

## RIGHTS OFF THE TABLE: EXPLORING FOOD RELIEF GOVERNANCE IN AUSTRALIA THROUGH A HUMAN RIGHTS LENS

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*Australians increasingly depend on food relief due to various factors, including the cost of living crisis. The charitable provision of food relief has become the major national response to food insecurity at the individual and household levels. Legal scholarship is yet to investigate how food relief is governed in Australia. This article develops a human rights-based analytical framework to assess Australia's governance of the food relief system. Using this framework and focusing on three Australian legal jurisdictions – the Commonwealth, Queensland, and South Australia – this article uncovers gaps in the law, policy and institutional infrastructure that reflect a failure to govern food relief in the context of binding obligations to fulfil the right to food. This article identifies the need for a comprehensive and rights-based law and policy response to food relief that focuses not only on immediate requirements, but also on realising the right to food over the long term.*

### I INTRODUCTION

The human right to adequate food imposes legal obligations on States to take necessary measures to ensure everyone is free from hunger and can fully enjoy the right as soon as possible.<sup>1</sup> Those measures include strengthening people's access to resources and means to ensure their livelihood, including food security (a precondition to fulfilling the right to food), and providing for the right directly where people are unable to do so for themselves.<sup>2</sup> In Australia, food aid, known as food relief, has become the major response to food insecurity at the individual and household levels. As such, it represents a key way through which Australia seeks to fulfil the right to food.

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1 Committee on Economic, Social and Cultural Rights, *General Comment No 12 (Twentieth Session, 1999): The Right to Adequate Food (Art 11)*, UN Doc E/C.12/1999/5 (12 May 1999) 6 [21] ('General Comment No 12').

2 Ibid 5 [15].

Reliance on food relief has increased dramatically across the country in recent years.<sup>3</sup> In 2023, the House of Representatives Standing Committee on Agriculture finished an inquiry into food security in Australia ('Food Security Inquiry'). The Inquiry recognised the critical importance of food relief and recommended, among other things, establishing a comprehensive and regular national survey of household food insecurity and increasing federal funding for food relief.<sup>4</sup>

Despite the central role that food relief currently plays in the Australian food security landscape, legal scholarship on its governance is very limited and has focused more broadly on food security and other food systems issues.<sup>5</sup> This article provides the first doctrinal analysis of food relief governance in Australia. To evaluate how food relief is governed in Australia, this article develops an analytical framework drawing on international human rights law and specifically, the human right to food. Using this framework, this article employs a human rights analysis to critically appraise the extent to which food relief governance in Australia fulfils the right to food. In doing so, this research contributes to the growing legal literature in Australia on food law and policy generally as well as public health literature focused on Australian food relief.

This article answers two research questions. First, how is food relief currently governed in Australia? Second, how does Australia's governance approach to food relief align with its legal obligations to fulfil the right to adequate food? To answer these questions, we reviewed existing research findings on food security, food relief and the right to adequate food in Australia and synthesised international human rights law principles regarding the right to food in a food relief context. We

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- 3 OzHarvest, SecondBite and Foodbank, Submission to the Treasury, *2024–25 Pre-budget Submissions* (January 2024) <<https://consult.treasury.gov.au/pre-budget-submissions/2024-25/view/54>>; OzHarvest, SecondBite and Foodbank, Submission to the Treasury, *2023–24 Pre-budget Submissions* (January 2023) <<https://consult.treasury.gov.au/pre-budget-submissions/2023-24/view/524>>; Luke Henriques-Gomes, "'Most Severe We've Seen It": Australia's Food Relief Providers Struggle to Meet Demand', *The Guardian* (online, 30 October 2022) <<https://www.theguardian.com/australia-news/2022/oct/30/most-severe-weve-seen-it-australias-food-relief-providers-struggle-to-meet-demand>>.
  - 4 House of Representatives Standing Committee on Agriculture, Parliament of Australia, *Australian Food Story: Feeding the Nation and Beyond* (Report, 7 December 2023) <[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/RB000221/toc\\_pdf/AustralianFoodStoryFeedingtheNationandBeyond.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/RB000221/toc_pdf/AustralianFoodStoryFeedingtheNationandBeyond.pdf)> ('*Australian Food Story*').
  - 5 Only a very small number of law academics address food security in Australia from a legal perspective, and none specifically focus on food relief governance: see, eg, Liesel Spencer, 'Late to the Table: Australian Law and Policy on Food Security' (2024) 49(1) *Alternative Law Journal* 26 <<https://doi.org/10.1177/1037969X231224947>>; Benedict Sheehy and Ying Chen, 'Let Them Eat Rights: Re-framing the Food Insecurity Problem Using a Rights-Based Approach' (2022) 43(3) *Michigan Journal of International Law* 631 <<https://doi.org/10.36642/mjil.43.3.let>>. Most research and literature on food security and human rights in Australia comes from public health and nutrition academics: see, eg, Rebecca Lindberg et al, 'Revising a Right to Food Road Map: Perspectives of Australian Key Informants' (2024) 48(5) *Australian and New Zealand Journal of Public Health* 1 <<https://doi.org/10.1016/j.anzjph.2024.100189>> ('Revising a Right to Food Road Map'). Other food law scholars in Australia focus on related but different food systems issues, such as food labelling, food marketing, food systems policy generally or agriculture: see, eg, Elizabeth Handsley and Belinda Reeve, 'Holding Food Companies Responsible for Unhealthy Food Marketing to Children: Can International Human Rights Instruments Provide a New Approach?' (2018) 41(2) *University of New South Wales Law Journal* 449 <<https://doi.org/10.53637/OXLV4395>>.

then conducted a mapping exercise of the laws and policies related to food relief in Australia and undertook a human rights-based analysis to determine whether Australia's governance approach aligns with its international obligations. After a broader initial investigation, we chose the Commonwealth, Queensland and South Australian ('SA') jurisdictions for analysis in this article. We selected the Commonwealth because international human rights obligations are situated at the national level, and the federal government is the key source of funding for the food relief sector. We selected Queensland as an example of a state-level jurisdiction which, on preliminary review, appeared to have limited governance structures in place for food relief. SA was chosen because it had implemented measures to govern food relief in the context of the right to food. For reasons of scope, food relief through local government initiatives was excluded, as was food relief in the context of natural disasters.

