



# AUSTRALIA

## AUSTRALIA **RECOMMENDATIONS** 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

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 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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# ABOUT THESE RECOMMENDATIONS

This document is a product of The Global Food Donation Policy Atlas project, a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN).<sup>1</sup> The Atlas project is an innovative partnership that maps the laws and policies affecting food donation in countries across the globe and provides a comparative legal analysis based on these findings. For each country, The Atlas project produces a Legal Guide to identify the laws relevant to food donation in that country. While the landscape differs across geopolitical borders, the Legal Guides recognize universal issues that affect efforts to reduce food loss and waste (FLW) and increase food recovery. These issues include food safety, date labeling, liability, taxes, donation requirements and food waste penalties, and government grants or funding programs.

In-country interviews with relevant stakeholders, including food banks and other food recovery organizations, food donors, government officials, and legal experts, further informed the content of the Legal Guides and revealed priority actions for law and policy change. Based on these findings, FLPC has developed specific recommendations for each country. These recommendations serve as a companion to the Legal Guides, though both documents may stand alone. The purpose of the recommendations is to highlight select actions for improving laws, policies, and programs relevant to food loss, waste, and donation.

The document sets forth recommendations focused on the Commonwealth of Australia, where around 7.6 million tons of food is wasted, costing \$36.6 billion in Australian dollars (AUD), or USD\$26.13 billion per year.<sup>2</sup> The discussion below provides a brief overview of the legal issues most pertinent to food donation, which the Australia Legal Guide explains in more detail. The recommendations included in this report are not exhaustive but offer select best practices and policy solutions to reduce FLW and combat food insecurity through stronger food donation laws and policies in Australia.





# SUMMARY OF RECOMMENDATIONS

The recommendations contained in this document provide a starting point for stakeholders in Australia to strengthen the legal and policy framework relevant to food donation. Food banks and other organizations whose mission is to reduce food waste and increase food donation (collectively referred to as “food recovery organizations”), donors, and policymakers should consider additional opportunities to advance food donation and reduce food waste. In summary, the recommendations for the Australian government and appropriate agencies are as follows:

**To ensure that food is donated safely and does not pose risks to recipients, as well as provide clarity to encourage food donors:**

- **Food Safety Australia New Zealand (FSANZ) should amend the Food Standards Code (FSC) to explicitly state which food safety provisions apply to food donation.**
- **The Australian government should develop and disseminate clarifying guidance on food safety requirements relevant to donation.**

**To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption:**

- **FSANZ should amend the FSC to eliminate the use of date labels other than “Best Before” and “Use By.”**
- **FSANZ should amend the FSC to expressly permit the donation and sale of food after the quality date.**
- **The Australian government and its relevant departments and agencies should provide consumer and business education and awareness campaigns on the meaning of date labels in partnership with the private sector.**

**To ensure concern for liability arising out of donating food does not deter potential donors, the Australian government, or the state and territory governments where applicable, should:**

- **Enact national legislation that establishes clear and comprehensive liability protection for food donors and food recovery organizations.**
- **Provide liability protection to allow food recovery organizations and other intermediaries to charge a nominal fee for donated food.**
- **Provide liability protection for past-date donation of foods if the label relates to quality rather than safety.**
- **Provide liability protection for donors who directly donate to final recipients.**
- **Expand state and territory liability protection laws to include protection for food recovery organizations and other intermediaries.**

**To ensure that food donors and food recovery organizations are sufficiently incentivized to donate food, the Australian government and appropriate agencies should:**

- **Amend Australia’s Income Tax Assessment Act 1997 (ITAA 1997) to cover costs incurred in the transport, storage, and refrigeration of donated food.**
- **Develop a food-donation specific tax deduction that provides a higher valuation for donated food.**

# INTRODUCTION

Food loss and waste (FLW) represents a major environmental, economic, and social challenge in Australia. Despite being one of the most food-secure nations in the world,<sup>3</sup> food insecurity in Australia remains a persistent issue and food waste amounts to an estimated economic cost of AUD\$36.6 billion.<sup>4</sup> Thus, it is critical to recover food waste and facilitate food donation. While the Australian government and private sector have taken action to encourage food donation and reduce food waste, many initiatives and policy changes can help promote food recovery.

Australia maintains higher rates of food security due to its shock-absorbing strategies during food shortages.<sup>5</sup> Australia produces more food than it consumes annually and thus exports more than 70% of its agricultural production.<sup>6</sup> Consequently, to address widespread food insecurity, Australia can scale back its exports and divert excess agricultural production into its local food system.<sup>7</sup> Further, the country does not rely on imported food to sustain its food supply.<sup>8</sup> Australia imports only 11% of its food supply, and most of those imports are motivated by taste and a market for variety rather than need.<sup>9</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 12.4% and 13.6% of the population, live below the poverty line.<sup>10</sup> Further, 652,000 Australians receive food assistance each month, 27% of whom are children.<sup>11</sup> 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>12</sup> Estimates of food insecurity among indigenous people range from 22% to 32% depending on location.<sup>13</sup>

Such reports of food insecurity are especially problematic given the amount of food that is reportedly wasted in Australia. A total of 7.6 million tons of food is lost or wasted every year.<sup>14</sup> Per capita, Australia wastes more food than any other country—over 350 kilograms annually.<sup>15</sup> Households make up the largest proportion of Australia's total food waste, amounting to 3.1 million tons of edible food each year, which costs each household an estimated AUD\$2,200 to AUD\$3,800 annually.<sup>16</sup> Primary production amounts to 2.27 million tons of FLW each year, and manufacturing and retail amounts to roughly 1.9 million tons.<sup>17</sup>

