



**AUSTRALIA**

AUSTRALIA  
**LEGAL  
GUIDE**

FOOD DONATION  
LAW AND POLICY

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## About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe to help practitioners understand national laws relating to food donation, compare laws across countries and regions, analyze legal questions and barriers to donation, and share best practices and recommendations for overcoming these barriers. The project is a collaboration between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit [atlas.foodbanking.org](https://atlas.foodbanking.org).

## About the Harvard Law School Food Law and Policy Clinic

The Harvard Law School Food Law and Policy Clinic (FLPC) serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods; supporting sustainable food production and food systems; and reducing waste of healthy, wholesome food. For more information, visit [chlpi.org/food-law-and-policy](https://chlpi.org/food-law-and-policy).



## About The Global FoodBanking Network

The Global FoodBanking Network (GFN) supports community-driven solutions to alleviate hunger in more than 40 countries. While millions struggle to access enough safe and nutritious food, nearly a third of all food produced is lost or wasted. GFN is changing that. GFN believes food banks directed by local leaders are key to achieving Zero Hunger and building resilient food systems. For more information, visit [www.foodbanking.org](https://www.foodbanking.org).



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# INTRODUCTION

## Purpose of this guide

Food loss and waste (FLW) is one of the greatest food system challenges that we face today. An estimated one-third of food produced globally is ultimately lost or wasted along the supply chain.<sup>1</sup> This amounts to approximately 1.3 billion tons of food each year that ends up in landfills.<sup>2</sup> At the same time, current data indicate that between 720 and 811 million people were hungry in 2020<sup>3</sup> and that more than 2 billion people were unable to regularly access safe, nutritious food in 2019.<sup>4</sup> Thoughtful public policies can help address these troubling trends and augment food system resilience, aiding in food recovery for social benefit and mitigating the environmental costs of excess production and loss.

FLW occurs at every stage of the supply chain and generates significant social, environmental, and economic costs: food that is ultimately lost or wasted has a huge carbon footprint of 3.3 gigatons,<sup>5</sup> using roughly 28% of agricultural land<sup>6</sup> and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.<sup>7</sup> Collectively, this damage costs approximately \$1.32 trillion in Australian dollars (AUD), or USD\$940 billion, per year.<sup>8</sup> Meanwhile, more than 820 million people are undernourished and one in nine is food insecure.<sup>9</sup> The international community has sought to address this paradox and mobilize the reduction of food waste, especially within the framework of the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.<sup>10</sup>

In many countries, food donation is a popular and logical solution to redirect safe, surplus food destined for landfills into the hands of those who need it most. Most food donations are facilitated through food banks or other charitable, nongovernmental organizations that recover surplus, wholesome food and redirect it to local beneficiary agencies (such as soup kitchens, shelters, and community pantries) to feed low-income, food-insecure persons. As food insecurity and FLW continue to rise, new and innovative models of food recovery have emerged around the world.

However, uncertainty surrounds the laws and regulations most relevant to food donation. To help address the most pressing questions, the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN) have partnered to create The Global Food Donation Policy Atlas.<sup>11</sup> This innovative partnership maps the laws and policies affecting donations in several countries around the world. 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.

This Legal Guide focuses on Australia, where each year roughly 7.6 million tons of food is wasted, costing the economy an estimated AUD\$36.6 billion, AUD\$19.3 billion of which comes from households.<sup>12</sup> FLPC and GFN, in collaboration with partners in Australia,<sup>13</sup> have developed this resource to help food banks, charitable food redistributors, and other intermediaries (hereinafter collectively referred to as “food recovery organizations”) and food donors understand the relevant legal frameworks that impact food waste and donation efforts in Australia. This Legal Guide also serves as a resource for individuals and institutions in other countries that are looking to inform their own food donation laws and policies.

After providing initial commentary on FLW and food recovery in Australia, this Legal Guide provides an overview of the legal frameworks most relevant to food donation at the national and local levels. The subsequent sections look more closely at the laws generally applicable to food donation: food safety laws and regulations, date labeling laws, “Good Samaritan” or liability protection laws, tax incentives for food donation and/or tax policy disincentives, waste diversion laws that penalize food waste or require donation or recovery, national food waste policies or strategies, government grants and incentives for donation, and other miscellaneous laws relevant to food waste mitigation and food donation.

# State of food insecurity, food loss, waste, and recovery in Australia

Policies to prevent FLW and promote food donation are critical for improving social and environmental conditions, especially in countries that otherwise enjoy steady economic growth. This is the case in Australia where, despite being one of the most food-secure nations in the world, food insecurity remains a persistent issue.<sup>14</sup>

Australia has been able to maintain higher rates of food security due to its shock-absorbing strategies during food shortages.<sup>15</sup> Australia produces more food than it consumes annually and thus exports more than 70% of its agricultural production.<sup>16</sup>

Consequently, to address widespread food insecurity, Australia can scale back its exports and divert excess agricultural production into its local food system.<sup>17</sup> Further, the country does not rely on imported food to sustain its food supply.<sup>18</sup> Australia imports only 11% of its food supply, and taste and a market for variety rather than need motivate most of those imports.<sup>19</sup>

Poverty and food insecurity persists even with these effective strategies in place and years of consistent economic growth. A study estimates that between 3.15 and 3.24 million Australians, or between 12.4% and 13.6% of the population, live below the poverty line.<sup>20</sup> Australians face tremendous economic inequality with stark variations between low-, middle-, and high-income households.<sup>21</sup> The average income of the highest 5% income group is nine times the income of the lowest 20% income group.<sup>22</sup> The principal factors contributing to the poverty rate include a slower growth rate of household incomes, rapid increases in housing costs, and the termination of government assistance programs.<sup>23</sup> The proportion of Australians facing poverty is similar to that of Australians facing food insecurity.<sup>24</sup> Between 4% and 13% of Australians can be categorized as severely food insecure.<sup>25</sup> Further, 652,000 Australians receive food assistance each month, 27% of whom are children.<sup>26</sup> The primary causes of food insecurity in Australia are unexpected expenses or “bill shock” (35%) or overall low incomes (30%).<sup>27</sup>

Between 4% and 13% of Australians can be categorized as severely food insecure. Further, 652,000 Australians receive food assistance each month, 27% of whom are children, while estimates of food insecurity among indigenous people range from 22% to 32% depending on location.

