

Submission to the Environmental Health Directorate

The Review of the Food Act (2008)

27th April 2022

The Western Australian Council of Social Service Inc. (WACOSS) welcomes the opportunity to make a submission to the Environmental Health Directorate in regards to the **Review of the Food Act (2008)**.

WACOSS is the peak body for the community services sector in Western Australia and works to create an inclusive, just and equitable society. We advocate for social and economic change to improve the wellbeing of Western Australians, and to strengthen the community services sector that supports them. WACOSS is part of a network consisting of National, State and Territory Councils of Social Service, who advance the interests of vulnerable and disadvantaged people. WACOSS is particularly interested in ensuring the operation and effectiveness of the Act in meeting its objectives to ensure food “for sale” is both safe and suitable for human consumption. We believe that the Food Act should be extended to include any business or organisation that produces, processes or distributes food including food donation, food redistribution and food relief organisations and that the definition “for sale” include that which is donated and redistributed to non-profit organisations to those in need. With an increasing amount of food being collected and redistributed via the charitable food sector in Western Australia, it is imperative that charity (free) food be included in the Food Act as food quality has direct impact on the health of vulnerable populations.

Definitions

Consumer: referring to the person who consumes the food, regardless of whether the food is consumed via the commercial or charity food sectors.

Food insecurity: the reduced or unreliable access to nutritionally appropriate or safe foods, or the reduced or unreliable ability to obtain foods in socially conventional ways.

Food rescue: the donation of edible food that would have otherwise gone to waste.

Food relief distributors: are the suppliers, producers and deliverers of food for the charitable food sector. This includes the organisations, who are responsible for the logistical transport and storage of the food, and the wholesalers whose role is to source, bank and/or distribute food to direct services providers.

Food relief provider: deliver food straight to recipients through a variety of different methods

Rough sleeper: a person who is homeless and who sleeps without adequate shelter, typically on the streets of a town or city.

Street present people: A person who may have housing but who spend time in on the streets in rough sleeper networks.

Context/Background

Food insecurity is a growing concern in Western Australia, with more than 270,000 Western Australians living in poverty¹ and an 8 per cent increase in requests to charity food assistance since the onset of COVID-19.² Increased demand for food relief linked to the COVID-19 pandemic in Western Australia can be evidenced by the Emergency Relief and Food Access Service (ERFAS),³ which reports that emergency food relief needs in Western Australia have been steadily increasing over the past 12 months.

In response to this growing need, charity food services' operations are expanding via established food relief distributors and providers such as Foodbank WA and St Vincent de Paul. This requires a growing number of volunteers coordinating donated food for people living with food insecurity. In addition, there are many volunteer groups that spontaneously mobilise around the needs of rough sleepers and street present people.

Current forms of charity food recovery and redistribution involve a variety of stakeholders in a diverse mix of initiatives, such as: food banks, warehousing and logistics, direct service provision via social supermarkets and community shops, street delivery, food pantries and hampers, soup kitchens and community/charitable programs delivered by a range of volunteer and employment models.⁴

The majority of charity food becomes available via surplus in the commercial sector, food distribution organisations collect food and redistribute it to charity food providers or directly to people in need of food relief. Prepared and processed foods are most often collected from the food service industry such as café's, hotels and events. Perishable produce is generally obtained from wholesale and retail sources such as supermarkets and commercial distribution centres. The primary goal of food distribution programs is to collect food donated from commercial sources and redirect it to charitable food services, as described above.