Despite the prevalence of food waste, Australia has set a goal to cut its food waste in half by 2030.<sup>18</sup> In 2017, the National Food Waste Strategy was released by what is now the Department of Agriculture, Water and the Environment (DAWE).<sup>19</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>20</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>21</sup> The Australian government invested AUD\$4 million to support SFWA.<sup>22</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>23</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>24</sup>

The private sector in Australia is also working to reduce food waste and tackle food insecurity. Foodbank Australia, Australia's largest food relief organization, sourced the equivalent of 87.9 million meals for 2,950 charity partners.<sup>25</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>26</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>27</sup>

While these steps by the Australian government, nonprofits, and the private sector are a good start in efforts to reduce FLW and provide rescued food to Australians, there remains significant room for improvement. At the national level and across the six states and 10 territories,<sup>28</sup> Australia's food donation laws and policies are often ambiguous, unclear, and fail to encourage food donation. As Australia seeks to reduce FLW, mitigate food insecurity, and increase food donation, food donors and food recovery organizations must be able to identify and understand the relevant laws and policies. The following sections briefly summarize some of the most common legal issues relevant to food donation (as identified and described in more detail in the Legal Guide) and offer policy recommendations to address these challenges.

# LEGAL CHALLENGES AND POLICY RECOMMENDATIONS

## Food safety for donations

### Issue overview

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 food offered for sale, 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.<sup>29</sup> While Australia has established national food safety standards,<sup>30</sup> relevant laws and regulations do not directly address food safety within the context of donation.

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>31</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>32</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>33</sup> Food Standards Australia New Zealand (FSANZ) is the joint body created and operated by FSANZA for this purpose.<sup>34</sup> In this Policy Recommendations guide, FSANZA and FSANZ will be discussed solely in its application to Australia.

FSANZ is part of the Australian government's Department of Health<sup>35</sup> and develops joint food standards for Australia and New Zealand.<sup>36</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>37</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>38</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>39</sup> For example, the Australian Capital Territory enforces food safety through the Health Protection Service,<sup>40</sup> New South Wales uses the NSW Food Authority,<sup>41</sup> and Queensland employs the local Department of Public Health for food safety concerns.<sup>42</sup>

Food safety laws in Australia are mostly contained within Chapter 3 of the FSC.<sup>43</sup> Chapter 3 contains general, widely applicable food safety standards aimed at ensuring that only safe and suitable food is sold in Australia.<sup>44</sup> 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>45</sup> The FSC also regulates safety standards and practices for receipt, storage, display, distribution, disposal, and recall of food. The FSC is a federal legislative instrument under the Legislation Act 2003, which provides a framework for the management of

Commonwealth legislation.<sup>46</sup> The FSC is binding in all Australian states and territories but is enforced at the state or territory level with separate agreements and understanding (such as the “home jurisdiction rule”) that determine the protocols for national enforcement over state borders.<sup>47</sup>

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 the food 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. 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>48</sup> This allows food that might otherwise be determined unfit for sale to be donated and relabeled instead.

The FSC can be amended through an application or proposal.<sup>49</sup> FSANZ consults publicly on all applications and proposals to change the FSC and welcomes feedback from the community.<sup>50</sup> Proposals and applications are prepared by FSANZ and are documented in the Food Standards Development Work Plan.<sup>51</sup> To date, no proposals or applications have sought to amend the FSC regarding FLW or food donation.<sup>52</sup>

## Recommended policy actions

### **1.** FOOD SAFETY AUSTRALIA NEW ZEALAND (FSANZ) SHOULD AMEND THE FOOD STANDARDS CODE (FSC) TO EXPLICITLY STATE WHICH FOOD SAFETY PROVISIONS APPLY TO FOOD DONATION.

FSANZ should update the FSC to feature a donation-specific chapter to eliminate the uncertainty regarding which FSC provisions apply to safety of donated food. Under its statutory authority, FSANZ reviews and selects which proposed changes to the FSC it will implement.<sup>53</sup> FSANZ regularly updates the FSC to ensure that the regulations reflect the latest public health findings and legislative changes.<sup>54</sup> Adding a chapter that applies to donated food would significantly ease the burden on food donors and food recovery organizations seeking to comply with relevant food safety provisions and may ultimately lead to greater food donation.

### **2.** THE AUSTRALIAN GOVERNMENT SHOULD DEVELOP AND DISSEMINATE CLARIFYING GUIDANCE ON FOOD SAFETY REQUIREMENTS RELEVANT TO DONATION.

Clear guidance from food safety enforcement agencies on which FSC provisions or other requirements apply to donated food would ease concerns of food donors and food recovery organizations. This would also support increased and safer donation operations. FSANZ could draft such guidance, as it is already empowered to identify and assess risks to human health and establish national policies relating to food safety.

As an example, the United Kingdom has a detailed legal framework relevant to food safety. It derives its framework from UK law, laws from individual countries of the United Kingdom, and retained European Union law—EU laws that were adopted by the United Kingdom and remain part of UK law after its exit from the European Union.<sup>55</sup> These legal frameworks give ample guidance on which food safety rules apply to food donation and recovery. EU law applies to food distribution, including donation. UK law applies to food recovery organizations, and the United Kingdom’s Food Safety Act 1990 applies to food donation of certain food products with damaged packaging and safe handling of food, by food recovery organizations. Further, the UK national government and the governments of the United Kingdom’s countries fund the Waste and Resources Action Programme (WRAP) to directly address and provide guidance for the safe redistribution of surplus food, among other food waste initiatives.