Part II of this article outlines the present state of food insecurity in Australia, including its causes. It describes how food relief currently operates as Australia's principal modality for addressing the immediate food needs of the population. Part III of this article then presents an analytical framework for conducting a human rights-based assessment of food relief governance, drawn from a synthesis of key human rights principles distilled from authoritative international and domestic sources. Part IV presents findings from an analysis of the Commonwealth jurisdiction, while Part V presents findings from Queensland and SA and evaluates the differences between the two state jurisdictions, concluding that the SA model is in stronger alignment with human rights obligations. Part VI of this article discusses the key findings and implications of food relief governance in the context of the right to food.

Our findings indicate that governance of food relief in the context of the right to food in Australia is greatly underdeveloped and has significant gaps. We argue that existing food relief governance does not meet Australia's obligations for the right to adequate food. Among various weaknesses and gaps, we highlight how the current approach to food relief governance lacks engagement with durable solutions to food insecurity. Food relief governance must be reorientated towards reducing reliance on food relief and fulfilling the right to adequate food.

## II FOOD RELIEF IN AUSTRALIA: AN OVERVIEW

### A Food (In)security in the Australian Context

As with other high-income nations, food insecurity in Australia is not a problem of food shortage (ie, availability in terms of the amount of food produced and imported) but of access (ie, accessibility in terms of economic and physical access).<sup>6</sup> As a nation, Australia produces more food than its population could consume, and much of it is exported to other countries.<sup>7</sup> However, food security

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6 *General Comment No 12* (n 1) 2–3 [5].

7 *Australian Food Story* (n 4) 23 [3.2], 38 [3.64], 54 [3.125].

‘is more than a question of quantity of food being produced’.<sup>8</sup> As demonstrated by scholarship since the work of Amartya Sen in the late 20<sup>th</sup> century on famines, the existence of enough food in a country is no guarantee that everyone will be fed.<sup>9</sup> If people do not have the resources to buy food, then it does not matter how much food is being produced.<sup>10</sup> Food security at an individual or household level is thus not determined by the food security status of the nation overall.<sup>11</sup>

In high-income countries like Australia, food insecurity is an equity issue connected to income.<sup>12</sup> Being food secure means one has the financial means to acquire sufficient food for an adequate diet so that other basic needs are not threatened or compromised.<sup>13</sup> In this way, food insecurity in Australia is not really about food. It is about economic factors like income and labour force status, which directly affect food access.<sup>14</sup> The main driver of food insecurity in Australia is the inability of disadvantaged households to afford nutritious food, either as a result of chronic poverty or an acute financial crisis.<sup>15</sup> The recent Senate inquiry into the extent and nature of poverty in Australia heard from people with lived experience of poverty who described ‘the impossible daily choices they make between food, shelter and healthcare’.<sup>16</sup>

The fact that food insecurity in high-income countries like Australia is not a ‘food’ problem is demonstrated by the solutions proposed by experts to fix it. In a recent international Delphi consensus study conducted by Danielle Gallegos et

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- 8 Roslyn Foskey et al, ‘Interdisciplinary Conversations on Complexities of Food/In Security’ in Quentin Farmar-Bowers, Vaughan Higgins and Joanne Millar (eds), *Food Security in Australia: Challenges and Prospects for the Future* (Springer, 2013) 49, 51 <[https://doi.org/10.1007/978-1-4614-4484-8\\_4](https://doi.org/10.1007/978-1-4614-4484-8_4)>.
- 9 See Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford University Press, 1982).
- 10 Carol Richards, Unni Kjørnes and Jostein Vik, ‘Food Security in Welfare Capitalism: Comparing Social Entitlements to Food in Australia and Norway’ (2016) 43 *Journal of Rural Studies* 61, 62 <<https://doi.org/10.1016/j.jrurstud.2015.11.010>>; Jennifer Clapp, ‘Food Security and Food Sovereignty: Getting Past the Binary’ (2014) 4(2) *Dialogues in Human Geography* 206, 207 <<https://doi.org/10.1177/2043820614537159>>.
- 11 The availability of food ‘does not necessarily equate to universal food security within a nation’: Richards, Kjørnes and Vik (n 10) 62.
- 12 Michelle L Gatton and Danielle Gallegos, ‘A 5-Year Review of Prevalence, Temporal Trends and Characteristics of Individuals Experiencing Moderate and Severe Food Insecurity in 34 High Income Countries’ (2023) 23 *BMC Public Health* 2215:1–13, 11 <<https://doi.org/10.1186/s12889-023-17139-9>>; Sheehy and Chen (n 5) 655.
- 13 *General Comment No 12* (n 1) 4 [13].
- 14 Richards, Kjørnes and Vik (n 10) 64; Jeromey B Temple, Sue Booth and Christina M Pollard, ‘Social Assistance Payments and Food Insecurity in Australia: Evidence from the Household Expenditure Survey’ (2019) 16(3) *International Journal of Environmental Research and Public Health* 455: 1–15, 2 <<https://doi.org/10.3390/ijerph16030455>>.
- 15 Quentin Farmar-Bowers, Vaughan Higgins and Joanne Millar, ‘Introduction: The Food Security Problem in Australia’ in Quentin Farmar-Bowers, Vaughan Higgins and Joanne Millar (eds), *Food Security in Australia: Challenges and Prospects for the Future* (Springer, 2013) 1, 7 <[https://doi.org/10.1007/978-1-4614-4484-8\\_1](https://doi.org/10.1007/978-1-4614-4484-8_1)> (‘Food Security Problem’); Richards, Kjørnes and Vik (n 10) 62; Hall & Partners Australia, *Emergency Relief in Australia: A Review of the Commonwealth Funded Emergency Relief Program* (Report, 2022) 38 <<https://www.dss.gov.au/system/files/resources/emergency-relief-australia-review-commonwealth-funded-emergency-relief-program.pdf>> (‘*Emergency Relief in Australia*’).
- 16 Senate Community Affairs References Committee, Parliament of Australia, *The Extent and Nature of Poverty in Australia* (Final Report, February 2024) 1 [1.4] <[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000208/toc\\_pdf/TheextentandnatureofpovertyinAustralia.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000208/toc_pdf/TheextentandnatureofpovertyinAustralia.pdf)>.

al with food security experts, the three top-ranked national policy intervention priorities for addressing food insecurity in high-income countries did not even mention food. The priorities were: (1) income, eg, social welfare payments, universal basic income and a legislated minimum wage; (2) comprehensive poverty alleviation strategies; and (3) addressing insecure and under-employment, and working conditions.<sup>17</sup> Lower-ranked policy priorities did address food directly, such as the need for a multi-sector food and nutrition security policy, and to measure, map and report food security.<sup>18</sup> With structural poverty a leading cause of food insecurity, food relief is only one of a suite of broader interventions required to address the issue.