Rates of food insecurity in Australia are particularly high for the indigenous population, who account for 3.3% of the total population, or an estimated 881,660 people.<sup>28</sup> Estimates of food insecurity among indigenous people range from 22% to 32% depending on location.<sup>29</sup> Food insecurity is particularly prevalent among remote indigenous communities due to the stark price differences between remote stores and those in regional and urban centers.<sup>30</sup> With fewer large supermarkets in remote areas, these communities depend on smaller shops that stock a limited range of foods.<sup>31</sup>

The Australian government works to mitigate food insecurity and poverty through a welfare program rather than food-specific government assistance. As of March 2020, the primary welfare program, previously referred to as *Newstart Allowance*, is now the *Jobseeker Payment Program*.<sup>32</sup> The program provides financial assistance through biweekly payments<sup>33</sup> to those between the ages of 22 and 66 who are searching for work, individuals with disabilities or parenting responsibilities that prevent them from working, or others who are exempted from the job search requirement.<sup>34</sup> These payments represent 54% of the income for those in the lowest 20% income group.<sup>35</sup>

Currently, Australia wastes 7.6 million tons of food per year.<sup>36</sup> Per capita, Australia wastes more food than any other country—over 350 kilograms annually.<sup>37</sup> However, its goal is to cut this food waste in half by 2030.<sup>38</sup> In

2017 the National Food Waste Strategy was released by what is now the Department of Agriculture, Water and the Environment (DAWE).<sup>39</sup> Part of this strategy involved developing Stop Food Waste Australia, a partnership led by Fight Food Waste Limited. Fight Food Waste Limited is a charitable organization consisting of industry partners, state governments, tertiary institutions, and the Australian government’s Cooperative Research Centre Program, which was established in 2018 and incorporates the Fight Food Waste Cooperative Research Centre (FFW CRC) and Stop Food Waste Australia (SFWA).<sup>40</sup> The partnership also includes representatives from the entire food supply chain (e.g., the Australian Food and Grocery Council, the National Farmers’ Federation, Foodbank Australia, and SecondBite) and all levels of government that will lead food waste reduction initiatives across the food supply chain.<sup>41</sup> The Australian government invested a total of AUD\$4 million to support SFWA.<sup>42</sup> Industries that sign onto the pact agree to optimize the food supply chain to produce more with less—making farming and manufacturing more efficient, finding innovative ways to best use food waste, and working toward making the food supply chain more circular to reduce waste.<sup>43</sup> As one example, FFW CRC aims to turn potato waste into prebiotics given that Australia is the largest producer of potatoes in the Southern Hemisphere.<sup>44</sup>

The private sector is also working to reduce food waste and tackle food insecurity. In 2021 Foodbank Australia, the country’s largest food relief organization, sourced the equivalent of 87.9 million meals for 2,950 charity partners.<sup>45</sup>

OzHarvest, another leading food rescue organization, has provided more than 160 million meals since 2004 through its more than 3,000 food donors, including supermarkets, cafes, delis, hotels, airlines, and restaurants.<sup>46</sup> Meanwhile, SecondBite, through its Community Connect™ model, connects community organizations to local food donors, enabling them to collect food directly. The food recovery organization works with more than 1,400 nonprofits.<sup>47</sup>

As Australia seeks to reduce FLW, mitigate food insecurity, and increase food donation, food donors and food recovery organizations must be able to identify relevant laws and policies and understand the laws that currently apply to food donation. The subsequent section of this Legal Guide summarizes the Australia’s legal framework to help these organizations better understand the country’s food donation laws and policies.

### Australia by the numbers

Population <b>25,466,000</b>	Prevalence of moderate to severe food insecurity <b>4 to 13%</b>	World Bank Classification <b>High income<sup>48</sup></b>
Median Age <b>37.5</b>	Food Security Index <b>81.4</b>	Human Development Index <b>0.938</b>
GDP (US\$) <b>AUD\$1.915 trillion</b> <b>(USD\$1.331 trillion)</b>	GINI Index (Income Inequality) <b>34.4<sup>49</sup></b>	Food Loss and Waste (FLW) Estimates <b>7.6 million tons<sup>50</sup></b>
Poverty Rate <b>12.40%<sup>51</sup></b>	Food Sustainability Index <b>74<sup>52</sup></b>	

# OVERVIEW OF AUSTRALIA'S RELEVANT LEGAL FRAMEWORK

This Legal Guide focuses on the Commonwealth of Australia (hereinafter referred to as Australia or Commonwealth), a country comprising the six states of New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia, and the Northern Territory and the Australian Capital Territory (the latter also administers Jervis Bay Territory) and several external island territories.<sup>53</sup> Familiarity with Australia's legal system may help food donors, food recovery organizations, and stakeholders better understand the legal frameworks most relevant to FLW and food recovery. A former British colony, Australia gained independence in 1901. Its legal system is based on English common law.<sup>54</sup> The Commonwealth of Australia Constitution Act 1900 establishes a federal system of government, under which powers are distributed between the central Commonwealth government and the states and territories of Australia.<sup>55</sup> At the national level, power is allocated across the executive branch, judicial branch, and the legislative branch. The power allocated to the executive branch includes the federal public service, which is accountable to the federal government led by the prime minister and his or her cabinet of ministers as well as ministries outside the cabinet. By convention, the Australian government remains accountable to the Crown (United Kingdom), represented by the governor-general, who must assent for legislation to be passed. The allocation of power through the judicial branch includes the federal court system and the High Court of Australia. The allocated power through the legislative branch includes federal Parliament, comprising the House of Representatives and the Senate, with government being formed by the dominant party or party coalition in the House of Representatives.

The main sources of Australian law are the Commonwealth of Australia Constitution, Commonwealth legislation, decisions of the High Court and Federal Courts of Australia, state constitutions, state legislation, and decisions of state courts.<sup>56</sup> Statutory laws are made by the federal Parliament or parliaments of states or territories.<sup>57</sup>

Section 51 and 52 of the constitution enumerate the powers of the Commonwealth government.<sup>58</sup> This list includes external affairs, interstate and international trade, marriage and divorce, taxation, corporations, immigration, and bankruptcy.<sup>59</sup> The Australian states exercise some of these powers concurrently.<sup>60</sup> They each have their own executive branch (comprising the state public service, which is accountable to a state government led by a state premier and his or her ministers), a state judicial branch, and a legislative branch. The states retain the power to legislate matters not covered in these sections, subject to a few exceptions.

While the jurisdictions between the federal Parliament and state parliaments are distinct, the Commonwealth retains considerable financial and economic powers and responsibilities, controlling the major sources of tax revenue of the country.<sup>61</sup> However, this is subject to a variety of intergovernmental agreements between the Commonwealth government and state governments that formulize revenue sharing and mechanisms for strategic policy coordination and legal framework harmonization across the country.<sup>62</sup> The Australian food regulatory framework provides an illustration of this.

As sections 51 or 52 of the Commonwealth Constitution of Australia do not expressly cover food as a Commonwealth power, the Australian state Food Acts and food industry legislation of the states have historically been the starting point for food law enforcement by state government agencies, with concurrent enforcement by local municipal government councils. However, the Commonwealth, by agreement with the states and territories, enacted federal law governing the national food standards via a federal legislative instrument known as the Australia New Zealand Food Standards Code (FSC).<sup>63</sup> Accordingly, all levels of government in Australia are involved in the food system and aim to protect the health and safety of consumers by reducing risks related to food; enable consumers to make informed choices about food by ensuring they have sufficient information and by preventing them from being misled; support public health objectives by promoting healthy food choices, enhancing the nutritional qualities of food, and responding to specific public health issues; and enable a strong, sustainable food industry to assist in achieving a diverse, affordable food supply for the general economic benefit of Australia.<sup>64</sup>

Australian common law, mirroring the British common law system, is a collection of judge-made legal precedents that define certain important legal concepts.<sup>65</sup> All states and territories in Australia follow a common law legal system.<sup>66</sup> While this Legal Guide generally focuses on federal law, examples of state- or territorial-level laws from New South Wales, Queensland, and the Australian Capital Territory, for example, will be referenced where relevant.