The past several years has seen a burgeoning amount of food collected and redistributed via the charitable food sector. Woolworths donate the equivalent of over 24 million meals per year to food relief via their stores and distribution centres to a range of food rescue partners, including OzHarvest, Foodbank and FareShare.⁵ Coles reports that they have donated the equivalent of 151.1 million meals to people in need through their partnership with SecondBite since 2011.⁶ In 2020, Foodbank obtained a record volume of food and groceries equating to 87.9 million meals, an increase of nearly 15 percent on 2019.⁷

Food relief services typically provide food for vulnerable populations. Communities more likely to experience food insecurity are people who are unemployed or under employed, university students, single-parent families, the elderly, culturally and linguistically diverse (CALD) people, Aboriginal and Torres Strait Islander people, socially isolated people, people living on low incomes and asylum seekers locked out of income and employment support. These communities may be more at risk of

¹ FoodbankWA (2021). *Hunger report 2021*. <https://reports.foodbank.org.au/wp-content/uploads/2021/10/2021-Foodbank-Hunger-Report-PDF.pdf>

² FoodbankWA (2021). *Hunger report 2021*. <https://reports.foodbank.org.au/wp-content/uploads/2021/10/2021-Foodbank-Hunger-Report-PDF.pdf>

³ Financial Counselling Network (2022). [Accessing emergency relief](#)

⁴ WACOSS (2019) *Food relief Framework* <https://wacoss.org.au/wp-content/uploads/2019/10/Food-Relief-Framework-report-sml.pdf>

⁵ Woolworths Group (2021) [Sustainability Report 2021: A better tomorrow](#)

⁶ Coles Group (2021) [Sustainability Report](#)

⁷ Foodbank (2021) [Foodbank sourced record amount of food and grocery relief in 2020](#)

various medical problems, including nutritional deficiencies and other diet-related diseases such as heart disease, stroke and type 2 diabetes.⁸

Food that is directed to vulnerable populations should have the same protective measures as food prepared and served to paying consumers. Food safety is an integral aspect of managing food donations and distributions and it is paramount to minimising the risk of distributing or serving unsafe foods. People who are at the highest risk of long-term complications of foodborne illness such as rough sleepers and people living in overcrowded housing, may be placed at further risk due to the under regulation of the food they receive from food relief services.

Research is restricted to the extent that charitable food assistance practices contribute to food contamination, this is largely due to lack of regulatory framework for reporting by providers and the complication for consumers to attend to the medical process of confirming food borne illness.

Currently, third-party audits are required for higher risk activities such as food service to vulnerable people in hospitals, nursing homes, aged care facilities and child care centres, and for licensed dairy, seafood and meat businesses. Food redistribution and food relief organisations also cater to vulnerable groups, yet are not subject to similar third-party audits or food safety legislation.

Many food providers operate in an environment of service delivery and contract standards that result in food safety protocols being extended to include their charity food operations. These providers are more often complying with the food regulations and have appropriate systems, policies and procedures in place to ensure safe food handling.

However, the sector is made up of a large range of volunteers, for some of these smaller and autonomous providers, the impacts of food regulation will require additional support to understand, implement and comply with food regulations. Overall, the capacity of many community groups to comply with food regulations may be more limited than that of most larger organisations and commercial businesses, depending on the background and experience of their volunteers and organisational structure and leadership.

Given the complexity of the regulatory requirements, clear, practical guidelines that are less complex and more user friendly should be available to help charitable food relief organisations understand their obligations, identify and manage food safety risks, and help reduce the administration imposed by food regulations.

Recommendations:

Expressly specify that legislation applies to any business or organisation that produces, processes or distributes food including food donation, food redistribution and food relief organisations.

Expand Part 2 item 10 of the WA Food Act 2008 definition of 'food business' to include organisations which receive food surplus – be they food redistribution organisations or food relief charity organisations

Include clarified guidelines on food donations informed by food rescue organisations and food donors operating at different scales and contexts as an annexation in the Food Act.

⁸ Hudak KM, Friedman E, Johnson J, Benjamin-Neelon SE. (2020) Food Bank Donations in the United States: A Landscape Review of Federal Policies. *Nutrients*.12(12):3764. <https://doi.org/10.3390/nu12123764>

Examples of existing legislation and guidelines

The EU guidelines on food donation⁹ cover actors involved at each stage of the food supply chain, from food donors to charitable food relief organisations. These guidelines aim to clarify the specific responsibilities and obligations of food business operators in the redistribution of surplus food as laid down in EU food law. The redistribution of surplus food is covered by the EU's General Food Law.¹⁰

In order to protect consumers and ensure food safety, only food which meets requirements laid down in the General Food Law and is fit for human consumption may be "placed on the market", including that which is donated to non-profit organisations for distribution to those in need.