Socio-economic disadvantage in Australia that drives chronic food insecurity is influenced by factors such as unemployment, unstable or precarious employment, low wage growth, housing insecurity, insufficient social assistance payments and geographical (regional and remote) location, as well as personal factors such as illness, disability and limited education.<sup>19</sup> Groups that are likely to be more food insecure than the general population include low-income and single-parent households; children; First Nations communities; people living in rural and remote communities; people from culturally and linguistically diverse backgrounds, particularly refugees and asylum seekers; people experiencing homelessness; and people with disabilities.<sup>20</sup>

In recent years, food insecurity has increasingly affected demographic groups that were historically less vulnerable, as their financial obligations outpace their income, including households with individuals in paid employment, middle-income households, and homeowners.<sup>21</sup> There has been a notable shift in the most commonly cited cause of food insecurity, from unexpected expenses to expected,

17 Danielle Gallegos et al, 'Food Security Definition, Measures and Advocacy Priorities in High-Income Countries: A Delphi Consensus Study' (2023) 26(10) *Public Health Nutrition* 1986, 1993 <<https://doi.org/10.1017/S1368980023000915>>.

18 Ibid.

19 Fiona H McKay, Bronte C Haines and Matthew Dunn, 'Measuring and Understanding Food Insecurity in Australia: A Systematic Review' (2019) 16(3) *International Journal of Environmental Research and Public Health* 476:1–27 <<https://doi.org/10.3390/ijerph16030476>>; Mitchell Bowden, 'Understanding Food Insecurity in Australia' (CFCA Paper No 55, Child Family Community Australia, Australian Institute of Family Studies, 2020) <[https://aifs.gov.au/sites/default/files/publication-documents/2009\\_cfca\\_understanding\\_food\\_insecurity\\_in\\_australia\\_0.pdf](https://aifs.gov.au/sites/default/files/publication-documents/2009_cfca_understanding_food_insecurity_in_australia_0.pdf)>; Aaron Reeves, Rachel Loopstra and Valerie Tarasuk, 'Wage-Setting Policies, Employment, and Food Insecurity: A Multilevel Analysis of 492 078 People in 139 Countries' (2021) 111(4) *American Journal of Public Health* 718, 724 <<https://doi.org/10.2105/AJPH.2020.306096>>; Nick Rose et al, 'The Human Right to Food' (2016) 29(2) *Parity* 14; *Emergency Relief in Australia* (n 15); Fiona H McKay et al, 'The Prevalence, Severity and Experience of Food Insecurity in Australia: An Investigation of Food Aid Use' (2020) 28(6) *Health and Social Care in the Community* 2399; Tahna L Pettman et al, 'A Food Relief Charter for South Australia: Towards a Shared Vision for Pathways out of Food Insecurity' (2022) 19(12) *International Journal of Environmental Research and Public Health* 7080:1–16, 1–2 ('A Food Relief Charter for South Australia').

20 Bowden (n 19) 9–12; Rebecca Lindberg et al, *Food Secure Communities in South Australia: An Evidence Summary to Support Food Security Across Food and Social Systems* (Report, 29 June 2023) 4 <<https://doi.org/10.26187/0ax1-0740>> ('*Food Secure Communities*').

21 Foodbank Australia, Submission No 1 to Senate Select Committee on the Cost of Living, Parliament of Australia (February 2023) 11–12 ('Submission No 1').

everyday living costs.<sup>22</sup> Foodbank Australia cites the rising cost of living, the COVID-19 pandemic, and the frequency and severity of national disasters as playing a role in the increasing diversity of food insecure households.<sup>23</sup> For many households, food is the only flexible budget component; there is no flexibility on fixed costs such as rent.<sup>24</sup> With grocery prices rising significantly since 2021 and outpacing inflation in the context of a cost-of-living crisis in Australia,<sup>25</sup> along with increased private rents and insecure housing, the ability of many Australians to afford adequate food, especially without adversely impacting other needs, has been reduced.<sup>26</sup> Thus, Australia is described as having ‘significant pockets’ of food insecurity at the individual and household levels.<sup>27</sup>

However, the true extent of food insecurity is unknown because food security (or insecurity) is not extensively measured regularly by the Australian Government.<sup>28</sup> The most recent national food security data released by the Australian Bureau of Statistics comes from the National Nutrition and Physical Activity Survey, conducted as part of the Australian Health Survey in 2011–12.<sup>29</sup> Annual data collected by the nation’s largest charitable food agency, Foodbank Australia, indicates that food insecurity increased across all states and territories

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22 Ibid 7.

23 Ibid 9; Sharonna Mossenson et al, ‘Evidence for Initiating Food Safety Policy: An Assessment of the Quality and Safety of Donated Food at an Australian Food Bank’ (2024) 123 *Food Policy* 102589:1–12, 2 <<https://doi.org/10.1016/j.foodpol.2023.102589>>.

24 Richards, Kjærnes and Vik (n 10) 64; Graham Riches and Tiina Silvasti, ‘Hunger in the Rich World: Food Aid and Right to Food Perspectives’ in Graham Riches and Tiina Silvasti (eds), *First World Hunger Revisited: Food Charity or the Right to Food?* (Palgrave Macmillan, 2<sup>nd</sup> ed, 2014) 1, 6 <[https://doi.org/10.1057/9781137298737\\_1](https://doi.org/10.1057/9781137298737_1)> (‘Hunger in the Rich World’); Bowden (n 19) 8.