## **Food Standards Australia New Zealand Act 1991**

In 1991, under an intergovernmental agreement between the Australian states and territories and the New Zealand national government, the Australian government established the Food Standards Australia New Zealand Act 1991 (FSANZA).<sup>67</sup> The joint arrangement between the national governments of Australia and New Zealand aims to harmonize food standards between the two countries to reduce compliance costs for industry and remove regulatory trade barriers.<sup>68</sup>

FSANZA seeks to ensure a high standard of public health protection throughout Australia and New Zealand by giving a specialist agency the responsibility to develop food standards and ensure uniformity of implementation across all states and territories.<sup>69</sup> Food Standards Australia New Zealand (FSANZ) is the joint body created and operated by FSANZA for this purpose.<sup>70</sup> In this Legal Guide, FSANZA and FSANZ are discussed solely in their application to Australia, even though FSANZ and the FSC are also part of a binational legislative framework between Australia and New Zealand, subject to some reserved exceptions.

## **Food Standards Australia New Zealand (FSANZ)**

FSANZ, the independent statutory agency established by FSANZA, is part of the Australian government's Department of Health<sup>71</sup> and develops joint food standards for Australia and New Zealand.<sup>72</sup> FSANZ contributes to the cooperative food regulatory system by developing standards, providing evidence-based advice, coordinating regulatory responses, and providing information about food standards.<sup>73</sup> FSANZ develops and amends food safety standards known as the Australia New Zealand Food Standards Code (FSC) to protect public health and maintain a safe food supply.<sup>74</sup> FSANZ does not enforce compliance with the FSC, as this is handled at a regional level by public health departments, food authorities, and environmental agencies throughout the states and territories.<sup>75</sup> For example, the Australian Capital Territory enforces food safety through the Health Protection Service,<sup>76</sup> New South Wales uses the NSW Food Authority,<sup>77</sup> and Queensland employs the local Department of Public Health for food safety concerns.<sup>78</sup> All states and territories also confer concurrent food regulatory enforcement powers upon local municipal government councils.

### **Australia New Zealand Food Standards Code (FSC)**

The FSC regulates food labeling and some types of claims as well as other aspects of food safety, packaging, microbial limits on food, and contaminants and residues.<sup>79</sup> It defines food safety regulation requirements for primary production and processing on food-related premises and for foodservice equipment.<sup>80</sup> The FSC also regulates safety standards and practices for receipt, storage, display, distribution, disposal, and recall of food. It is a federal legislative instrument under the Legislation Act 2003, which provides a framework for the management of Commonwealth legislation.<sup>81</sup> The FSC is binding in all Australian states and territories but is enforced at the state or territory level with separate agreements and understandings (such as the "home jurisdiction rule")<sup>82</sup> that determine the protocols for national enforcement over state borders.<sup>83</sup> Imported foods that are not compliant with the FSC or federal biosecurity laws may also be denied border entry by Commonwealth officers from the Department of Agriculture, Water and the Environment (DAWE).

The FSC can be amended through an application or proposal.<sup>84</sup> FSANZ consults publicly on all applications and proposals to change the FSC and welcomes feedback from the community.<sup>85</sup> Proposals and applications are prepared by FSANZ and are documented in the Food Standards Development Work Plan.<sup>86</sup> To date, no proposals or applications have sought to amend the FSC regarding FLW or food donation.<sup>87</sup>



# National food waste strategy

To address the environmental, economic, and social impacts of food waste in Australia, the Australian Department of Agriculture, Water and Environment (DAWE) (formerly the Department of Environment and Energy) published the National Food Waste Strategy in 2017.<sup>88</sup> This initiative aligns with the *United Nations Transforming Our World: 2030 Agenda for Sustainable Development's* goal of reducing food waste by 50% by 2030.<sup>89</sup> The strategy provides a framework for collective action, identifying four priority areas for improvement: policy support, business improvements, market development, and behavior change.<sup>90</sup> While much work was underway to target food waste prior to 2017 on the national, regional, and local levels, the National Food Waste Strategy leverages these existing efforts and provide recommendations to accelerate progress toward this goal.<sup>91</sup>

To address the environmental, economic, and social impacts of food waste in Australia, the Australian Department of Agriculture, Water and the Environment (DAWE) published the National Food Waste strategy in 2017, which was designed to align with the *United Nations Transforming Our Word: 2030 Agenda for Sustainable Development's* goal of reducing food waste by 50% by 2030.

The National Food Waste Strategy directly references food donation. First, it mentions “food rescue donations” as a preferred priority in the waste hierarchy for waste management practices.<sup>92</sup> Also, it mentions that industry and business provide food waste solutions by partnering with food rescue organizations to donate food that would otherwise be wasted.<sup>93</sup> Further, according to the strategy, the cost of transporting food waste to the buyer or for donation can prohibit its reuse or repurposing by business and food rescue organizations.<sup>94</sup> Thus, it suggests that improving infrastructure and services outside metropolitan areas could help wholesalers and retailers donate edible food.<sup>95</sup>

The strategy also calls for an initial funding commitment of more than AUD\$1.3 million over the course of 24 months. These funds would support the development of an implementation plan, a monitoring and evaluation framework, a voluntary commitment program to engage businesses, and a National Food Waste Baseline,<sup>96</sup> which would monitor progress toward the food reduction goal.<sup>97</sup> Recommending a variety of stakeholder involvement opportunities in detail, the strategy urges collaboration between governments, industry, business, academia, food rescue organizations, and the entire Australian community.<sup>98</sup>

In December 2020 the minister for the environment—who directly oversees DAWE—launched Stop Food Waste Australia to lead food waste reduction efforts across the supply chain.<sup>99</sup> With a AUD\$4 million investment over four years, this initiative brings together organizations all along the food supply chain, including governmental agencies, food and grocery councils, food banks, and farmers' associations.<sup>100</sup> Additionally, Stop Food Waste Australia promotes collaboration throughout the food supply chain by providing an online platform. It is currently developing new sector-specific action plans to reduce food waste.<sup>101</sup>

To further detail the possibility of achieving the National Food Waste Strategy's target, the Australian government contracted Food Innovation Australia Limited (FIAL) to conduct a feasibility study.<sup>102</sup> FIAL is the Food and Agribusiness Growth Centre established by the Australian government to grow the share of Australian food in the global marketplace in collaboration with industry.<sup>103</sup> The study, published in 2021, found that reducing food waste by 50% is in fact possible in six to seven years if significant but plausible investments in innovation, fiscal incentives, strict regulation, participation in voluntary

A feasibility study on Australia's National Food Waste Strategy found that reducing food waste by 50% is in fact possible in six to seven years if significant but plausible investments in innovation, fiscal incentives, strict regulation, participation in voluntary commitment programs, citizen engagement, and industry involvement are made.

commitment programs, citizen engagement, and industry involvement are made.<sup>104</sup> The FIAL report recognizes that budgets and resources to meet this goal may be prohibitive.<sup>105</sup> It presents a comprehensive road map to meeting the National Food Waste Strategy's goal, concluding that Australia can reduce its food waste<sup>106</sup> by 52% by 2030 if it fully implements the recommended scenario with urgency.<sup>107</sup>

## Other relevant federal law

While the Food Standards Australia New Zealand Act (FSANZA) provides the most relevant regulatory standards framework for Australia concerning food, other federal laws in Australia can apply concurrently in relation to food safety, food commerce, and food donation. These laws include the Imported Food Control Act 1992, which sets compliance requirements for imported food to meet national food safety standards,<sup>108</sup> and the Income Tax Assessment Act 1997 (ITAA 1997),<sup>109</sup> which structures income taxes in Australia (including tax deductibility eligibility issues, inventory valuation rules for businesses, tax exemption eligibility criteria, tax incentives and concessions eligibility criteria, among others). As it pertains to food donation, the ITAA 1997 is discussed in detail in the "Tax incentives" section of this Legal Guide.