Australian state and territorial governments should work with FSANZ to properly disseminate the clarifying guidance on food safety requirements relevant to donation. If no food safety changes occur at the national level, state and territory governments should issue clarifying guidance surrounding their respective food safety policies within their Food Acts as it pertains to donation.

## Date labeling

### Issue overview

A major driver of food waste and an obstacle to food donation is the general misconception about date labels such as “Sell By,” “Use By,” or “Best By,” affixed to food products. Many donors and consumers interpret these date labels as indicators of food safety. Yet, for the vast majority of foods, date labels indicate freshness or quality rather than food safety, and few foods become more likely to carry foodborne illness-causing bacteria over time. Nevertheless, food donors and food recovery organizations, being cautious about food safety, may discard food once the date has passed even if the food is perfectly safe to donate and consume.

In countries that have measured the impact of date labels, research shows 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>56</sup> Similarly, 84% of Americans report that they throw away food after the expiration date passes due to safety concerns, even if there is minimal risk of a foodborne illness at that time.<sup>57</sup> This confusion occurs in the home but also impacts food businesses’ willingness to donate as well as stigma against past-date food among food donation recipients.

Australia’s date labeling regime is currently standardized at the national level under the FSC section 1.2.5 and enforced at the state and territory level. Enforcement is often delegated to the municipal government.<sup>58</sup> Consistent with the 2018 update to the *Codex Alimentarius*’ General Standard for the Labelling of Prepackaged Foods,<sup>59</sup> the FSC imposes a dual date labeling scheme on most food items, with the exception of bread.<sup>60</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>61</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>62</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>63</sup> The FSC also expressly restricts the use of any date marking other than those prescribed.<sup>64</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>65</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>66</sup> These labels are intended to notify retailers for inventory stock control purposes.<sup>67</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>68</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>69</sup>

The National Food Waste Strategy Feasibility Study--a study conducted to measure the attainability of Australia’s National Food Waste Strategy goal of reducing food waste by half by 2030--suggests that an improved, uniform, and understandable date labeling system could result in a 49,088-ton reduction in food waste.<sup>70</sup> Its recommendation for an improved date labeling scheme suggests a “more uniform/understandable

date labeling system to communicate information to consumers (e.g., removing best before dates from products that do not require one and/or removing sell by/display until dates).<sup>771</sup> Stakeholders express a similar preference for a clearer, more uniform policy that reduces the use of nonessential quality-based dates and prohibits the use of any labels other than “Best Before” and “Use By.”<sup>772</sup>

## Recommended policy actions

### 1. FSANZ SHOULD AMEND THE FSC TO ELIMINATE THE USE OF DATE LABELS OTHER THAN “BEST BEFORE” AND “USE BY.”

FSANZ should amend the FSC to prohibit the use of any date labeling terms other than “Best Before” and “Use By.” This would mean that date labels used for bread and the use of “Packed On” date labels would no longer be permitted. The labeling scheme should be made consistent with the 2018 update to the *Codex Alimentarius’* General Standard for the Labelling of Prepackaged Foods and require that food have only one date label: *either* a quality-based label *or* a safety-based label. Permitting the use of bread-specific and manufacturer “Packed On” date labels is unnecessary and may lead to greater confusion, which may prevent safe food from being donated.<sup>773</sup> For example, individuals may equate the “Packed On” date with a safety-related date, which may create premature food waste.<sup>774</sup> Updating the FSC to prohibit any date labels beyond the dual date labeling scheme is a simple task that should reduce confusion and encourage donation.

The European Union and the United Kingdom provide the best examples of effective dual date labeling systems that Australia should use as models. The EU scheme distinguishes between safety-based and quality-based date labels. It requires manufacturers to affix a safety-based date, expressed as “Use By,” only for foods considered “highly perishable”<sup>775</sup> and no longer safe to consume after the date.<sup>776</sup> For all other foods, manufacturers must affix a quality-based, “Best Before” date, after which food may still be perfectly safe to consume and donate. This scheme was adopted and enforced across the European Union before the United Kingdom’s exit. Per the terms of the exit, all previously passed EU law remains in force in the United Kingdom as retained law.<sup>777</sup>

### 2. FSANZ SHOULD AMEND THE FSC TO EXPRESSLY PERMIT THE DONATION AND SALE OF FOOD AFTER THE QUALITY-BASED DATE.

FSANZ should amend the FSC to expressly permit the donation and sale of foods after the “Best Before,” or quality-based date label. Currently, the FSC is silent on whether any food can be donated after the affixed date. Consistent with the 2018 update to the *Codex Alimentarius’* General Standard for the Labelling of Prepackaged Foods, the FSC prohibits the sale of food after the “Use By” date.<sup>778</sup> However, even though the *Codex Alimentarius* recognizes that food may be “fully marketable after the quality-based date,” the FSC does not state whether food can be donated or sold after the “Best Before” date.<sup>779</sup>

Because foods are still safe past their peak quality date, expressly permitting the donation and sale of wholesome food past this date will reduce waste and set a positive example for consumers regarding the safety of food past this date. Clarifying that donating food past its quality date is permissible could increase the amount of safe food that reaches those in need and reduce the stigma on receipt of such foods.

UK policies on this matter provide a model for Australia to implement the recommended best practices. UK governmental agencies and WRAP have guidance on donation and redistribution, stating that food may not be sold after the “Use By” or safety-based date, but it may still be sold after the “Best Before” or quality-based date.<sup>80</sup> This guidance clearly states that food with a “Best Before” or quality-based date label can legally be sold, donated, redistributed, and consumed past this date.<sup>81</sup> It also states that food cannot be sold, redistributed, or consumed after its “Use By” or safety-based date unless the food is frozen or cooked prior to the date.<sup>82</sup> This clarifies and distinguishes between date labels and helps the public understand these terms, enabling the sale and donation of past-date, safe, and wholesome food.