25 Christina Zorbas and Kathryn Backholer, ‘We’re in a Food Price Crisis: What Is the Government Doing to Ease the Pressure?’, *The Conversation* (online, 7 February 2024) <<http://theconversation.com/were-in-a-food-price-crisis-what-is-the-government-doing-to-ease-the-pressure-222368>>; ‘Consumer Price Index, Australia, June Quarter 2024’, *Australian Bureau of Statistics* (Web Page, 31 July 2024) <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/jun-quarter-2024>>; ‘Selected Living Cost Indexes, Australia, June 2024’, *Australian Bureau of Statistics* (Web Page, 7 August 2024) <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/selected-living-cost-indexes-australia/jun-2024>>; Lindberg et al, *Food Secure Communities* (n 20) 5; Australian Competition & Consumer Commission, ‘Higher Grocery Prices Force Many Consumers to Make Sacrifices, ACCC Hears’ (Media Release 40/24, 28 March 2024) <<https://www.accc.gov.au/media-release/higher-grocery-prices-force-many-consumers-to-make-sacrifices-accc-hears>>; Amy Remeikis, ‘Priced Out: How Australians Are Being Hit by the Soaring Cost of Food’, *The Guardian* (online, 1 May 2023) <<https://www.theguardian.com/australia-news/2023/may/01/priced-out-how-australians-are-being-hit-by-the-soaring-cost-of-food>>; Lucy Slade, ‘Cost of a Supermarket Shop Rises by 33 Per Cent in Nearly Three Years’, *9News* (online, 9 April 2024) <<https://www.9news.com.au/national/exclusive-supermarket-product-price-compare-between-grocery-shop-in-2021-and-today-due-to-inflation/8b1f03b1-c094-4ee5-aa68-35d401517b90>>.

26 Pettman et al, ‘A Food Relief Charter for South Australia’ (n 19) 2.

27 *Australian Food Story* (n 4) 54 [3.125].

28 Bowden (n 19) 6.

29 Australian Bureau of Statistics, *Australian Health Survey: Updated Results, 2011–2012* (Catalogue No 4364.0.55.003, 7 June 2013). A new National Nutrition and Physical Activity Survey was conducted in 2023, with results yet to be released: ‘National Nutrition and Physical Activity Survey’, *Australian Bureau of Statistics* (Web Page, 26 April 2024) <<https://www.abs.gov.au/participate-survey/household-survey/national-nutrition-and-physical-activity-survey>>.

of Australia in 2022–23.<sup>30</sup> According to their results, 36% of Australian households reported some level of food insecurity in the 12 months to July 2023, and 3.7 million households experienced moderate to severe levels of food insecurity.<sup>31</sup>

## B Food Relief as the Primary Response to Food Insecurity

Australia does not have an official domestic definition of food relief. Thus, this article puts forward a definition adapted from international definitions of food aid.<sup>32</sup> Domestic food relief in Australia can be defined as: *assistance or support in the form of food or for the procurement of food, which is aimed at improving the food security of individuals and households*. Food relief may be accessed through informal sources, such as family and friends, or formal programs.<sup>33</sup> The governance of formal food relief in Australia forms the focus of this article. Typical forms of formal food relief in Australia encompass both the direct provision of food (eg, food parcels, hampers, community kitchens, food pantries, soup kitchens or vans, hot or frozen meals, and fresh fruit and vegetables) along with mechanisms to improve access to food (eg, food banks, which collect and distribute rescued or donated food to charitable agencies and are at the heart of food relief efforts in Australia and other high-income nations, cash or supermarket vouchers, and discounts on food purchased at specific stores).<sup>34</sup>

A vast network of charitable non-governmental organisations ('NGOs') and religious institutions undertake formal food relief services in Australia.<sup>35</sup> This type of food aid is known as 'third sector' food aid – emergency food distributed by non-profit organisations instituted separately from the government.<sup>36</sup> Unlike the United States ('US'), the Australian Government does not directly operate a national food relief program.<sup>37</sup> Instead, the government plays a funding role, targeting food insecurity through grants to charitable food relief agencies and indirectly via broad

30 Foodbank, *Foodbank Hunger Report 2023: National Key Findings Report* (Report, 25 September 2023) 6 <[https://reports.foodbank.org.au/wp-content/uploads/2023/10/2023\\_Foodbank\\_Hunger\\_Report\\_IPSOS-Report.pdf](https://reports.foodbank.org.au/wp-content/uploads/2023/10/2023_Foodbank_Hunger_Report_IPSOS-Report.pdf)> ('*Foodbank Hunger Report*').

31 Ibid 4–5.

32 Food and Agriculture Organization of the United Nations, *The State of Food and Agriculture 2006: Food Aid for Food Security?* (Report, 2006) 11 <<https://www.fao.org/4/a0800e/a0800e.pdf>>; Joachim von Braun, 'International Workshop on Food Aid: Contributions and Risks to Sustainable Food Security' (2004) 25(1) *Food and Nutrition Bulletin* 89.

33 *Foodbank Hunger Report* (n 30).

34 Fiona H McKay, 'Responding to Hunger in Australia: The Role of Traditional and Emerging Food Distribution Measures in Addressing Food Insecurity' in Beth R Crisp and Ann Taket (eds), *Sustaining Social Inclusion* (Routledge, 2020) 108, 110 <<https://doi.org/10.4324/9780429397936-10>>; *Emergency Relief in Australia* (n 15) 31; McKay et al (n 19).

35 McKay et al (n 19) 2399, 2402.

36 Thirza Andriessen and Laura A van der Velde, 'How the Social Dignity of Recipients Is Violated and Protected across Various Forms of Food Aid in High-Income Countries: A Scoping Review' (2024) 41(1) *Agriculture and Human Values* 363, 363 <<https://doi.org/10.1007/s10460-023-10476-w>>.