## Federal government food related agencies

Beyond FSANZ, the agencies most relevant to the issues discussed in this Legal Guide include DAWE, the Department of Health, and the Treasury.<sup>110</sup> DAWE enforces laws related to agriculture exports, imported food safety, and agricultural production.<sup>111</sup> The Department of Health administers portions of the FSC and manages nutrition-related programming.<sup>112</sup> The Treasury manages the ITAA 1997, which contains provisions that in some circumstances could incentivize food donation.

## State and territory law

States and territories in Australia maintain a high degree of autonomy, which is demonstrated by the management of food laws. Each state and territory has its own Food Act, which applies the FSC in the respective region.<sup>113</sup> These acts also ensure food for sale is safe and suitable for human consumption and prevent misleading conduct in relation to the sale of food.<sup>114</sup> This includes setting provisions for monitoring and enforcing food standards, regulating food products, food premises, and food business operators, including registration requirements for food businesses according to separate risk classifications. These state and territory laws as well as federal laws (such as the Australian Consumer Law, administered and enforced by the Australian Competition and Consumer Commission (ACCC)) protect consumers from misleading advertising and food labeling and regulates audits of food businesses.<sup>115</sup>

Some jurisdictions also have specific legislation relating to different industry sectors requiring compliance by food producers, processors, and suppliers. Some states have additional administrative legislation. For example, the Food Production (Safety) Act of 2000 in Queensland provides for additional food safety rules relating to the production of primary produce—meat, eggs, seafood, and horticulture—and establishes the regulatory body Safe Food Production Queensland.<sup>116</sup>

Further, as discussed later in this Legal Guide, each Australian state and territory also has liability protection legislation to protect food donors from civil liability arising from food-related injuries, often known as "Good Samaritan Laws."<sup>117</sup> However, at the time of publication, there is no federal law equivalent to the Good Samaritan laws applicable in individual states and territories.

Scaling up these operations and investing in new and innovative solutions to hunger and food waste requires recognizing and understanding the laws and policies that apply to food donation. It likely also requires strengthening the laws and policies that apply to food donation, an issue that is further explored in this Legal

Guide’s companion document, Policy Recommendations.<sup>118</sup> The remaining sections of this Legal Guide provide an overview of Australia’s food donation legal framework and address the issues most likely to arise for food donors, food recovery organizations, policymakers, and other interested stakeholders.

## State and territory government food-related agencies

Several Australian states and territories have an Environment Protection Authority (EPA) that serve as the primary environmental regulator in each of those jurisdictions. The EPAs partner with business, government, and the community to reduce pollution and waste—including food waste—as well as to protect human health and prevent environmental degradation.<sup>119</sup> For instance, the New South Wales (NSW) EPA established the Love Food Hate Waste program to provide households and businesses with strategies on reducing food waste.<sup>120</sup>

Other state and territory food-related agencies include sustainability, waste management, and resource efficiency-focused agencies. Some of these agencies, such as Sustainability Victoria, offer grants for businesses targeting food waste reduction and generate reports for households and businesses focused on food waste mitigation strategies.<sup>121</sup>

# LEGAL ISSUES RELEVANT TO FOOD DONATION

## Food safety for donations

In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors are often uncertain as to which food safety regulations apply to donated food, as opposed to purchased food, as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could be redirected to populations in need is instead destined for landfills.

Food safety laws in Australia are mostly contained within Chapter 3 of the Australia New Zealand Food Standards Code (FSC).<sup>122</sup> Chapter 3 contains general, widely applicable food safety standards (that are enforced under relevant state and territory laws as mentioned above) aimed at ensuring that only safe and suitable food is sold in Australia.<sup>123</sup> It also specifies process control requirements for food businesses and food handlers for each step of the food handling process.<sup>124</sup> Food businesses are defined *as either* a business, enterprise, or activity that involves handling food intended for sale or the sale of food, “regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature.”<sup>125</sup> While typically not the case, food recovery organization could be considered a food business under the FSC. A key issue to consider is whether the food recovery organization (or an individual donor) is “selling” food or handling food for “sale.”<sup>126</sup> “Sell” has an equivalent legal definition under each state and territory Food Act.<sup>127</sup> It is defined broadly and includes acts that cause food to be sold and that give away food for a marketing benefit.

The FSC does not explicitly reference food safety standards as it pertains to donated food nor do other federal laws in Australia contain regulations or guidance related to food donation safety. Therefore, there is no unanimous regulatory position on whether all donated food must comply with all requirements of the FSC, even if the given requirement does not relate to food safety (for example, a mistake in labeling that is not relevant to safety). As such, without a clear distinction between food safety and non-safety provisions in the FSC, food donors should presume they must comply with all FSC provisions to ensure food safety when donating food.

Although the FSC does not specifically refer to food donation, Standard 1.2.1 permits food to be relabeled to correct any mislabeling.<sup>128</sup> This allows food that might otherwise be determined unfit for sale to be donated and

re-labeled instead (for example, if an allergen is not originally identified on the label, the recipient of donated food can ensure that the food is made safe by relabeling it with the correct allergen information).

Notably, Victoria is the only Australian state or territory to explicitly reference donated food in its food safety laws. It adopted the provisions of the FSC through the Food Act 1984 (Victoria) and added a provision that explicitly states that food may be donated to charities or emergency service organizations.<sup>129</sup> However, such a provision does not have significant bearing on the food safety or other aspects of donation.

## Date labeling

Date labels affixed to food products are a major driver of food waste but also can be an obstacle to food donation. As explained in the previous section, most food donors and food recovery organizations are appropriately cautious about donating food that meets safety standards, even though some food standards may not be directly relevant to food safety. And while fresh products like fruits and vegetables will appear visibly spoiled when they are no longer safe to consume, it can be more difficult to gauge when this occurs in packaged foods. Many donors interpret date labels affixed to such food products as indicators of safety and will therefore throw away food once the “expiration date” passes. Intermediaries may refuse to accept donated food after this date, deeming it unfit for human consumption.