### 3.

## THE AUSTRALIAN GOVERNMENT AND ITS RELEVANT DEPARTMENTS AND AGENCIES SHOULD PROVIDE CONSUMER AND BUSINESS EDUCATION AND AWARENESS CAMPAIGNS ON THE MEANING OF DATE LABELS IN PARTNERSHIP WITH THE PRIVATE SECTOR.

Given that potential food donors erroneously perceive “Best Before” dates and any other voluntary dates included on food products as indicators of safety, increasing the sale, consumption, or donation of food after this date will require a change in behavior. The Australian government and its relevant departments and agencies should launch a consumer awareness and business education campaign in partnership with the private sector to educate industry and the public on the two standard date label phrases. So far, neither public-sector nor private-sector actors have initiated a large-scale consumer or business education campaign to promote greater industry and consumer awareness of the controlling date labeling scheme in Australia.<sup>83</sup>

National consumer education will be critical to inform donors, food recovery organizations, and consumers that these dates do not convey safety but instead indicate quality. Education and awareness campaigns will also be necessary to clarify the difference between quality and safety labels. Joint public- and private-sector initiatives may help ensure that stakeholders understand that date labels should not stand as a barrier to donation. Any clarification or standardization, such as express permission of past-date sale and donation of food, will also require education campaigns to increase awareness among donors, food recovery organizations, and consumers.

A strategy that may prove effective is the partnership of governments and private food system actors to issue widespread, unified guidance. Several UK-wide consumer awareness campaigns clearly differentiate between the United Kingdom’s quality-based and safety-based date labels, including the Love Food Hate Waste<sup>84</sup> and Look, Smell, Taste, Don’t Waste campaigns.<sup>85</sup> Since implementing guidance and public awareness campaigns, the UK has reduced food waste and increased food donation in recent years.<sup>86</sup> According to WRAP’s latest data, public awareness initiatives from the past three years have seen up to an 11% decrease in household food waste.<sup>87</sup> The data suggest that awareness raising is gaining traction through increased social media connections and viewership, according to a survey reporting that 69% of UK households have seen or heard information about food waste in the preceding year.<sup>88</sup>

## Liability protection for food donations

### Issue overview

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. Other countries, including Argentina and the United States, have comprehensive protections for both food donors and food recovery organizations.<sup>89</sup> These protections limit the likelihood that actors will be held legally or financially responsible for any resulting harm, provided that they act in accordance with relevant laws. 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 the relevant liability legislation in each state and territory.<sup>90</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.

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>91</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>92</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>93</sup>

The legal landscape for food donation liability protection across states and territories is detailed in the Appendix of the accompanying 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>94</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>95</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>96</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>97</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>98</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>99</sup>

Enacting liability protection at a federal level may confer uniform liability protection for food donors and food recovery organizations across the country. However, stakeholders representing foodbanks, governmental agencies, and legal experts have communicated that stronger liability protection at the state and territory level would also be an effective solution.<sup>100</sup>

## Recommended policy actions

1.

THE AUSTRALIAN GOVERNMENT SHOULD ENACT NATIONAL LEGISLATION THAT ESTABLISHES CLEAR AND COMPREHENSIVE LIABILITY PROTECTION FOR FOOD DONOR AND FOOD RECOVERY ORGANIZATIONS.

While the Australian states and territories have laws providing liability protection for food donors, not all states or territories provide liability protection for food recovery organizations, and areas of ambiguity within the laws may cause confusion for donors and distributing organizations. In particular, not having a national standard makes it difficult for businesses to know what general rules apply. To address these issues, the federal government should enact legislation that offers robust liability protection for food donors and food recovery organizations. A strong liability protection law should include a presumption of good faith on the part of the donor. Acting in good faith means “behaving honestly and frankly, without any intent to defraud or to seek an unconscionable advantage.”<sup>101</sup> In the food donation context, a presumption of good faith means a donor or food recovery organization donated or distributed food in honesty without intention to cause harm to a beneficiary.<sup>102</sup> Under these circumstances, courts will presume that donors and food recovery organizations



complied with all provisions of existing law. The burden to prove that a donor or food recovery organization did not act in good faith would fall on the individual who alleges any wrongdoing. A food donor or food recovery organization would only be held liable if the court determines that it did not act in good faith. National liability protection in Australia states and territories must also ensure that food donors are not shielded from protection if they act recklessly indifferent.

In Argentina, for example, comprehensive liability protections apply so long as donations are made in accordance with conditions set forth in the country's Food Donation Law (i.e., donations are made free of charge to a qualified intermediary and benefit populations in need).<sup>103</sup> Argentina affords donors and food recovery organizations a presumption of good faith (*buena fe*) absent any willful misconduct or negligence resulting in harm to a beneficiary.<sup>104</sup>

## **2. PROVIDE LIABILITY PROTECTION TO ALLOW FOOD RECOVERY ORGANIZATIONS AND OTHER INTERMEDIARIES TO CHARGE A NOMINAL FEE FOR DONATED FOOD.**

The Australian states and territories currently do not provide liability protections if a nominal fee is charged for the donated food. Thus, national liability protection for food donations should explicitly allow food donors and food recovery organizations to charge a nominal fee to final recipients. If the national government does not carry this out, the state and territory governments can carry it out.