37 'Supplemental Nutrition Assistance Program (SNAP)', *Economic Research Service* (Web Page, 8 January 2025) <<https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/>>.

social safety nets such as social assistance payments.<sup>38</sup> At state, territory and local government levels, funding is also provided to charitable agencies to provide food relief services.<sup>39</sup> Support from philanthropic donations and the commercial food sector supplements this government funding.<sup>40</sup> The size and scope of food relief agencies vary, but they are numerous.<sup>41</sup>

Food relief delivered by the charitable sector is widely considered to be Australia's primary response to food insecurity, as is the case in other high-income countries.<sup>42</sup> The recent Food Security Inquiry focused on various threats to agricultural production (such as climate change and economic viability) for long-term national food security. However, a chapter from the Inquiry's report did address food insecurity at individual and household levels. Recommendations included developing a better understanding of the causes of food insecurity in Australia, regularly measuring domestic food insecurity, increasing education regarding nutrition, considering school meals programs (which are generally considered part of food assistance), increasing federal funding for the food relief sector, and introducing specific tax incentives for food donation.<sup>43</sup> The Food Security Inquiry also provided some specific recommendations regarding food insecurity in remote communities, including First Nations communities, and recommended, in particular, that the government support community stores.<sup>44</sup> These recommendations partly reflect the continuing emphasis in Australian policy discourse on improving food relief as a primary response to food insecurity.

Because food insecurity in Australia is now often a long-term issue affecting individuals and households for months or years, reliance on food relief, which

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38 'Food Relief', *Department of Social Services* (Web Page, 13 November 2024) <<https://www.dss.gov.au/emergency-support/food-relief>>. See also McKay (n 34) 112.

39 See, eg, 'Food Rescue Grant Program: Round 2', *Queensland Government* (Web Page, 16 March 2023) <<https://www.qld.gov.au/environment/circular-economy-waste-reduction/funding-grants/food-rescue-grant-program-round-2>> ('Food Rescue Grant Program'); 'NSW Food Program', *NSW Department of Communities and Justice* (Web Page, 9 May 2024) <<https://dcj.nsw.gov.au/service-providers/deliver-community-and-sector-assistance/nsw-food-program.html>>; 'Community Food Relief', *Service Providers* (Web Page, 20 December 2024) <<https://providers.dffh.vic.gov.au/community-food-relief>>.

40 McKay et al (n 19) 2399.

41 For example, in Western Australia ('WA') alone, more than 450 organisations, mostly charities or churches, provide food relief throughout the State: Western Australian Council of Social Service, *WA Food Relief Framework 2019* (Report, 2019) 33 <<https://www.wacoss.org.au/wp-content/uploads/2019/10/Food-Relief-Framework-report-sml.pdf>> ('*WA Food Relief Framework*').

42 Pettman et al, 'A Food Relief Charter for South Australia' (n 19) 2; Danielle Gallegos and Mariana M Chilton, 'Re-evaluating Expertise: Principles for Food and Nutrition Security Research, Advocacy and Solutions in High-Income Countries' (2019) 16(4) *International Journal of Environmental Research and Public Health* 561:1–16, 1 <<https://doi.org/10.3390/ijerph16040561>>; Graham Riches and Valerie Tarasuk, 'Canada: Thirty Years of Food Charity and Public Policy Neglect' in Graham Riches and Tiina Silvasti (eds), *First World Hunger Revisited: Food Charity or the Right to Food?* (Palgrave Macmillan, 2nd ed, 2014) 42, 43 <[https://doi.org/10.1057/9781137298737\\_4](https://doi.org/10.1057/9781137298737_4)>; Katharine S E Cresswell Riol and Sean Connelly, 'Beyond a Neoliberal Critique of Hunger: A Genealogy of Food Charity in Aotearoa New Zealand' (2023) 40(3) *Agriculture and Human Values* 1221, 1223 <<https://doi.org/10.1007/s10460-023-10414-w>>.

43 *Australian Food Story* (n 4) 104–5 [5.111]–[5.112], 150 [7.69]–[7.71], 151 [7.73].

44 *Ibid* 151 [7.74].

originated as a temporary or emergency response measure, can be protracted.<sup>45</sup> While some individuals and families in Australia access food relief services for days or weeks, others may rely on ‘emergency’ food relief for months, years or even generations. Research suggests that this increasing entrenchment of long-term provision of food assistance in Australia is mirrored in Canada and the United Kingdom, other high-income countries which have seen a sharp rise in the number of people seeking food relief in recent years.<sup>46</sup> Those who do access food relief services receive a significant amount of their total food from food relief.<sup>47</sup> Food relief providers have reported that they cannot keep up with the increasing demand for services.<sup>48</sup>

### III USING THE RIGHT TO FOOD AS AN ANALYTICAL FRAMEWORK FOR FOOD RELIEF GOVERNANCE

#### A Legal Foundation and Scope of the Right to Food

Access to adequate food is not just a basic human need but also a fundamental human right with corresponding legal obligations on States.<sup>49</sup> The right to adequate food is recognised in several international human rights instruments<sup>50</sup> and enshrined as part of the right to an adequate standard of living in the *International Covenant on Economic, Social and Cultural Rights* (‘ICESCR’).<sup>51</sup> The ICESCR also recognises the fundamental right of everyone to be free from hunger.<sup>52</sup>

The right to adequate food is closely associated with the inherent dignity of the human person, essential for the fulfilment of other human rights, and inseparable from social justice.<sup>53</sup> The right is linked to Goal 2 of the Sustainable Development Goals (‘SDGs’): Zero Hunger, one of the 17 goals that form a global blueprint for achieving ‘a better and more sustainable future for all’.<sup>54</sup>

45 Food insecurity has been described as ‘increasingly pervasive, chronic and intractable’: Submission No 1 (n 21) 4. See also Lindberg et al, *Food Secure Communities* (n 20) 1; Sue Booth, ‘Food Banks in Australia: Discouraging the Right to Food’ in Graham Riches and Tiina Silvasti (eds), *First World Hunger Revisited: Food Charity or the Right to Food?* (Palgrave Macmillan, 2<sup>nd</sup> ed, 2014) 15, 21 <[https://doi.org/10.1057/9781137298737\\_2](https://doi.org/10.1057/9781137298737_2)>; Mossenson et al (n 23) 1.

46 McKay et al (n 19) 2400.

47 In what was stated to be the largest qualitative study of food aid users in Australia, most participants reported obtaining half to one-third of their food from food aid: *ibid* 2405.

48 OzHarvest, Submission No 40 to House of Representatives Standing Committee on Agriculture, Parliament of Australia, *Inquiry into Food Security in Australia* (9 December 2022) 2.

49 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 11.1 (‘ICESCR’).

50 See, eg, *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) art 25 (‘UDHR’); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 24.

51 ICESCR (n 49) art 11.1.

52 *Ibid* art 11.2.