Under the General Food Law, '**placing on the market**' means: the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, *whether free of charge or not*, and the sale, distribution, and other forms of transfer themselves.

In addition, organisations which receive food surplus are to be considered as food business operators under the General Food Law:

'food business' means any undertaking, *whether for profit or not* and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food

As food business operators, food redistribution and food relief organisations must comply with the General Food Law and with EU rules related to food hygiene or safety. As a result, they must verify the activities under their control meet the requirements of food law. They may, in this regard, refuse products proposed for donation which could present a risk for the final consumer (e.g. products with damaged packaging, abnormal aspect of the food, product too close to the 'use by' date to allow for its safe redistribution and use by the consumer prior to its expiration, etc.).

The nature of the organisation's activity as well as its operating model determines the specific rules which apply under the EU regulatory framework for food safety and food information to consumers. Different requirements in terms of traceability, food hygiene and food information to consumers may depend upon, for example, whether an organisation redistributes food to another organisation ('business to business') or directly to an end beneficiary ('business to consumer') as well as the type of activity which it carries out (such as donation of food of animal origin, or preparation of meals).

Examples of existing regulatory and policy measures impacting food redistribution from EU Member States.

Regulatory and policy measures relevant for food redistribution in EU Member States are characterised by either the presence of national laws and strategies or food donation-specific guidelines. National law and guideline documents may address all topics relevant to the requirements of the food redistribution process including labelling requirements for redistributed

⁹Official Journal of the European Union (2017) [Commission notice — EU guidelines on food donation C/2017/6872](#)

¹⁰ European Parliament, Council of the European Union (2002) [Regulation \(EC\) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety](#), Official Journal L 031 , 01/02/2002 P. 0001 - 0024

food, food safety requirements, traceability, primary responsibility and liability, or even the general fiscal regime related to food donations.

The presence of national laws to simplify the hygiene requirements for food redistribution make it easier for the concerned food redistribution actors to identify the procedures relevant to their activity. France, Estonia and Italy have outlined food hygiene (safety) requirements linked to redistribution in national law.¹¹

National guidelines on hygiene in the context of food redistribution are useful tools for food redistribution actors to identify and understand the procedures relevant to their activity, and in general are easier to understand and apply than general legislation or guidelines covering a broader range of food-related activities. Guideline documents may be developed by the relevant public organisations or may result from collaboration between the public and private sectors. Such guidelines are mostly developed by public–private cooperation, as is the case in Belgium, Czech Republic, France, Italy, Luxembourg, the Netherlands, Portugal and the UK.¹² Findings from scoping interviews indicate that these guidelines have been successful in clarifying EU legislation on hygiene requirements for food.¹³

Country Examples

Italy

In 2016, Italy passed *Law No. 166/2016 Provisions concerning the donation and distribution of food and pharmaceutical products for purposes of social solidarity and to limit waste*¹⁴ which lays out the general framework on food safety, food hygiene and food information to consumers for the redistribution of donated food items. Donors are required to have operating practices that ensure the hygienic safety of donated foods, and must select the products sent for donation according to quality and hygiene requirements.

As provided by the law, a guide to good practices for redistribution of food by charitable organisations (*Recupero, raccolta e distribuzione ai fini di solidarietà sociale*)¹⁵ was developed by Caritas Italiana and the Fondazione Banco Alimentare O.N.L.U.S. and was validated by the Italian Ministry for Health.

In the manual the following are extensively treated:

the system of recovery, collection and distribution of food for the purposes of social solidarity; the transport of recovered and collected food; storage and conservation; food preparation; the distribution to the those in need of: ready-made foods (eg sandwiches, cooked meals, drinks, etc.) and pre-packaged and non-perishable and non-perishable foods.