Allowing the low price sale of food donations would support other offerings by food recovery organizations, such as social supermarkets (nonprofit grocery stores that sell donated food at a low cost and are popular throughout Europe) or other low-cost market-based opportunities to serve those in need. To better support innovative food recovery models, food recovery organizations and other intermediaries should be permitted to charge a reduced or nominal fee for donated food. This scheme would benefit both food insecure populations and the intermediary, which would be able to rely on a more sustainable funding source. Charging a deeply-reduced price for donated food would not compromise the integrity of food donation, but would provide small revenue for food recovery organizations to transform so that they can better meet the needs of the community. Limiting this nominal fee permission to nonprofit food recovery organizations and intermediaries will ensure that any funds generated from the sale of food will be used in furtherance of the organization's charitable purpose to serve more individuals in need, rather than for commercial purposes.

## **3. PROVIDE LIABILITY PROTECTION FOR PAST-DATE DONATION OF FOODS IF THE DATE LABEL RELATES TO QUALITY RATHER THAN SAFETY.**

As previously explained, date labels relate more to quality rather than safety of prepacked food. However, many food donors and food banks interpret the date labels as indicators of safety, and as a result, do not donate or accept donated food once the affixed date has passed. The Australian government should explicitly state that donating food after the affixed quality-based date and accepting donations that are past-date will not disqualify donors and intermediaries from receiving liability protection. This could be carried out either by the Australian government, if it chooses to pass a liability protection law, or by the state and territory governments.

## **4. PROVIDE LIABILITY PROTECTION FOR DONORS WHO DIRECTLY DONATE TO FINAL RECIPIENTS.**

The Australian state and territory liability protections do not extend to food that is donated directly to the ultimate recipient. Extending liability protection to include direct donations that do not involve intermediaries will increase the likelihood that potential donors will donate rather than discard food that is otherwise safe for consumption. This is particularly true in the case of small-scale farmers and producers that may lack the infrastructure to store and transport perishable food items to intermediaries before the food spoils. Such a change could be made either by the Australian government, if it chooses to pass a liability protection law, or by the state and territory governments.

# 5.

## EXPAND STATE AND TERRITORY LIABILITY PROTECTION LAWS TO INCLUDE PROTECTION FOR FOOD RECOVERY ORGANIZATIONS AND OTHER INTERMEDIARIES.

The Australian state and territory liability protection in Queensland, Victoria, Western Australia, the Northern Territory, and the Australian Capital Territory does not extend to food recovery organizations and other intermediaries. To ensure that the fear or potential liability does not deter food donation at the state and territory level, the aforementioned states and territories should amend the existing liability protection laws to include food recovery organizations and other intermediaries, as seen in New South Wales, South Australia, and Tasmania.

## Taxes

### Issue Overview

Food donation helps mitigate the costs of hunger and stimulate the economy, but it 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. Tax laws can either help offset these expenses and incentivize donation, or they can create an additional barrier to donation, contributing to greater FLW. Food businesses may be more likely to donate surplus food to food banks if they receive a charitable deduction or credit to offset the cost of transportation and logistics.

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>105</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>106</sup> For an organization to receive DGR status as a PBI, it must meet specified requirements for both designations.<sup>107</sup>

Section 30.15 of ITAA 1997 allows for a specific type of deduction with regard to gifts made to DGRs.<sup>108</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>109</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>110</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>111</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>112</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>113</sup>

In an effort to address the dearth of tax incentives for food donations in Australia, KPMG developed a *National Food Waste Tax Incentive Model* for "boosting food relief through Australia's tax system."<sup>114</sup> The model aims to

optimize Australia’s food donation incentives by supplementing the current Australian tax framework with additional food donation–specific incentives.<sup>115</sup> The recommended incentives would support firms such as producers, manufacturers, and distributors along the food supply chain that are committed to reducing food waste and food insecurity.<sup>116</sup>

## Recommended policy actions

The below recommendations align with the National Food Waste Tax Incentive Model and have received widespread stakeholder support.<sup>117</sup>

**1.**

### AMEND AUSTRALIA’S INCOME TAX ASSESSMENT ACT 1997 (ITAA 1997) TO COVER COSTS INCURRED IN THE TRANSPORT, STORAGE, AND REFRIGERATION OF DONATED FOOD.

The process of donating food can incur costs to a business related to transportation, storage, logistics, and staff time. Under the ITAA 1997, donations of food and grocery items are considered “gifts” and thus are tax deductible.<sup>118</sup> Yet donations of operations services, such as transportation, pallet hire, storage, and refrigeration, are not tax deductible and remain a barrier to potential donors, as sending their food to the landfill is viewed as the most affordable option.<sup>119</sup> This is more troubling given that much of Australia is rural and remote, thus making the transportation and proper handling of donations to these areas more challenging and expensive.<sup>120</sup>

The Australian government could amend ITAA 1997 to allow tax deductibility for donations of service deemed essential for the fulfillment of the donation, specifically listing transportation, refrigeration, and storage. This list should be non-exhaustive but specific enough to exclude services that are not necessary to provide for donations.<sup>121</sup> The deduction available should be calculated based on the market value of the service on the day the gift was made.

The state of California in the United States serves as a good model for this tax reform. In California, taxpayers engaged in the business of processing, distributing, or selling agricultural products are eligible for a tax credit valued at 50% of transportation costs of donated crops to eligible nonprofits.<sup>122</sup> California offers this incentive on top of a tax credit to qualified taxpayers—farmers and any person responsible for packing or processing a qualified donation item, provided that person is not a retailer—worth 15% of the wholesale market price of donated produce, raw agricultural products, and processed foods to Californian food banks.<sup>123</sup>

**2.**

### DEVELOP A FOOD-DONATION SPECIFIC TAX DEDUCTION THAT PROVIDES A HIGHER VALUATION FOR DONATED FOOD.

In Australia, the costs of immediately disposing food can be far lower than the cost incurred in donating food.<sup>124</sup> Further, the tax deductions allowed for donating food compared to discarding food is frequently the same, thus making it more practical and cost effective for businesses to discard rather than donate.<sup>125</sup> Therefore, the Australian government should develop a food-donation specific tax deduction that provides a higher valuation for donated food.