53 *General Comment No 12* (n 1) 2 [4].

54 ‘Take Action for the Sustainable Development Goals’, *Sustainable Development Goals* (Web Page) <<https://www.un.org/sustainabledevelopment/sustainable-development-goals/>>.

The right to adequate food is realised when ‘every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement’.<sup>55</sup> The United Nations (‘UN’) Committee on Economic, Social and Cultural Rights (‘CESCR’) considers that the core content of the right implies both availability and accessibility of adequate food. *Available* food is available in sufficient quantity and quality to satisfy dietary needs, is free from adverse substances and is culturally acceptable. *Accessible* food is both economically and physically accessible in a sustainable way that does not interfere with the enjoyment of other human rights.<sup>56</sup> *Adequacy* of food is a key element in determining whether food that is available and accessible is appropriate (eg, safe for human consumption).<sup>57</sup>

Food security is a closely linked concept and a precondition to the fulfilment of the right to adequate food.<sup>58</sup> The right to food is not met if there is food insecurity. Food security exists when ‘all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life’.<sup>59</sup> Food security can be viewed as a continuum, with ‘food secure’ at one end, ‘food insecure without hunger’ (or with ‘hidden hunger’, ie, nutritional inadequacies) in the mid-range, and ‘food insecure with severe hunger’ at the other extreme.<sup>60</sup> Individual and household food security status is not fixed and can and does change over time; food insecurity might be transitory, episodic, deepening or persistent (chronic).<sup>61</sup>

It is important to note that food security is not a legal concept; it does not place legally binding obligations on governments or provide for enforceable individual entitlements. It is the *right to food* that imposes legal obligations on States to take initiatives with respect to hunger and malnutrition and work towards food security for all.<sup>62</sup> Hence, some scholars have suggested that the emphasis on food security, as opposed to the right to food, in international law and policy discourse is problematic because it avoids human rights.<sup>63</sup>

States, as the primary duty bearers under international human rights law, must create environments conducive to the enjoyment of the right to adequate food.<sup>64</sup>

55 *General Comment No 12* (n 1) 3 [6].

56 *Ibid* 3 [8].

57 *Ibid* 3 [7]; Office of the High Commissioner for Human Rights and Food and Agriculture Organization of the United Nations, ‘The Right to Adequate Food’ (Fact Sheet No 34, 1 April 2010) 3 <<https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>>.

58 ‘The Right to Adequate Food’ (n 57) 4.

59 Food and Agriculture Organization of the United Nations, ‘World Food Summit Plan of Action’ (Plan, November 1996) [1] <<https://digitallibrary.un.org/record/195568>>. There have been suggestions made recently to redefine food security for the specific context of high-income countries where severe food insecurity is less prevalent: Gallegos et al (n 17) 1990.

60 Sheryl L Hendriks, ‘The Food Security Continuum: A Novel Tool for Understanding Food Insecurity as a Range of Experiences’ (2015) 7(3) *Food Security* 609 <<https://doi.org/10.1007/s12571-015-0457-6>>.

61 *Foodbank Hunger Report* (n 30) 24; Submission No 1 (n 21) 13.

62 ‘The Right to Adequate Food’ (n 57) 4.

63 See, eg, Hope Johnson, *International Agricultural Law and Policy: A Rights-Based Approach to Food Security* (Edward Elgar Publishing, 2018).

64 Hilal Elver, *Right to Food: Interim Report of the Special Rapporteur on the Right to Food*, UN Doc A/74/164 (15 July 2019) 4 [3] <<https://docs.un.org/en/A/74/164>> (‘2019 Interim Report’).

States Parties to the *ICESCR* undertake to take steps, to the maximum of available resources, to progressively achieve the full realisation of the right to adequate food<sup>65</sup> but have an immediate obligation to ensure freedom from hunger.<sup>66</sup> Typically, binding State obligations under human rights law are understood through the tripartite ‘respect, protect and fulfil’ framework.<sup>67</sup> The CESCR has conceptualised how these three pillars of duty apply to States in the specific context of the right to adequate food:

1. The obligation to *respect*: States must refrain from taking measures that detract from people’s existing access to adequate food.
2. The obligation to *protect*: States must take steps to ensure that third parties do not interfere with people’s access to adequate food.
3. The obligation to *fulfil*: States must proactively strengthen people’s access to and use of resources and means to ensure food security (*facilitate*) and meet the right directly when they cannot fulfil the right through means at their own disposal (*provide*).<sup>68</sup>

State obligations to fulfil are especially relevant in the context of food relief. States should provide practical assistance to individuals or groups in circumstances where they are unable to meet the right to food for themselves.<sup>69</sup> This can be done by putting in place social safety and food safety nets.<sup>70</sup> Where food relief plays a role in those safety nets, it should ‘bridge the gap between the nutritional needs of the affected population and their ability to meet those needs themselves’.<sup>71</sup>

From a human rights perspective, acceptable food relief empowers recipients, provides for independence and inclusion, and upholds dignity.<sup>72</sup> Transparent eligibility criteria must be established based on the principle of non-discrimination.<sup>73</sup> Food relief initiatives should provide for meaningful participation of recipients.<sup>74</sup>

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65 *ICESCR* (n 49) art 2(1).

66 By making accessible the minimum amount of essential food which is ‘sufficient, nutritionally adequate and safe’: *General Comment No 12* (n 1) 4 [14], 6 [21].

67 The obligation to respect requires States to refrain from interfering with the enjoyment of human rights. The obligation to protect requires States to prevent third parties from violating rights and to react when such violations are committed. The obligation to fulfil mandates States to take appropriate measures towards the realisation of human rights (ie, to provide), which could require allocating significant public resources for such purposes: see, eg, David Jason Karp, ‘What Is the Responsibility to Respect Human Rights? Reconsidering the “Respect, Protect, and Fulfill” Framework’ (2020) 12(1) *International Theory* 83, 86 <<https://doi.org/10.1017/S1752971919000198>>; Anthony R Reeves, ‘Standard Threats: How to Violate Basic Human Rights’ (2015) 41(3) *Social Theory and Practice* 403, 416–17 <<https://doi.org/10.5840/soctheorpract201541322>>; Ida Elisabeth Koch, ‘Dichotomies, Trichotomies or Waves of Duties?’ (2005) 5(1) *Human Rights Law Review* 81, 82 <<https://doi.org/10.1093/hrlrev/ngi004>>.