Despite this interpretation, date labels such as those expressed as “best before” may indicate freshness, taste, or quality rather than food becoming unsafe after the specified date passes. Manufacturers use a variety of quality-based methods to determine the time frame for date labels, all of which reflect when the food will be at its “peak quality.”<sup>130</sup> Nevertheless, global trends indicate that consumers generally confuse date labels as indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discarded about 22% of food that they could have eaten due to confusion over date labeling.<sup>131</sup> Similarly, 84% of Americans report that they throw away food after the “expiration date” passes due to safety concerns, even if there is a minimal risk of foodborne illness at that time.<sup>132</sup>

Date labels in Australia are federally standardized under the FSC section 1.2.5 and are enforced at the state and territory level. Enforcement is often delegated to local municipal government council environmental health officers.<sup>133</sup> Consistent with the 2018 update to the *Codex Alimentarius*’ General Standard for the Labelling of Prepackaged Foods,<sup>134</sup> the FSC imposes a dual date labeling scheme on most food items, with the exception of bread.<sup>135</sup> Specifically, the labeling scheme distinguishes between safety-based and quality-based date labels, requiring manufacturers to affix 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.”<sup>136</sup> A “Use By” date label is also the “only date-marking information required . . . (if any)” if a food is in a “small package,” which is defined as a package with a total surface area of less than 100 cm<sup>2</sup>.<sup>137</sup> For all other foods, manufacturers must affix 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 an “individual portion of ice cream or ice confection . . . except where the food should be consumed before a certain date because of health or safety reasons.”<sup>138</sup> The FSC also expressly restricts the use of any date marking other than those prescribed.<sup>139</sup>

Unlike the *Codex Alimentarius*, the FSC also requires the use of a date label specific to bread. Bread that is sold no later than 12 hours after the time it was baked must be marked with a “Baked For” or “Bkd For” date, while “Baked On” or “Bkd On” dates are used for all other bread labeling.<sup>140</sup> Also, manufacturers are not precluded from including a “Packed On” date or a manufacturer’s or packer’s code in addition to the required date label.<sup>141</sup> These labels are intended to notify retailers for inventory stock control purposes.<sup>142</sup>

Whether donated food has a “Use By” or “Best Before” date is therefore important. Australia prohibits the sale of food past its “Use By” date.<sup>143</sup> Food donors must also consider whether their donation in each instance might meet the legal definition of a “sale.” Food donors and food recovery organizations are entitled to assess whether food past its “Best Before” date is still safe to consume when offered for donation or even sale.<sup>144</sup>

As mentioned above, the FSC contains permission to alter product labels in some circumstances. To amend a label, it is necessary to obtain permission from the relevant authority unless the amendment fixes incorrect information on the label. If further information from the supplier provides information that corrects any misapprehension about the “Use By” or expiry date, this information could be used to correct the label.

Although the government has not launched an educational and awareness campaign on the meaning of date labels and how they apply to food donation, food recovery organizations are aware of the scope for informing food suppliers of a product’s eligibility for donation past its “Best Before” date and are in a position to promote this.

## 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. To address this fear, several countries, as well as provincial or regional governments, have enacted liability protections meant to protect food donors.

This section addresses the scope of liability protection for donors and food recovery organizations in Australia. Food-related criminal offences in Australia are prosecuted at the state and territory level. Moreover, civil wrongs, such as claims of negligence, are usually heard within the state and territory judicial system in accordance with relevant liability legislation in each state and territory.<sup>145</sup> While liability protection is not enacted at the federal level, each state and territory has passed laws to provide protection from civil liability for food donors, including both companies and individuals. Liability protection is not absolute. In most states, acting with reckless disregard or an intent to injure can still result in liability.

### Civil liability protection

Each Australian state and territory has laws to protect individual donors and businesses from civil liability that may arise from potential harm associated with donated food. While these state laws are not identical, they share many common elements. Drawing on those common elements, this section discusses what types of food donors and food recovery organizations generally are protected under these laws, what the general requirements are under these laws, and the scope of protection afforded to food donors and food recovery organizations under these laws.

It is important to note that most Australian state and territory liability protection laws do not protect food recovery organizations that deal with the donated food.<sup>146</sup> Specifically, Queensland, Victoria, Western Australia, the Northern Territory, and Australian Capital Territory each exclude organizations that distribute food donated by others from civil liability protections.<sup>147</sup> This means that food recovery organizations would not receive protection in these jurisdictions. However, food recovery organizations receive express liability protection in New South Wales, South Australia, and Tasmania, as these states protect not only the food donor but also the entity that distributes donated food.<sup>148</sup>

The legal landscape for food donation liability protection across states and territories is detailed in the Appendix to this Legal Guide. The basis for liability is typically tort law, the legal system that involves civil litigation between private parties about wrongful acts. Tort law can be distinguished from criminal law, in which the government files a case against a defendant who allegedly committed a crime. An alternative basis of liability for food products is contract law, where someone becomes sick after eating purchased food and sues alleging that the contract was breached due to the sale of unsafe food. While not specifically stated in all of the state and territory laws, it is understood that most Australian state and territory liability protection applies to protect against basic negligence of the donor. This means that a donor would be protected if they failed to act in a manner that most people would have acted in the same circumstance, so long as the donated food meets all food safety requirements and other qualifications outlined below.<sup>149</sup> South Australia is the only jurisdiction to *expressly* state that if a donor is recklessly indifferent as to the fact the food is unsafe, the donor

will not receive protection from liability.<sup>150</sup> Recklessly indifferent means that a court would have to conclude not only that the donated food was unfit for consumption but also that the donor acted with an extremely high degree of carelessness or actual intent to harm the end recipient before it could determine that a donor would be held liable.<sup>151</sup>

For a donor to receive protection from liability, a donation must be made in good faith (i.e., without intent to harm the recipient) and for a charitable or benevolent purpose.<sup>152</sup> Further, the state and territorial laws generally state that an individual or business must donate with the intent that the end recipient receives the food free of charge.<sup>153</sup> The food also must be safe to eat when it is donated, according to food safety standards of each respective state or territory, and where the food requires a particular handling method to ensure it remains safe for the end consumer, the donor must provide instruction to the charity on how to properly handle the food.<sup>154</sup>

## Criminal Liability Protection

Australian states and territories provide protection from only civil, not criminal, liability. All food offenses in Australia are prosecuted at the state or territory level under their respective Food Acts.<sup>155</sup> However, in the absence of any safety risks, state and territory food regulators will usually take a more educative/collaborative approach.<sup>156</sup> It is unlikely that a food regulator would criminally prosecute a food donor unless it is clear that a donor donated food it *knew* to be unsafe. As such, food donors and food recovery organizations that exercise ordinary care would likely not be subject to criminal liability.

## Taxes

Reducing FLW results in sizable economic benefits to society, as it minimizes the costs associated with producing and discarding food that is never consumed. Food donation also helps mitigate the costs of hunger and stimulates the economy: food recovery organizations provide jobs or sponsor community development, and recipients of donated food can spend limited financial resources on other basic goods and services.

Yet food donation can be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded at no cost. As a result, it is often easier and less expensive for farmers, businesses, and private individuals to throw away food instead of donating it. Some countries have sought to address this issue by offering tax incentives and removing financial barriers to food donation.