Many other countries provide tax incentives specifically for food donations to qualifying institutions, including food banks and other food recovery organizations that are generally recognized as “tax-exempt.” For instance, at least seven European Union states allow tax deductions for food donations, allowing donors to deduct at least part of the value from their tax base to reduce their tax liability.<sup>126</sup> In Colombia<sup>127</sup> and the United States,<sup>128</sup> the government offers tax deductions specifically for in-kind food donations made to qualifying institutions.

Australia can look specifically to the United States as a best practice for food-donation tax incentives that provide a higher valuation for donated food. US taxpayers are eligible to claim a general tax deduction of the

basis value of the food for all in-kind charitable contributions (capped at 10% of income for most corporate donors).<sup>129</sup> Because this incentive did not amount to an increase in food donations, the United States created an “enhanced tax deduction” for food donations (capped at 15% of income for most corporate donors).<sup>130</sup> In addition to the higher deduction cap, the “enhanced deduction” also permits a donor to deduct the lesser of (1) twice the basis value of donated food or (2) the basis value of the donated food plus one-half of the food’s expected profit margin (profit margin = fair market value minus basis value).<sup>131</sup> The “enhanced tax deduction” for food can offer deductions that are sometimes twice the value of the general deduction scheme for other in-kind donations, therefore providing an extra incentive to donate. The United States example illustrates how a country can adjust the deduction cap as well as the donated food’s valuation to ensure that the tax benefit effectively incentivizes donation.

As another example, in Portugal, food donations are valued at 140% of the value of the food at the time of donation.<sup>132</sup> If Australia is to follow this model, it would allow a higher valuation of 140% or some other increased value, versus the valuation of 100% for deductions taken on food that is disposed. This valuation increases the likelihood of donation as it can cover extra costs associated with donation and make it a more attractive proposition.

## **CONCLUSION**

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While these Policy Recommendations are intended to help strengthen food donation in Australia, they are not exhaustive. Those committed to reducing FLW and promoting food recovery should seek the advice of legal experts, policymakers, and other stakeholders to identify the most effective and feasible policy interventions.



# ENDNOTES

- 1 The Global Food Donation Policy Atlas was made possible through the funding of the Walmart Foundation. The Walmart Foundation is not responsible for the content of this document or the views contained herein. The findings, conclusions, and recommendations presented in this project and these recommendations are those of the Harvard Law School Food Law and Policy Clinic. The content of this document should not be interpreted as legal advice. Those seeking legal advice should speak to an attorney licensed to practice in the applicable jurisdiction and area of law.
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- 18 *Tackling Australia's food waste*, *supra* note 2.
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- 33 *Id.* Australia's six states of New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia, and the Northern Territory and Australian Capital Territory (the latter also administers Jervis Bay Territory) and several external island territories.
- 34 *Food Standards Australia New Zealand Act 1991* (Cth) (Austl.) [hereinafter FSANZA].
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- 36 *Food Standards Australia New Zealand*, FSANZ, <https://www.foodstandards.gov.au/Pages/default.aspx> [<https://perma.cc/BL8M-YAZ6>].
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- 44 *Id.*
- 45 *Id.*
- 46 *Legislative Instruments Act 2003* (LIA) (Cth) (Austl.); *See Legislation Act 2003*, AUSTRAL. GOV'T ATT'Y-GEN. DEP'T, [https://www.ag.gov.au/legal-system/administrative-law/legislation-act-2003#:~:text=The%20Legislation%20Act%202003%2C%20formerly,repeal\)%20of%20Commonwealth%20delegated%20legislation](https://www.ag.gov.au/legal-system/administrative-law/legislation-act-2003#:~:text=The%20Legislation%20Act%202003%2C%20formerly,repeal)%20of%20Commonwealth%20delegated%20legislation) (last visited Feb. 10, 2022).
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- 53 *Food Standards Code: Changing the Code*, FSANZ (Mar. 2020), <https://www.foodstandards.gov.au/code/changes/Pages/default.aspx> [<https://perma.cc/B6UT-TR6K>].
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- 61 *Id.* at Standard 1.2.5-2.
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- 63 *Id.* at Standard 1.2.5-2, 1.2.5-3(2).
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- 65 *Id.* at Standard 1.2.5-2.
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- 85 *Past May Date? Look, Smell, Taste, Don't Waste: Best Before Labels Are Causing Food Waste*, TOO GOOD TO GO INT'L (2020), <https://toogoodtogo.co.uk/en-gb/campaign/commitment> (last visited Oct. 25, 2021); Rebecca Smithers, *Cut food waste at home by sniffing and tasting, urges new campaign*, GUARDIAN (Jan. 23, 2021), <https://www.theguardian.com/environment/2021/jan/23/cut-food-waste-at-home-by-sniffing-and-tasting-urges-new-campaign> (last visited Oct. 25, 2021).
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- 88 WRAP, COURTAULD COMMITMENT 2025 MILESTONE PROGRESS REPORT 16 (2020), <https://wrap.org.uk/sites/default/files/2020-08/Courtauld-Commitment-2025-Milestone-Progress-Report.pdf> (last visited Oct. 25, 2021).
- 89 See The Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C.A. § 1791(c)(1) [United States]; Law 25989, Dec. 16, 2004 [30564] B.O. 1 [Argentina].
- 90 See, e.g., *Civil Law (Wrongs) Act 2002* (ACT) Ch. 2 Pt. 2.2A s. 11A-B; *Civil Liability Act 2002* (NSW) Pt. 8A s. 58A-C; *Personal Injuries (Liabilities and Damages) Act 2003* (NT) Pt. 2 Div. 1 s. 7A; *Civil Liability Act 2003* (Qld) Div. 2.2 s. 38A-C; *Civil Liability Act 1936* (SA) Pt. 9 Div. 11A s. 74A; *Civil Liability Act 2002* (Tas) Pt. 8B s. 35D-F; *Wrongs Act 1958* (Vic) Pt. VIB s. 31E-H; *Volunteers and Food and Other Donors (Protection from Liability) 2002* (WA) Pt. 3 s. 8A [hereinafter collectively *Australian State Liability Acts*]; See also John Thisgaard & Macy Greene, *What are the laws on repurposing or reclaiming recalled foods?*, FOODLEGAL (Dec. 2020), <https://www.foodlegal.com.au/inhouse/document/2347> [<https://perma.cc/DMB5-JVNR>].