68 *General Comment No 12* (n 1) 5 [15].

69 *Ibid*.

70 Food and Agriculture Organization of the United Nations, ‘Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security’ (Guidelines, 2005) 25–7 [14.1]–[14.7] (‘FAO Voluntary Guidelines’).

71 *Ibid* 26 [14.5].

72 Graham Riches and Tiina Silvasti (eds), *First World Hunger Revisited: Food Charity or the Right to Food?* (Palgrave Macmillan, 2<sup>nd</sup> ed, 2014) <<https://doi.org/10.1057/9781137298737>>.

73 Those eligibility criteria should ensure no one in need is excluded, and those not in need are excluded: ‘FAO Voluntary Guidelines’ (n 70) 25 [13.3].

74 *Ibid* 15 [5.4], 26 [14.5].

Appropriate foods offered through food relief are nutritionally adequate, safe and appropriate, considering local circumstances, dietary traditions and culture.<sup>75</sup> Food safety nets should be linked to complementary interventions that promote longer-term food security.<sup>76</sup> These ideals have informed the analytical framework outlined in the next section.

## B Developing the Analytical Framework

To develop an analytical framework to assess food relief governance, we reviewed a range of predominantly international authoritative sources that provide detailed guidance on the human rights-based approach ('HRBA') that States should be taking regarding the right to adequate food and the provision of food relief. Those sources included:

1. the CESCR's *General Comment No 12 (Twentieth Session, 1999): The Right to Adequate Food (Art 11)*;<sup>77</sup>
2. the Food and Agriculture Organization of the UN's ('FAO') 'Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security';<sup>78</sup>
3. the Committee on World Food Security's 'Voluntary Guidelines on Food Systems and Nutrition';<sup>79</sup>
4. reports from Special Rapporteurs on the Right to Food;<sup>80</sup>
5. concluding observations from UN committees on periodic reports submitted by Australia as part of its human rights treaty reporting commitments;<sup>81</sup> and
6. scholarly commentary and other human rights-based literature, including from national human rights institutions.<sup>82</sup>

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75 Ibid.

76 Ibid 26 [14.4].

77 *General Comment No 12* (n 1).

78 'FAO Voluntary Guidelines' (n 70).

79 Committee on World Food Security, 'CFS Voluntary Guidelines on Food Systems and Nutrition' (Guidelines, February 2021) <[https://www.fao.org/fileadmin/templates/cfs/Docs2021/Documents/CFS\\_VGs\\_Food\\_Systems\\_and\\_Nutrition\\_Strategy\\_EN.pdf](https://www.fao.org/fileadmin/templates/cfs/Docs2021/Documents/CFS_VGs_Food_Systems_and_Nutrition_Strategy_EN.pdf)> ('CFS Voluntary Guidelines').

80 Michael Fakhri, *Right to Food: Report of the Special Rapporteur on the Right to Food, Michael Fakhri*, UN Doc A/HRC/46/33 (24 December 2020) ('*Right to Food*'); Hilal Elver, *Critical Perspective on Food Systems, Food Crises and the Future of the Right to Food: Report of the Special Rapporteur on the Right to Food*, UN Doc A/HRC/43/44 (21 January 2020) ('*Critical Perspective on Food Systems*'); Hilal Elver, *Report of the Special Rapporteur on the Right to Food, Hilal Elver: Access to Justice and the Right to Food*, UN Doc A/HRC/28/65 (12 January 2014) ('*Access to Justice and the Right to Food*'); Michael Fakhri, *Right to Food for Food System Recovery and Transformation: Report of the Special Rapporteur on the Right to Food, Michael Fakhri*, UN Doc A/78/202 (18 July 2023) ('*Food System Recovery*'); Michael Fakhri, *The Right to Food: Interim Report of the Special Rapporteur on the Right to Food, Michael Fakhri*, UN Doc A/76/237 (27 July 2021) ('*2021 Interim Report*'); Elver, *2019 Interim Report* (n 64).

81 See, eg, Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Fifth Periodic Report of Australia*, UN Doc E/C.12/AUS/CO/5 (11 July 2017) ('*Concluding Observations on the Fifth Periodic Report*'); Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Eighth Periodic Report of Australia*, UN Doc CEDAW/C/AUS/CO/8 (25 July 2018) ('*Concluding Observations on the Eighth Periodic Report*').

82 'Human Rights-Based Approach', *European Network of National Human Rights Institutions* (Web Page) <<https://ennhri.org/about-nhris/human-rights-based-approach/>>; Katie Boyle, Scottish Human Rights

Human rights jurisprudence based on the *ICESCR* did not offer any guidance. There has yet to be a single individual communication to the CESCR based on the right to adequate food, with only limited cases founded on other rights that even mention food.<sup>83</sup> This may be in part because few countries have ratified or acceded to the Optional Protocol to the *ICESCR*, which allows for individual communications on the rights contained therein,<sup>84</sup> and also because economic, social and cultural ('ESC') rights have historically been viewed as non-justiciable and unenforceable.<sup>85</sup>

From the sources outlined above, we synthesised a set of key human rights principles: participation, accountability, non-discrimination and equality, empowerment, legality and dignity. Incidentally, these principles largely align with a general human rights-based framework used by policymakers, which is referred to as PANEL.<sup>86</sup> However, this framework does not expressly include dignity. Based on our review of international human rights law regarding the right to food and literature on the experiences of people accessing food relief,<sup>87</sup> dignity should be explicitly included in any framework seeking to operationalise the right to food. A detailed description of the framework principles is contained in Table 1.

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Commission, *Models of Incorporation and Justiciability for Economic, Social and Cultural Rights* (Report, November 2018) <[https://www.scottishhumanrights.com/media/1809/models\\_of\\_incorporation\\_escr\\_vfinal\\_nov18.pdf](https://www.scottishhumanrights.com/media/1809/models_of_incorporation_escr_vfinal_nov18.pdf)>; Australian Human Rights Commission, Submission to the Treasury, *Measuring What Matters* (January 2023) <[https://treasury.gov.au/sites/default/files/2023-03/c2023-379612-australian\\_human\\_rights\\_commission.pdf](https://treasury.gov.au/sites/default/files/2023-03/c2023-379612-australian_human_rights_commission.pdf)> ('Measuring What Matters Submission'); Scottish Human Rights Commission, 'SNAP 2: Scotland's Second National Human Rights Action Plan (2023–2030)' (Plan, March 2023) <<https://www.snaprights.info/wp-content/uploads/2023/03/SNAP-2-March-2023-FINAL-PDF.pdf>> ('SNAP 2'); Booth (n 45).