## Incentives

Tax incentives can provide significant support for food donation efforts and for the reduction of FLW. For example, corporate donors generally are more likely to donate surplus food to food recovery organizations if they receive a charitable deduction to offset the cost of transportation and logistics. These tax incentives could help reduce the burden of the national income tax or other taxes levied on businesses.<sup>157</sup>

Income and gains generated by most corporate taxpayers in Australia are taxed at a rate of 30%, except for companies deemed to be “small or medium businesses,”<sup>158</sup> which are subject to a reduced tax rate of 25% as of the 2021/2022 fiscal year.<sup>159</sup>

Australia offers tax deductions for both monetary and in-kind donations. Food donations, like other in-kind donations are able to claim this tax deduction. These deductions are defined under Australia’s Income Tax Assessment Act 1997 (ITAA 1997).<sup>160</sup> Section 8.1 of ITAA 1997 provides general rules for tax deductions, and section 30.15, offers specific rules regarding organizations that qualify as Public Benevolent Institutions (PBI) with Deductible Gift Recipient (DGR) status.<sup>161</sup> For an organization to receive DGR status as a PBI, it must meet specified requirements for both designations.<sup>162</sup>

Section 30.15 of ITAA 1997 allows for a specific type of deduction with regard to gifts made to DGRs.<sup>163</sup> A “gift” must be a voluntary transfer of money or property where the donor does not expect anything in return for the gift and does not materially benefit from the gift.<sup>164</sup> Gifts of money, property, and trading stock (i.e., food donations) from a taxpayer to a food recovery organization, such as a DGR, may be deductible under this section.<sup>165</sup> A gift of property valued at more than AUD\$5,000 (including trading stock, which generally means anything that a business produces, manufactures, or acquires to manufacture, sell, or exchange<sup>166</sup>) is deductible up to the lesser of either the market value of the property on the day the donation was made or the amount paid for the property.<sup>167</sup>

Therefore, donors may be able to claim deductions for donations to qualifying institutions that have DGR status, as follows:

- If property is donated within 12 months of its purchase and is valued at AUD\$2 or more;
- If property is valued at AUD\$5,000 or more by the Commissioner of the Australian Tax Office (ATO), subject to the following conditions:
  - » 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
  - » If a donor did not purchase the property (i.e., won or inherited it), and donated it at any value, the donor can claim a deduction for the amount the ATO valued the property on the valuation certificate.
- If the donor is a business owner and it donates trading stock, subject to the following conditions:
  - » The donation of trading stock must be made outside the ordinary course of business; and
  - » The donor has not claimed an income tax deduction for the forced disposal or death of livestock.<sup>168</sup>

## Barriers

While certain tax schemes may encourage food donations, tax policies may also stand as potential deterrents. In many countries, the Value-Added Tax (VAT) or Goods and Services Tax (GST) presents a financial barrier to donating food. VAT is levied on goods at each stage of the supply chain, from production to the point of sale, whenever value is added. This tax is usually levied through a system of debits (an output VAT) and credits (an input VAT). The VAT debit is the amount that a VAT-registered business will charge on its own sale of the good to businesses downstream or the end consumer, whereas a VAT credit is the amount the VAT-registered business paid when it acquired the inputs or ingredients. The VAT-registered business subtracts the input VAT that it paid on products from the output VAT it charged when selling the product and then pays the balance to the government. In Australia, the VAT is known as the goods and services tax (GST).<sup>169</sup>

Many countries adjust tax rates to accomplish policy objectives, for instance, reducing rates on basic essentials such as pharmaceuticals, health care services, food, and education.<sup>170</sup> The Australian government has taken one such measure to reduce the likelihood that the GST will deter food donation. While Australia applies a standard GST rate of 10% to the sale of most goods, many foods and drinks—those that qualify as staples and basic foods intended for human consumption—are “GST-free.”<sup>171</sup> This means a vendor does not charge an output GST on the sale of the good. As there is no GST attached to these basic food items, businesses may offer this food for donation without needed to pay GST on these products.<sup>172</sup>

The list of food items that qualify as “GST-free” is quite expansive but not absolute.<sup>173</sup> Foods that do not qualify as “GST-free” are subject to the standard GST tax rate of 10%.<sup>174</sup> Foods are subject to the GST either because of its type or where and how it is sold.<sup>175</sup> Certain food products are taxable, regardless of where they are sold, including, but not limited to, confectionery goods, savory snacks (including chips, crackers, and nuts that have been processed or treated with flavoring), ice cream, biscuits, bakery products (other than plain bread and plain rolls),<sup>176</sup> alcohol, and many flavored beverages (unless they are at least 90% by volume fruit or vegetable juice).<sup>177</sup> Other foods are taxable because of where they are sold or the manner in which they are sold. For example, all food that is sold for consumption on the premises<sup>178</sup> or sold as take-away or prepared meals are taxable.<sup>179</sup>

Notably, a gift made to a not-for-profit organization is not considered payment for a sale and is not subject to GST.<sup>180</sup> To qualify, a gift must be made voluntarily, and the donor cannot receive a material benefit in return.<sup>181</sup> This means that neither the food business nor the food recovery organization must pay GST for the food at the time of donation.

However, food businesses may face a cost from the “input GST,” or the GST they paid when they acquired the basic ingredients. Generally, an organization can claim GST credits for the “input GST” paid at the time it purchased ingredients or raw materials for its business activities.<sup>182</sup> However, if the organization has claimed a GST credit and does not use that purchase as part of its business activities, it must repay the previously claimed GST credit.<sup>183</sup> The exception to this is if a business donates these ingredients to an endorsed charity or gift deductible entity.<sup>184</sup> Therefore, if a business purchases basic ingredients for food that ultimately is donated to a food recovery organization, it is *not* required to pay back the GST credit on the food that it purchased. Further, under Division 11 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act), since discarding food could be an ordinary part of business, a business would not have to make any adjustment to its credits (i.e., reimburse a credit claimed for “input GST”) for food that is discarded.<sup>185</sup>

While most food recovery organizations offer donated foods free of charge to end recipients, some organizations may offer food for sale at a low cost. Under the GST rules, the sale of donated secondhand goods by an eligible entity is “GST-free,” provided there is no change in the original character of the goods.<sup>186</sup> This means that food that is donated to a food recovery organization and then sold as-is will be “GST-free.” But, if a business donates its prepackaged food items to a food recovery organization and the food recovery organization uses these prepackaged food items in a recipe to create a meal they wish to offer for sale, the sale of this meal will not be “GST-free.”—the food recovery organization owes the GST—as it is no longer the same as the prepackaged good that was originally donated but has been manufactured by the charity into a new product.

## 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).<sup>187</sup> Such requirements or penalties aim to influence business behavior and promote sustainable food systems. At the time of this writing, Australia had no existing or introduced federal, state, or territorial laws that impose food donation requirements, nor are there penalties for households or businesses that contribute to excess food waste. However, government agencies and food waste reduction advocacy groups have proposed voluntary commitment initiatives to discourage food waste and, in some cases, encourage donations.<sup>188</sup>

## Government grants and incentives

Grants and incentive programs funded at the national or local level offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts. For example, government grants can help food donors and food recovery organizations acquire equipment and resources necessary for recovering, storing, processing, and transporting food for donation. Government funding can also support new innovations and emerging technologies that will make food donation more efficient and sustainable. Several time-bound grants and initiatives have existed to promote food donations and reduce food waste directly and indirectly.