- 91 Stakeholder interviews with in-country legal reviewers who specialize in food laws and policies in Australia (May 2022). Notes on file with authors.
- 92 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).
- 93 Stakeholder interviews with in-country legal reviewers who specialize in food laws and policies in Australia (May 2022). Notes on file with authors.
- 94 *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.
- 95 *Civil Liability Act 1936* (SA) Pt. 9 Div. 11A s. 74A(3); See also Thisgaard & Green, *supra* note 90.
- 96 *Civil Liability Act 1936* (SA) Pt. 9 Div. 11A s. 74A(3); See also Thisgaard & Green, *supra* note 90.
- 97 See, e.g., *Australian State Liability Acts*, *supra* note 90; See Thisgaard & Green, *supra* note 90.
- 98 See, e.g., *Australian State Liability Acts*, *supra* note 90; See Thisgaard & Green, *supra* note 90.
- 99 See, e.g., *Australian State Liability Acts*, *supra* note 90; See Thisgaard & Green, *supra* note 90.
- 100 Video interviews with in-country stakeholders (Oct. 2021-Nov. 2021). Interview notes on file with authors.
- 101 *Acting in Good Faith*, BLACK’S LAW DICTIONARY (11th ed. 2019).
- 102 See ESTHER AKWIE ET AL., FLPC, THE GLOBAL FOOD DONATION POLICY ATLAS ISSUE BRIEF PROMOTING FOOD DONATION: LIABILITY PROTECTION LAW AND POLICY 7 (2021), <https://www.foodbanking.org/wp-content/uploads/2021/12/Liability-Protections.pdf> [<https://perma.cc/9T8W-EKJN>] (detailing the best practices of liability protection for food donation).
- 103 Law 25989, Dec. 16, 2004 [30564] B.O. 1 [Argentina] <http://servicios.infoleg.gob.ar/infolegInternet/anexos/100000-104999/102664/texact.htm> [<https://perma.cc/ED5J-EE4H>] amended via the National Plan for Food Loss and Waste (Law No. 27454).
- 104 *Id.*
- 105 *Income Tax Assessment Act 1997* (Cth) div. 8 s. 1 & div. 30 s. 15 (Austl.); see also KPMG, NATIONAL FOOD WASTE TAX INCENTIVE: BOOSTING FOOD RELIEF THROUGH AUSTRALIA’S TAX SYSTEM 7 (2020), <https://assets.kpmg/content/dam/kpmg/au/pdf/2020/national-food-waste-tax-incentive.pdf> [<https://perma.cc/V84X-5S96>] [hereinafter KPMG FOOD WASTE TAX INCENTIVE REPORT]; see also *A case for tax reform to increase food donation by business*, FIGHT FOOD WASTE COOP. RSCH. CTR., <https://fightfoodwastecrc.com.au/project/tax-reform/> (last visited June 14, 2022).
- 106 *Income Tax Assessment Act 1997* (Cth), div. 8 s. 1 & div. 30 s. 15 (Austl.).
- 107 JUSTICE CONNECT, GUIDE TO DEDUCTIBLE GIFT RECIPIENT STATUS 17 (2021), [https://www.nfplaw.org.au/sites/default/files/media/Guide\\_to\\_Deductible\\_Gift\\_Recipient\\_Status\\_0.pdf](https://www.nfplaw.org.au/sites/default/files/media/Guide_to_Deductible_Gift_Recipient_Status_0.pdf) [<https://perma.cc/N8FZ-2BP8>].
- Id.*; The requirements for an organization to qualify as a PBI include providing benevolent relief to people in need and being registered as a charity with the Australia Charities and Not-for-profits Commission (ACNC)—the regulatory authority for charities and nonprofit organizations within Australia. The requirements for qualification for DGR status include having an Australian Business Number, being in Australia, and being a not-for-profit organization. *Deductible Gift Recipient (DGR)*, AUSTRALIAN CHARITIES & NOT-FOR-PROFITS COMM’N, [https://www.acnc.gov.au/tools/topic-guides/eductible-gift-recipient-dgr#:~:text=Deductible%20Gift%20Recipients%20\(DGRs\)%20are,they%20lodge%20their%20tax%20return](https://www.acnc.gov.au/tools/topic-guides/eductible-gift-recipient-dgr#:~:text=Deductible%20Gift%20Recipients%20(DGRs)%20are,they%20lodge%20their%20tax%20return) (last visited Feb. 11, 2022).
- 108 *Income Tax Assessment Act 1997* (Cth) div. 30 s. 15 (Austl.); *Gift types and conditions*, AUSTRALIAN TAX’N OFF. (July 15, 2017), <https://www.ato.gov.au/non-profit/gifts-and-fundraising/receiving-tax-deductible-gifts/gift-types-and-conditions/> [<https://perma.cc/VCV5-EHWT>]; KPMG FOOD WASTE TAX INCENTIVE REPORT, *supra* note 105 at 7-8.
- 109 *Income Tax Assessment Act 1997* (Cth) div. 30 s. 15 (Austl.); *Gift types and conditions*, *supra* note 108; KPMG FOOD WASTE TAX INCENTIVE REPORT, *supra* note 105 at 7-9.
- 110 *Income Tax Assessment Act 1997* (Cth) div. 30 s. 15 (Austl.); *Gift types and conditions*, *supra* note 108; KPMG FOOD WASTE TAX INCENTIVE REPORT, *supra* note 105 at 7-8.
- 111 *Trading Stock*, AUSTRALIAN TAX’N OFF. (July 25, 2017), <https://www.ato.gov.au/non-profit/gifts-and-fundraising/claiming-tax-deductions/gift-types-requirements-and-valuation-rules/trading-stock/#:~:text=Trading%20stock%20is%20generally%20anything,Livestock%20is%20also%20trading%20stock> [<https://perma.cc/YQH3-PYG5>].
- 112 *Income Tax Assessment Act 1997* (Cth) div. 30 s. 15 (Austl.); *Gift types and conditions*, *supra* note 108; KPMG FOOD WASTE TAX INCENTIVE REPORT, *supra* note 105 at 7-8. A deduction is also allowable for property valued over AUD\$5,000 by the Australian Commissioner of Taxation, and the amount that can be deducted will generally be for the fair market value if the property was not purchased during 12 months before the gift was made. *Id.*
- 113 *Income Tax Assessment Act 1997* (Cth) div. 30 s. 15 (Austl.); *Gift types and conditions*, *supra* note 108; KPMG FOOD WASTE TAX INCENTIVE REPORT, *supra* note 105 at 9.
- 114 KPMG FOOD WASTE TAX INCENTIVE REPORT, *supra* note 105.
- 115 *Id.*
- 116 *Id.*