France

¹¹ European Commission, Directorate-General for Health and Food Safety, Food redistribution in the EU: mapping and analysis of existing regulatory and policy measures impacting food redistribution from EU Member States, Publications Office, 2020, <https://data.europa.eu/doi/10.2875/406299>

¹² Ibid.

¹³ Ibid.

¹⁴ Zero Waste Europe (2020) *Italy's law for donation and distribution of food and pharmaceuticals to limit food waste: Food Waste Prevention Legislation*, Zero Waste Europe Factsheet.

¹⁵ Caritas Italiana & Fondazione Banco Alimentare O.N.L.U.S. (2015) *Manuale Per corrette prassi operative Per le organizzazioni caritative*. Secondo Articolo 8 del Regolamento (CE) N. 852/2004

The French Federation of Food Banks in collaboration with NGOs developed a Guide to Good hygiene practices in the distribution of foods by charity organisations (Guide des bonnes pratiques d'hygiène de la distribution de produits alimentaires par les organismes caritatifs),¹⁶ validated by the French National Food Safety Agency and other relevant authorities.

It includes exhaustive practical guidance to help operators carry out their activities, such as decision criteria to select food suitable for redistribution and guidance to ensure food hygiene at each step of the redistribution process. The guide goes over the legislative and logistical aspects of food donation, clarifying the sanitary and food safety regulations proper to each sector of the food supply chain.

Netherlands

In the Netherlands, the Association of Dutch Food Banks developed a *Food Safety Guide*¹⁷ based on the Dutch Food Retail Association (CBL) Hygiene Code 2011, the Hygiene Code for Poultry and the NVWA Factsheet 76158. It is applicable to all food banks affiliated with the Association. The handbook covers all aspects of food redistribution, including food quality control, cold chain monitoring and personal hygiene practices, plus advice from the NVWA. In order to ensure the safe handling of donated food, the Association of Dutch Food Banks set up a certification scheme for food banks and regional distribution centres, with the help of an inspection bureau.

United Kingdom

The Waste and Resources Action Programme (WRAP), Department for Environmental, Food and Rural Affairs (DEFRA) and the Food Standards Agency published guidance documents for food businesses including those involved in the provision and receipt of food surplus for redistribution. These guideline documents covered various topics relating to labelling, primary responsibility, date marking, and storage advice, etc., to ensure food is safe to eat, reduce consumer food waste and remove barriers to redistribution. Hence, it provides redistribution organisations with clear instructions for their activities.

To complement the main guidance document, specific resources were developed in relation to date labelling and storage advice,¹⁸ best practice and food safety for redistribution,¹⁹ and transport and freezing requirements.²⁰ Food charities, similarly to any other food business, are required to put in place and maintain food safety management systems, though these may be adapted to the nature of the food business.

For further EU examples, a full description of existing regulatory and policy measures impacting food redistribution across EU Member States can be found [here](#).

United States

¹⁶ Ministère de l'Agriculture et de l'Alimentation (2011) [Guide des bonnes pratiques d'hygiène de la distribution de produits alimentaires par les organismes caritatifs](#). France

¹⁷ European Commission (2019) [Food redistribution in the EU: translation of Food Safety Guide of the Association of Dutch Food Banks](#)

¹⁸ WRAP, DEFRA and Food Standards Agency (2017) "Labelling guidance – Best practice on food date labelling and storage advice." <http://www.wrap.org.uk/sites/files/wrap/labelling-guidance.pdf>

¹⁹ WRAP, DEFRA and Food Standards Agency (2017) "Redistribution summary - Food labelling and safety." http://www.wrap.org.uk/sites/files/wrap/redistribution-summary_0.pdf.

²⁰ WRAP, DEFRA and Food Standards Agency (2017) "Redistribution Checklist - Date labels storage advice and freezing for food safety." www.wrap.org.uk/sites/files/wrap/redistribution-checklist_0.pdf

In the United States, the federal government plays a key role in food safety by providing model food safety regulations for restaurants and retail stores via the FDA Food Code,²¹ which is released every four years and has been adopted by all states. The FDA Food Code does not include model language specifically related to food donation or food recovery.