While no federal grants are specifically for food donation or recovery efforts, some states have created their own funds to support these initiatives. In 2021, Queensland offered Food Rescue Grants of up to AUD\$200,000 for food recovery organizations to use for infrastructure, equipment, and other costs for storage and transportation purposes that are involved with diverting food from landfills and redistributing it to those in need.<sup>189</sup> Eligible applicants included nonprofit organizations with the primary purpose of providing food relief to Queenslanders with food rescued directly from a source where it otherwise would have gone to a landfill.<sup>190</sup>



New South Wales's Department of Planning, Industry, and Environment offered grants of up to AUD\$100,000 in 2019 to help food relief organizations collect and disseminate more donated food.<sup>191</sup> The grant money was available to nonprofit organizations and local councils to cover costs of enlisting more donors, retrieving surplus food for redistribution, and funding equipment such as freezers and refrigerated vans.<sup>192</sup> The department also awards Food Donation Education grants to support projects that increase the efficiency and capacity of food relief organizations to manage surplus foods.<sup>193</sup>

Further, the New South Wales government awarded AUD\$337 million in funding for the "Waste Less, Recycle More" initiative that provides grants for waste and recycling projects.<sup>194</sup> More than AUD\$35 million was allocated to the Organics Infrastructure Fund and Program from 2017 to 2021 as part of this initiative.<sup>195</sup> The fund is managed by the New South Wales EPA<sup>196</sup> and prioritizes increasing the capacity for surplus food donation and distribution, among several other waste and recycling initiatives.<sup>197</sup> It also supports food waste avoidance efforts by "Love Food Hate Waste", a waste reduction education program that is licensed from the United Kingdom's Waste and Resources Action Programme (WRAP).<sup>198</sup>

In February 2020 the state government of Victoria announced Recycling Victoria (RV), a 10-year, more than AUD\$300 million investment and action plan to transform Victoria's waste and recycling system.<sup>199</sup> Through goals set forth in RV, the Circular Economy Business Innovation Centre (CEBIC) was created to support businesses in innovating, adopting, and implementing circular economic opportunities and business models, including strategies to reduce food waste.<sup>200</sup> Another food-waste-focused organization is Sustainability Victoria, which manages an organic waste reduction program as part of its sustainability plan, "The Path to Half."<sup>201</sup> In 2021, Sustainability Victoria awarded AUD\$6.3 million to 23 projects through grants from CEBIC.<sup>202</sup> In line with CEBIC's first annual focus area, 12 of the 23 funded projects are tackling food waste by implementing solutions to recycle or reduce food waste by 50,280 tons each year, contributing 4.2% toward Victoria's target to halve food waste by 2030. They are also identifying, developing, and running trial solutions to reduce an additional 639,000 tons of food waste each year.<sup>203</sup>

Though the Australian government has committed to halving food waste by 2030,<sup>204</sup> there has been minimal federal-level distribution of grant funding specifically for reducing food waste or encouraging safe food donation. To respond to challenges faced by community organizations during the COVID-19 pandemic, the government authorized more than AUD\$200 million in emergency funding for charities across the country.<sup>205</sup> A modest portion of this emergency funding was dedicated directly to food relief providers to increase workforce, food procurement, and transport options.<sup>206</sup>

## Miscellaneous

There are several emerging policies and proposed laws in Australia to advance food donation as a solution to FLW and hunger. For example, as previously mentioned, in partnership with Australia's state-level governments, DAWE established the National Food Waste Strategy with the goal of halving organic waste by 2030.<sup>207</sup> Among other objectives, the strategy aims to enhance the capacity for local councils to collect food and garden organic waste (FOGO) from households and businesses and increase the number of Australians receiving FOGO collection services from the current 28% to 95%.<sup>208</sup> This is projected to create 4,000 new jobs and add AUD\$612 million to the Australian economy every year.<sup>209</sup>

Another action laid out in the National Food Waste Strategy and its Feasibility Study is the creation of a voluntary commitment program.<sup>210</sup> This proposal draws upon the best practices and experiences of 20 countries and includes measurable actions that are proven to meet food waste reduction goals.<sup>211</sup> The design allows signatories to focus on food waste reduction activities that significantly impact food waste within their own organizations and across the food system. While the program is intended to initially engage business and industry sectors in Australia, it may be extended to community groups and households.<sup>212</sup> It is not legally enforceable, but it is anticipated to be impactful as it provides flexibility and the opportunity to support food waste accountability efforts in the private sector.<sup>213</sup>

Around the world, voluntary commitment programs are frequently an alternative to legislation and regulation to work toward a variety of sustainable development objectives.<sup>214</sup> For example, in the first 10 years of the United Kingdom's WRAP Courtauld Commitment, avoidable food waste was reduced by 28%, saving consumers and food businesses a collective GBP\$12 billion (AUD\$21.87 billion), while also reducing greenhouse gas emissions.<sup>215</sup> Continued investment in similar programs such as the Australian Food Pact can bolster efforts toward domestic and global food waste and climate goals.

In addition to the relevant laws addressed in this Legal Guide, there may be other federal, state, territory, or local laws and policies that influence food donation efforts in Australia.

## CONCLUSION

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This Legal Guide identifies Australia's current laws, policies, and programs that relate to FLW and food donation. While the Australian national, state, and territorial governments are primarily responsible for guaranteeing food security and sustainable food systems in the country, food recovery organizations acting in a private capacity can provide an additional social safety net. The Australian government has taken steps to reduce food waste through programs such as Stop Food Waste Australia and the National Food Waste Strategy. These initiatives help reduce waste and redistribute food that would be wasted to hungry Australians.

This Legal Guide provides a starting point from which policymakers, private-sector actors, and civil society may better understand the current laws and policies relevant to food donation. It also offers a foundation for dialogue about FLW prevention and the value of food recovery to Australia's food security, economic stability, and environmental sustainability. To contribute to this discussion, a separate document produced under The Global Food Donation Policy Atlas project sets forth policy recommendations specific to Australia. In the meantime, food donors and food recovery organizations should consider the laws, policies, and legal issues discussed in this Legal Guide when donating food or distributing donated food to those in need. To better understand the regulation of food donation in Australia, donors, intermediaries, and policymakers should investigate the laws identified in this Legal Guide and seek additional legal counsel, if necessary.