- 117 Video interviews with in-country stakeholders (Oct. 2021-Nov. 2021). Interview notes on file with authors; KPMG FOOD WASTE TAX INCENTIVE REPORT, *supra* note 105.
- 118 *Income Tax Assessment Act 1997* (Cth) div. 30 s. 15 (Austl.).
- 119 Foodbank Australia, Submission to Australian Government, *Pre-Budget Submission 2018-19: Food Relief Partnerships with Impact* 15 (Feb. 2018); *see also* MACQUARIE U., ENHANCING THE AUSTRALIAN TAX FRAMEWORK TO FACILITATE DONATIONS IN SERVICES 6 (2018). Report on file with authors.
- 120 Foodbank NSW, 'NSW Government funding to help Foodbank regional charities' (Media Release, 18 July 2018), <https://www.foodbanknsw.org.au/nsw-government-funding-help-foodbank-regional-charities/>.
- 121 *See, e.g.*, MACQUARIE U., *supra* note 119 at 16.
- 122 Cal. Rev. & Tax. Code § 17053.12.
- 123 Cal. Rev. & Tax. Code § 17053.88.5.
- 124 KPMG FOOD WASTE TAX INCENTIVE REPORT, *supra* note 105 at 1; *see also* CGT events: Sale or disposal of asset, AUSTRALIAN GOVERNMENT TAX OFF. (Aug. 4, 2021), <https://www.ato.gov.au/Individuals/Capital-gains-tax/CGT-events/?anchor=OtherCGTeventsK#OtherCGTeventsK> [<https://perma.cc/6EWV-EP65>].
- 125 KPMG FOOD WASTE TAX INCENTIVE REPORT, *supra* note 105 at 1; *see also* CGT events: Sale or disposal of asset, *supra* note 124.
- 126 Denmark, Germany, Greece, Hungary, Italy, Poland, Portugal. *See* Deloitte, Comparative Study on EU Member States' Legislation and Practices on Food Donation, 2014, 5, [https://www.eesc.europa.eu/resources/docs/comparative-study-on-eu-member-states-legislation-andpractices-on-food-donation\\_finalreport\\_010714.pdf](https://www.eesc.europa.eu/resources/docs/comparative-study-on-eu-member-states-legislation-andpractices-on-food-donation_finalreport_010714.pdf).
- 127 Estatuto Tributario Nacional (Colom.) art. 240.
- 128 *See* I.R.C. § 170(e)(3)(B)(U.S.); 26 C.F.R. § 1.170A-4A(b)(4) (2017)(U.S.).
- 129 *See* I.R.C. § 170(e)(3)(C)(ii) (U.S.).
- 130 *See* I.R.C. § 170(e)(3)(B)(U.S.); 26 C.F.R. § 1.170A-4A(b)(4) (U.S.).
- 131 OECD, *Taxation and Philanthropy: The Tax Treatment of Giving* (Nov. 26 2020), <https://www.oecd-ilibrary.org/sites/559f2c2c-en/index.html?itemId=/content/component/559f2c2c-en>.
- 132 ARTIGO 62.<sup>o</sup> - Dedução para efeitos da determinação do lucro tributável das empresas.



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