As a result, the Comprehensive Guidelines for Food Recovery Programs²² were collaboratively developed in 1997 by the United States Department of Agriculture and the Food and Drug Administration and have since been updated in 2007 and 2016. The Comprehensive Guidelines is not law, but it provides guidance regarding policies and procedures that should be followed when implementing a food recovery program, including guidance on how to implement a food recovery program and food safety procedures based on the FDA Food Code.

The Comprehensive Guidelines were originally proposed to be included as an annex to the FDA Food Code; however, it was ultimately published as a separate document. Research suggests that as a result, the Comprehensive Guidelines are not widely circulated and are not updated frequently enough.²³ Regulations specifically relating to food donation, therefore, are either not on the radar of state food safety regulators, may not be included in state or local codes, or are included inconsistently from one jurisdiction to another.

Other Country Examples

The United Nations Food and Agriculture Organisation developed the *Technical Platform on the Measurement and Reduction of Food Loss and Waste*,²⁴ cataloguing the guidance documents addressing the area of recovery and redistribution of safe and nutritious food for human consumption from countries around the world.

Impact of not taking action

While undertaking consumer research in the development of the Food Relief Framework Report (2019),²⁵ WACOSS captured case studies where consumers discussed the impact of food borne illness and unknown allergens being present in consumed charity food.

Carly - Food Relief Framework focus group participant

“When you are poor, you are not allowed to have dietary requirements, myself and my daughter are celiac, we often get premade meals for free and have to decide to take the risk of eating gluten or going hungry, we never know if we will get sick or not”.

John - Food Relief Framework focus group participant

“I got sick many times while sleeping on the streets, it’s a very terrible thing to get sick while on the streets. I think sometimes the food we eat made us sick, but we are hungry and have to eat”.

²¹ U. S. Food and Drug Administration (2017) [FDA Food Code 2017](#)

²² Food Recovery Committee 2000 Conference for Food Protection (2007) [Comprehensive Guidelines for Food Recovery Programs](#)

²³ Harvard Law School Food Law and Policy Clinic and the Natural Resources Defense Council (2017) [Don't Waste, Donate: Enhancing Food Donations Through Federal Policy](#)

²⁴ FAO (2022) *Technical Platform on the Measurement and Reduction of Food Loss and Waste*, <https://www.fao.org/platform-food-loss-waste/food-waste/food-waste-reduction/country-level-guidance/en/>

²⁵ WACOSS (2019)

The charity food sector lacks a regulatory framework for systemic quality control, charity food provision is largely driven by volunteer groups and good will. While the majority of volunteer providers have sufficient knowledge and capability to apply food safety to the preparation and distribution of food, there are many others who prepare food at home or in substandard food environments. Much of these types of food are cooked into meals and distributed to vulnerable populations without sufficient knowledge and capability to do so safely.

Currently, evidencing the impact of unsafe food practices is difficult, for example, proving a charity food provider's practices are responsible for food borne illness would require the impacted person to attend their GP or hospital and ask for a bowel sample to be taken. This is unlikely for many different reasons, from recognising the correlation between the food and illness, or due to competing priorities, or the person having a lack of transportation and support to present for medical support.

While there is a dearth of research available to evidence the impact of unsafe food across the charity food system, we know by talking to consumers that these impacts are more commonly occurring across low income and vulnerable communities. The impact of not taking action is the continuation of risks associated with vulnerable community members consuming food outside of safety regulations with flow on impacts across emergency department presentations and the health system.

With a lack of research available to evidence the impact of unsafe food across the charity food system, both internationally and in Australia, and given that food relief recipients also obtain food across multiple services, it is especially difficult to trace foodborne illnesses back to food relief organisations.²⁶ There have, however, been some examples brought to light by the international media of foodborne illnesses coming directly from charitable food services.

