



Senate Standing Committees on Economics
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National Food Relief Sector submission: Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024

Foodbank, OzHarvest and SecondBite, referred to collectively in this submission as the ‘national food relief sector’, welcome the opportunity to respond to the Senate Standing Committee on Economics in relation to the Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024 (the Bill). We commend the introduction of this Bill and strongly support its passage through Parliament.

As noted in the Bill’s Explanatory Memorandum (EM), the national food relief sector has been a close collaborator in the development of a National Food Donation Tax Incentive proposal by KPMG including the preparation of the [following reports](#):

- [A National Food Waste Tax Incentive 2020](#) – providing two proposed tax reform design options that deliver complementary benefits to two nationally significant policy areas of food loss and waste and food relief.
- [Australian National Food Donation Tax Incentive Implementation Analysis 2023](#) – which tested and analysed potential industry acceptance and participation to provide clear implementation recommendations that have largely been adopted and incorporated within this Bill.

The reports find that whilst Australia has an extensive regime for the tax deductibility of charitable donations, the introduction of a food donations tax incentive will enable an estimated \$2 billion per annum social, economic and environmental benefit and positively contribute to Australia’s ambition to halve food waste by 2030.

A [letter of support](#) for the proposal was sent to the Treasurer, The Hon Jim Chalmers MP, in 2023 signed by over 60 food industry organisations and companies.

In addition, the national food relief sector has advocated for the proposal in its Pre-Budget Submissions in [2023](#) and [2024](#) as well as submissions to the House Standing Committee on Agriculture [Inquiry into Food Security in Australia](#) and Senate inquiries into the [Extent and nature of poverty in Australia](#) and the [Cost of Living](#).

A recommendation in the report, [Australian Food Story: Feeding the Nation and Beyond](#), by the House Standing Committee on Agriculture coming from the Inquiry into Food Security

in Australia, is that: “the Australian Government provide an incentive through the tax system for those who donate food or related services, based on the Food Waste Tax Incentive developed by KPMG and the Fight Food Waste Cooperative Research Centre.”

Having reviewed the Bill, we would like to take this opportunity to provide several recommendations which we believe would enhance the operation of the tax offset.

Claimants

Under the Bill, the only type of entity that is eligible to claim the offset is a constitutional corporation. However, many small businesses, including primary producers and others in the agricultural sector, commonly operate their businesses through different structures, notably partnerships and trusts. As currently drafted, these entities will be ineligible to claim the offset which we believe is contrary to the spirit of the Bill.

Therefore, we recommend that the availability of the offset be extended to trusts and partnerships.¹

Donation recipient

The Bill provides that the registered charity must be registered under the [Australian Charities and Not-for-profits Commission Act 2012](#) as the subtype of an entity in column 2 of [item 3](#) of the table in subsection 25-5(5) of that Act. Item 3 is an entity with a purpose to which paragraph (c) of the definition of charitable purpose in subsection 12(1) of the *Charities Act 2013* applies (advancing social or public welfare).

We recommend this is extended to include either entity subtype item 3 (above) or item 14, which is a public benevolent institution (**PBI**). There are many registered charities that play active roles in trying to reduce food waste and food hunger, and not all these charities fall within item 3. We suggest the provision is updated as follows:

“registered food charity means an entity that is:

*(a) a * registered charity; and*

(b) registered under the Australian Charities and Not-for-profits 7 Commission Act 2012 as the subtype of entity mentioned in column 2 of item 3 or item 14 of the table in subsection 25-5(5) of that Act.”

Offset quantum

We note the quantum of the offset is limited by a \$5 million cap, which we support in the current fiscal environment.

¹ Given these entities are ‘flow-through’ entities and generally not tax-paying themselves, for tax purposes the offset would not be claimable at the trust / partnership level, but rather would be passed on to the beneficiaries / partners. This is consistent with the operation of a number of other tax offsets such as franking credit offsets, foreign income tax offsets and the small business income tax offset (noting that the tax offsets that are, broadly, only available to companies include the R&D tax offset and film tax offset).