# APPENDIX

## State and Territory Liability Protection Laws

State or territory	Law	Protection afforded to food donors	Express protection to food donors	Express protection to food recovery organizations	Exceptions to protection
<b>Australian Capital Territory</b>  (includes Coral Sea Islands, Jervis Bay Territory, and Norfolk Island)	Civil Law (Wrongs) Act 2002 (ACT) CH. 2 Pt. 2.2A s. 11A–B	Civil liability for any personal injury that results from the consumption of donated food	Yes	No	Protection is not available if any of the following apply: <ul style="list-style-type: none"> <li>· When the end consumer pays for the food;</li> <li>· When the donated food is not safe or suitable;</li> <li>· When the donor does not donate food for a charitable or benevolent purpose; or</li> <li>· When the donor does not give the charity information it needs to ensure the ongoing safety of the food with respect to both handling and time limits for safe consumption</li> </ul>

<p><b>New South Wales</b></p>	<p>Civil Liability Act 2002 (NSW) Pt. 8A s. 58A-C</p>	<p>Civil liability in respect of any death or personal injury that results from the consumption of donated food</p>	<p>Yes</p>	<p>Yes</p>	<p>Protection is not available if any of the following apply:</p> <ul style="list-style-type: none"> <li>· When the end consumer pays for the food;</li> <li>· When the donated food is not safe or suitable;</li> <li>· When the donor does not donate food for a charitable or benevolent purpose; or</li> <li>· When the donor does not give the charity information it needs to ensure the ongoing safety of the food with respect to both handling and time limits for safe consumption</li> </ul>
<p><b>Northern Territory</b>  (includes Ashmore and Cartier Islands)</p>	<p>Personal Injuries (Liabilities and Damages) Act 2003 (NT) Pt. 2 Div. 1 s. 7A</p>	<p>Civil liability for any personal injury that results from the consumption of donated food</p>	<p>Yes</p>	<p>No</p>	<p>Protection is not available if any of the following apply:</p> <ul style="list-style-type: none"> <li>· When the end consumer pays for the food;</li> <li>· When the donated food is not safe;</li> <li>· When the donor does not donate food for a charitable or benevolent purpose; or</li> <li>· When the donor does not give the charity information it needs to ensure the ongoing safety of the food with respect to both handling and time limits for safe consumption</li> </ul>

<p><b>Queensland</b></p>	<p>Civil Liability Act 2003 (Qld) Div. 2.2 s. 38A-C</p>	<p>Civil liability in relation to any act or omission done or made by a food donor, giving risk to harm resulting from the consumption of donated food</p>	<p>Yes</p>	<p>No</p>	<p>Protection is not available if any of the following apply:</p> <ul style="list-style-type: none"> <li>· When the end consumer pays for the food;</li> <li>· When the donated food is not safe;</li> <li>· If the donor distributes food directly to the consumer;</li> <li>· When the donor does not donate food for a charitable, benevolent, philanthropic, political, educational, or cultural purpose; or</li> <li>· When the donor does not give the charity information it needs to ensure the ongoing safety of the food with respect to both handling and time limits for safe consumption</li> </ul>
<p><b>South Australia</b></p>	<p>Civil Liability Act 1936 (SA) Pt. 9 Div. 11A s. 74A</p>	<p>Civil liability for loss of life or personal injury arising from the consumption of donated food</p>	<p>Yes</p>	<p>Yes</p>	<p>Protection is not available if any of the following apply:</p> <ul style="list-style-type: none"> <li>· When the end consumer pays for the food;</li> <li>· If the donor knew or was recklessly indifferent as to the fact that the food was unsafe;</li> <li>· If the donor does not donate food for a charitable or benevolent purpose; or</li> <li>· If the donor expects payment or other consideration</li> </ul>

<b>Tasmania</b>	Civil Liability Act 2002 (Tas) Pt. 8B	Civil liability in respect of any death or personal injury that results from the consumption of donated food	Yes	Yes	Protection is not available if any of the following apply: <ul style="list-style-type: none"> <li>· When the end consumer pays for the food;</li> <li>· When the donated food is not safe;</li> <li>· When the donor does not donate food for a charitable or benevolent purpose;</li> <li>· If the donor acted with intent to cause injury or death; or</li> <li>· When the donor does not give the charity information it needs to ensure the ongoing safety of the food with respect to both handling and time limits for safe consumption</li> </ul>
<b>Victoria</b>	Wrongs Act 1958 (Vic) PT. VIB s. 31E-H	Any civil proceeding for any death or injury that results from the consumption of donated food	Yes	No	Protection is not available if any of the following apply: <ul style="list-style-type: none"> <li>· When the end consumer pays for the food;</li> <li>· When the donated food is not safe;</li> <li>· When the donor does not donate food for a charitable or benevolent purpose; or</li> <li>· When the donor does not give the charity information it needs to ensure the ongoing safety of the food with respect to both handling and time limits for safe consumption</li> </ul>

<p><b>Western Australia</b></p> <p>(includes the Indian Ocean Territories (IOT) including Christmas Island and Cocos (Keeling) Islands)</p>	<p>Volunteers and Food and Other Donors (Protection from Liability) 2002 (WA) Pt. 3 s. 8A</p>	<p>Civil liability for any personal injury that results from the consumption of donated food</p>	<p>Yes</p>	<p>No</p>	<p>Protection is not available if any of the following apply:</p> <ul style="list-style-type: none"> <li>· When the end consumer pays for the food;</li> <li>· When the donated food is not safe;</li> <li>· When the donor does not donate food for a charitable or benevolent purpose;</li> <li>· If the donor distributes food directly to the consumer; or</li> <li>· When the donor does not give the charity information it needs to ensure the ongoing safety of the food with respect to both handling and time limits for safe consumption</li> </ul>
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# ENDNOTES

- 1 FOOD & AGRIC. ORG. OF THE U.N. (FAO), GLOBAL FOOD LOSSES AND FOOD WASTE—EXTENT, CAUSES AND PREVENTION 4 (2011), <http://www.fao.org/3/a-i2697e.pdf> [<https://perma.cc/Q883-4XGG>].
- 2 *Id.*
- 3 FAO ET AL., THE STATE OF FOOD SECURITY & NUTRITION IN THE WORLD: TRANSFORMING FOOD SYSTEMS FOR FOOD SECURITY, IMPROVED NUTRITION AND AFFORDABLE HEALTHY DIETS FOR ALL 10, 125 (2021), <https://www.fao.org/3/cb4474en/cb4474en.pdf> [<https://perma.cc/N7CD-DUN6>].
- 4 Projections indicate that more than 840 million will be hungry by 2030 if current trends continue. *Id.* at 22.
- 5 *Id.*
- 6 *Id.*
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- 147 See *Civil Law (Wrongs) Act 2002* (ACT) Ch. 2 Pt. 2.22A s. 11A(b); *Civil Liability Act 2003* (Qld) Div. 2.2 s. 38A(3); *Volunteers and Food and Other Donors (Protection from Liability) 2002* (WA) Pt. 3 s. 8A(3); *Personal Injuries (Liabilities and Damages) Act 2003* (NT) Pt. 2 Div. 1 s. 7A(4); *Wrongs Act 1958* (Vic) Pt. VIB s. 31F(1). These express exclusion of organizations that distribute food donated by others is generally described as follows: “[P]erson who donates food or a grocery product does not include a person who distributes food or a grocery product donated by another person.” See, e.g., *Personal Injuries (Liabilities and Damages) Act 2003* (NT) Pt. 2 Div. 1 s. 7A(4).
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- 149 *Civil Liability Act 2002* (NSW) Pt. 8A s. 58A; *Civil Liability Act 1936* (SA) Pt. 9 Div. 11A s. 74A(1); *Civil Liability Act 2002* (Tas) Pt. 8B s. 35D. While the language may differ slightly between states, these states generally include the following language to grant distributors liability protection: “[D]onate food includes distribute, without payment or other reward, food donated by others.” See, e.g., *Civil Liability Act 2002* (NSW) Pt. 8A s. 58A.
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