of donors and food recovery organizations with those of the ultimate recipients, any liability protection should require donated food to meet all relevant food safety laws, and liability protection should not be available if harm is the result of intentional action or the donor or distributor acted with reckless indifference. If a national liability protection scheme is not enacted, states and territories can still improve upon their laws by expanding protection to cover the food recovery organizations in those states where protection only extends to food donors.

## AUSTRALIA FOOD DONATION POLICY OPPORTUNITIES

**FOOD SAFETY FOR DONATIONS:** In Australia, food safety laws are mostly contained within Chapter 3 of the Australia New Zealand Food Standards Code (FSC). While the FSC does not explicitly contain food donation in its scope, existing food safety rules are broad in scope and presumably apply to food donations. However, food donations are not explicitly mentioned in law or guidance at the national or state/territory level.

**ACTION OPPORTUNITY:** To ensure that food is donated safely and does not pose risks to recipients, as well as provide clarity to encourage food donors, the Australian government should **amend the FSC to feature a donation-specific chapter to eliminate the uncertainty around which FSC provisions apply to the safety of donated food**. In addition, or alternatively, the federal government should produce and disseminate clarifying guidance on food safety requirements relevant to donation.

**TAX INCENTIVES AND BARRIERS:** Food donation helps mitigate hunger and stimulate the economy, but can also be expensive, as food donors must allocate time and money to recover, package, store, and transport surplus food that otherwise would be discarded, usually at no or low cost. Taxes can either help offset these expenses and create an incentive to donate, or they can create an additional barrier to donation, one which contributes to greater food loss and waste. Australia's Income Tax Assessment Act 1997 (ITAA 1997) allows donors to claim a deduction for donations to qualifying institutions when (1) the property is donated within 12 months of its purchase and is valued at AUD\$2 or more; (2) the property is valued at AUD\$5,000 or more by the Commissioner of the Australian Tax Office (ATO) where (a) if a donor purchased the property more than 12 months before donating it, the donor can claim a tax deduction for what it was valued by the ATO on the valuation certificate, or (b) if the donor did not purchase the property and donated it at any value, the donor can claim a deduction for the amount the ATO valued the property on the valuation certificate; or (3) if the donor is a business owner and it donates trading stock, subject to the following conditions: (a) the donation must be made outside the ordinary course of business, and (b) the donor has not claimed an income tax deduction for the forced disposal or death of livestock. Also, **there are no specific tax barriers to donation, as most food and drink is “zero rated” for the Goods and Services Tax (GST)** meaning no GST is charged on such foods. For food that is not “zero-rated,”—which includes but is not limited to confectionary goods, savory snacks, ice cream, biscuits, bakery products, alcohol, and many flavored beverages that are less than 90% by volume fruit or vegetable juice—a business can claim an input GST credit for GST paid when acquiring ingredients if the food is donated. This means that taxpayers may offer this food for donation without concern about transferring and reclaiming the GST.

**ACTION OPPORTUNITY:** In order to offset costs businesses may incur when donating food, the Australian government should **amend the ITAA 1997 to cover costs incurred in the transport, storage, and refrigeration of donated food**. Further, the Australian government should **develop a food-donation specific tax deduction that provides a higher valuation for donated food** to encourage businesses to donate rather than discard food.

## AUSTRALIA FOOD DONATION POLICY: HOW DOES IT COMPARE?

Australia’s adoption of the National Food Waste Strategy and the feasibility study conducted on targeted food waste action items demonstrate the attention that the country is placing on the issues surrounding food loss and waste (FLW). While Australia works toward a comprehensive framework for redirecting safe, surplus, or otherwise unmarketable food to those who need it most, policymakers should pursue targeted improvements to existing law and regulations that impact food donation. In particular, such targeted policies should include clarifying food safety rules for food donations, making amendments to the existing date labeling scheme to expand its effectiveness, enacting national liability protections for food donors and food recovery organizations, and creating tax incentives to promote food recovery.

Food Safety for Donations	Date Labeling	Liability Protection for Food Donation	Tax Incentives	Tax Barriers	Donation Requirements or Food Waste Penalties	Government Grants and Incentives	National FLW/ Donation Law or Policy
No	Moderate	Moderate	Moderate	No	No	Limited	Yes

For more detail on how Australia measures up against the other countries evaluated in The Global Food Donation Policy Atlas project, check out [www.atlas.foodbanking.org](http://www.atlas.foodbanking.org). For more information about the food donation legal framework in and policy recommendations for strengthening this framework, check out the food donation law and policy Legal Guide and Policy Recommendations for Australia.



# BACKGROUND INFORMATION: MAJOR LEGAL ISSUES IMPACTING FOOD DONATION

**Food Safety for Donations:** A key barrier to food donation can be the lack of knowledge or readily available guidance regarding safety procedures for donated food. All donated food should be safe for consumption and comply with applicable food safety laws and regulations. Potential donors, however, are often uncertain as to which food safety regulations apply to donated food and the steps necessary to comply.

**Date Labeling:** Date labels affixed to food products are a major driver of food waste and an obstacle to food donation. Most food donors and food recovery organizations are appropriately cautious about donating food that may no longer be safe, but it is not always clear whether the date label accompanied by language such as “sell by,” “expires on,” or “best by” relates to food safety. In fact, date labels are generally intended to reflect freshness or quality rather than safety for the vast majority of foods.

**Liability Protection for Food Donations:** A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. Some countries have adopted liability protections to mitigate this concern. However, many food donors and food recovery organizations are uncertain as to whether there are actions required to maintain the protection and what limits, if any, apply.

**Tax Incentives and Barriers:** Transportation and storage costs are often cited as the main expenses that manufacturers, retailers, and restaurants need to overcome to donate food. Tax incentives, including deductions and credits, can help offset these financial inputs and help make donation a more attractive, affordable option. The application of certain taxes to donated foods, such as the value-added tax (VAT), however, can also create a barrier to donation.

**Donation Requirements or Food Waste Penalties:** Some countries employ food donation requirements or impose monetary penalties for food that is sent to landfills (often known as organic waste bans or waste taxes) in order to influence business behavior and promote more sustainable food systems.

**Government Grants and Incentives:** Grants and incentive programs funded at the national or local levels offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives to be insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts.

**National law or policy on food waste:** Adopting a national food loss and waste or food donation framework can help governments ensure policy coherence and advance food recovery efforts along the supply chain. Offering a unified and comprehensive framework may better enable governments to clarify food safety rules, standardize date labels, define liability protections for food donors and food recovery organizations, and set forth additional tax benefits to which donors may be entitled under relevant law.

## THE GLOBAL FOOD DONATION POLICY ATLAS PROJECT SUPPORT

**Project Partners:** The Global Food Donation Policy Atlas is a joint initiative of the Harvard Law School Food Law and Policy Clinic and The Global FoodBanking Network.



### Support from the Walmart Foundation:



This research was made possible through funding by the Walmart Foundation. The findings, conclusions, and recommendations are those of the Harvard Law School Food Law and Policy Clinic alone, and do not necessarily reflect the opinions of the Walmart Foundation.