The offset has a three-tiered structure, providing for a 45 percent offset for a company with an aggregated turnover of less than \$20 million, a 40 percent offset for a company with an aggregated turnover of at least \$20 million and less than \$50 million, and a 30 percent offset for all other companies.

Practically, this means that, for many companies that can only claim the 30 percent offset, there may be minimal incentive to undertake food donations activities. As such, consideration should be given to increasing the \$50 million threshold to allow for all businesses classified as medium sized businesses (defined by the ATO as turnover of between \$10 million and \$250 million²) to be eligible for the 40 percent offset rate.

This is particularly the case having regard to the fact that the test looks at turnover (i.e. revenue) rather than profit. Many businesses across the food waste supply chain operate with high turnover but low profit margins, meaning they may exceed the current \$50 million threshold. However, low profitability can make it difficult for such businesses to bear the additional costs of donating excess food in the absence of an incentive. This way the incentive will target those businesses requiring the most support.

The national food relief sector supports an amended Bill and welcomes the opportunity to discuss any elements of it with the Committee. Should you wish to discuss this submission further, please do not hesitate to contact us.

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² [Latest estimate and trends | Australian Taxation Office \(ato.gov.au\)](#). For 2020-21 the ATO estimated that approximately 80% of medium businesses have a turnover of less than \$50 million.

Appendix A

About Foodbank

Foodbank works with the entire Australian food and grocery sector including farmers, wholesalers, manufacturers and retailers who donate and redirect surplus product to Foodbank warehouses for sorting, sharing and redistribution nationally. Foodbank also works with the transport and logistics sector to maximise efficiency in both sourcing and distributing bulk food relief. In 2023, Foodbank sourced the equivalent to 92 million meals (51 million Kgs) or 252,000 meals a day from hundreds of food donors. It shared the stock within its national network and distributed it to over 2,800 charities and directly through Foodbank hubs, mobile pantries and pop-up markets. For more information, go [here](#).

About OzHarvest

OzHarvest collects quality surplus food from more than 3,000 businesses, including supermarkets, restaurants, cafes, hotels, retailers, and retail food outlets reaching as wide as possible into the food supply chain. Every week over 250 tonnes of food is saved from going to landfill and delivered to 1,900+ charitable agencies. OzHarvest also provides education programs and operates free food supermarkets in Sydney and Adelaide, and a free restaurant in Sydney. Since inception OzHarvest has delivered over 240 million meals and saved over 82,000 tonnes of food from landfill.

In addition to food relief, OzHarvest creates positive change through a national household food waste campaign 'Use It Up' (now in over 100,000 Australian households) and three education programs including:

- FEAST – a curriculum-aligned program for primary (years 5 –6) and high school (years 7-8) students, raising awareness about food waste and healthy eating and inspiring future change-makers.
- NEST - tailored workshops to create community connections and teach people in need nutrition education and how to cook healthy meals on a budget.
- Nourish - a hospitality qualification and life skills training program with pathways to employment for vulnerable youth who face barriers to traditional education.

For more information, go [here](#).

About SecondBite | FareShare

SecondBite collaborates with growers, manufacturers and retailers to rescue quality, surplus food and redirect it to charities and community organisations. SecondBite collects food, aggregates, and sorts it in warehouses across Australia, to help ensure the best possible mix of food for direct delivery to charity partners. In areas which are difficult to get to, SecondBite facilitates a Community Connect model that connects charities to collect donated food from supermarkets. SecondBite has grown to provide the equivalent of 50 million meals annually for those in need across Australia, working with 1,300 charities who run food programs.

FareShare operates Australia's largest non-profit kitchens in Melbourne and Brisbane, where chefs transform rescued and donated food, as well as produce grown on their own farms, into millions of delicious, nutritious meals for people in need. -These meals are given away free to frontline charities, such as soup vans, homeless shelters, women's refuges, First Nations organisations and groups providing dignified food relief and providing the right meals to people most in need. Last financial year, FareShare distributed over 740,000 meals across Victoria, via a network of approximately 150 charity partners. Over the next 12 months, 1.2 million meals are expected to be produced from the newly refurbished Victorian kitchen site in Abbotsford.

In a transformative move, FareShare and SecondBite merged on July 1, 2024. You can read more about the merger [here](#).