Between December 2014 and April 2015, a prolonged outbreak of Salmonella Enteritidis occurred in France, and was eventually linked to the consumption of frozen beefburgers received from a food bank and originating from Poland.²⁷

In 2017, contaminated food supplied by a UK charity made hundreds of people severely ill at an Iraq refugee camp as outlined by *The Guardian*.²⁸ More than 200 people needed hospital treatment in the provincial capital, Erbil, and other nearby towns, while nearly 600 others were treated in the camp itself after eating the contaminated evening meal.

In 2020, an investigation by *Environmental Health News*²⁹ revealed that a lack of regulatory oversight across the US for hunter-donated meat could result in potentially hundreds of thousands of lead-contaminated meals provided by food charities each year.

Regulatory Burden

²⁶ Chaifetz, A. & Chapman, B (2015) Evaluating North Carolina Food Pantry Food Safety–Related Operating Procedure., *Journal of Food Protection*, 78 (11): 2033 DOI: [10.4315/0362-028X.JFP-15-084](https://doi.org/10.4315/0362-028X.JFP-15-084)

²⁷ Jones G, Pihier N, Vanbockstael C, Le Hello S, Cadel Six S, Fournet N, Jourdan-da Silva N. (2016) Outbreak of Salmonella Enteritidis linked to the consumption of frozen beefburgers received from a food bank and originating from Poland: northern France, December 2014 to April 2015, *Euro Surveill*, 6;21(40):30363. doi: 10.2807/1560-7917.ES.2016.21.40.30363

²⁸ The Guardian (2017) [Hundreds at Iraq refugee camp ill from contaminated food](#)

²⁹ Environmental Health News (2020) [Exempt from inspection: States ignore lead-contaminated meat in food banks](#)

While many charity food distributors and providers' current food safety practices align with food safety regulations, there will be ad hoc volunteer providers who will require support via the development of guides and training packages to adapt food handling practices and processes.

The development of sector support resources should ensure that any legislation or guidelines address relevant food safety concerns for charitable food provision within the context of their operations. Guides should be developed that are realistic and support organisations to implement across different models of delivery, such as the distribution of premade meals or the distribution of food that can be eaten independent of infrastructure, temperature control, storing, heating or reheating. For example, whether or not a refrigerated vehicle is needed to safely transport donated foods depends on the type of food being donated and the length of time it will be in transit.

Food safety and food recovery are not static, trends in charity food recovery and delivery models are changing rapidly and evolving as new technologies emerge.³⁰ The rise of food rescue and distribution applications has resulted in food being transported between donor and consumer in faster a more efficient manner. These applications may reduce risks associated with the storage and transportation of charity food, while also tracking charity food through the process of donor, distributor to consumer. By utilising online technologies, charity food providers may reduce risks associated with the transportation and storage of food. Applications can also play a role in disseminating information about food safety and food science in ways that are more accessible and digestible by charity food volunteers.

Ultimately, ideal food control must involve the effective application of regulatory requirements, along with health and hygiene education through community outreach programs and the promotion of voluntary compliance which is delivered in flexible ways.³¹ We have an important opportunity here to amend the Food Act and ensure that consumers of food are protected and treated equally regardless of their capacity to purchase that food.

If you would like to discuss this submission further, please contact the WACOSS Community Relief and Resilience Coordinator Leela James at leela@wacoss.org.au or WACOSS Senior Policy Officer Eva Perroni at eva@wacoss.org.au.

Yours sincerely,



Louise Giolitto

Chief Executive Officer

WACOSS

³⁰ Harvard Law School Food Law and Policy Clinic and the Natural Resources Defense Council (2017)

³¹ Makhunga S, Mashamba-Thompson T, Hlongwa M, Hlongwana K. (2019) Evidence on food control in charitable food assistance programs: a systematic scoping review. *Syst Rev.* 8(1):240. Published 2019 Oct 25. doi:10.1186/s13643-019-1164-8