- 83 Based on a search of individual communications to the CESCR conducted on 21 July 2024: Office of the High Commissioner for Human Rights, *Jurisprudence Database* (Web Page) <<https://juris.ohchr.org/>>. One case based on the right to social security did mention foodstuffs in connection with that right: Committee on Economic, Social and Cultural Rights, *Views: Communication No 1/2013*, UN Doc E/C.12/57/D/1/2013 (20 April 2016).
- 84 Only 31 parties, as of June 2025. Australia is not one of them: 'Optional Protocol to the International Covenant on Economic, Social and Cultural Rights', *United Nations Treaty Collection* (Web Page) <[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3-a&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3-a&chapter=4&clang=en)>.
- 85 Salma Yusuf, 'The Rise of Judicially Enforced Economic, Social, and Cultural Rights: Refocusing Perspectives' (2012) 10(2) *Seattle Journal for Social Justice* 753, 766; Elver, *Access to Justice and the Right to Food* (n 80) 4 [6]–[8]; Boyle (n 82) 43–7. While the UN human rights treaty system has been criticised for its failings around implementation and enforcement of State obligations, it nonetheless remains an important source of norms, standards and liabilities: Sheehy and Chen (n 5) 659–60.
- 86 The PANEL framework is a general HRBA to governance that is underpinned by five key human rights principles: participation, accountability, non-discrimination and equality, empowerment, and legality: see, eg, 'Human Rights Based Approaches', *Australian Human Rights Commission* (Web Page) <<https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-based-approaches>>; 'Human Rights-Based Approach' (n 82); Measuring What Matters Submission (n 82) 5 [13]; 'SNAP 2' (n 82); 'Our Mission and Principles That Underpin Our Work', *Northern Ireland Human Rights Commission* (Web Page) <<https://nihrc.org/about-us/who-we-are/our-mission-and-principles-that-underpin-our-work>>.
- 87 Rebecca Lindberg, Mark Lawrence and Martin Caraher, 'Kitchens and Pantries: Helping or Hindering? The Perspectives of Emergency Food Users in Victoria, Australia' (2017) 12(1) *Journal of Hunger and Environmental Nutrition* 26, 35, 39–40 <<https://doi.org/10.1080/19320248.2016.1175397>>; Sue Kleve et al, 'Perspectives of Food Insecurity and Service Delivery amongst Emergency Food Relief Clients in a Regional City in Victoria, Australia' [2023] *Health and Social Care in the Community* 8711041:1–10 <<https://doi.org/10.1155/2023/8711041>>.

**Table 1: The Framework Principles**

Principle	Description
<b>Participation</b>	Everyone has the right to be heard concerning decisions that affect their rights. <sup>88</sup> The formulation of laws, strategies and policies for the right to food requires full participation of the people, <sup>89</sup> and particularly the inclusion of marginalised and vulnerable people who are generally excluded from such processes. <sup>90</sup>
<b>Accountability</b>	Accountability ensures individuals are participants in their own development, rather than passive recipients. <sup>91</sup> States must ensure that rights-holders can hold the State accountable for rights violations and obtain remedies for those violations. <sup>92</sup> Accountability requires transparent rules of engagement – there must be transparency in decision-making processes and policy implementation on the right to food in a way that addresses individuals' specific needs. <sup>93</sup> The right of individuals to freedom of expression and the right to see, receive and impart information is also critical. <sup>94</sup>
<b>Non-discrimination and equality</b>	Emphasis is on inclusive societies that are free from discrimination. <sup>95</sup> People should have 'equal and equitable access to sufficient, affordable, safe and nutritious foods'. <sup>96</sup> Equity requires special consideration for groups including but not limited to Indigenous peoples, women, the poor, people with disabilities and the elderly. <sup>97</sup> States must account for power imbalances that undermine good governance. <sup>98</sup>
<b>Empowerment</b>	Agency is central to a HRBA to 'put power into the hands of all people'. <sup>99</sup> Individuals must be empowered to take part in the conduct of public affairs <sup>100</sup> and be able to change the system to improve their own and social well-being. <sup>101</sup>

88 Measuring What Matters Submission (n 82) 5 [13].

89 *General Comment No 12* (n 1) 6–7 [23]; 'CFS Voluntary Guidelines' (n 79) 11 [54]; Olivier De Schutter, *Report of the Special Rapporteur on the Right to Food, Olivier De Schutter: Final Report*, UN Doc A/HRC/25/57 (24 January 2014) 14–15 [35].

90 'FAO Voluntary Guidelines' (n 70) 6–7 [19].

91 *Ibid.*

92 Elver, *Critical Perspective on Food Systems* (n 80) 14 [60].

93 'FAO Voluntary Guidelines' (n 70) 9 [1.2]; 'CFS Voluntary Guidelines' (n 79) 8–9 [48].

94 'FAO Voluntary Guidelines' (n 70) 6–7 [19].

95 *Ibid.*

96 'CFS Voluntary Guidelines' (n 79) 17 [56].

97 'FAO Voluntary Guidelines' (n 70) 6–7 [19], 16 [8.2]–[8.3]; *ibid* guideline 3.3.1(d), 22 [59].

98 Elver, *Critical Perspective on Food Systems* (n 80) 15 [65].

99 Fakhri, *Right to Food* (n 80) 14 [74].

100 'FAO Voluntary Guidelines' (n 70) 6–7 [19].

101 Fakhri, *Right to Food* (n 80) 14 [74].

Principle	Description
<b>Legality</b>	<p>Laws must be consistent with human rights, and individuals must be able to assert their rights.<sup>102</sup> This requires the adoption at a national level of laws, institutional structures and mechanisms to ensure that ICESCR rights, including the right to food, are recognised and justiciable (ie, legally enforceable), and that remedies are available when violations occur.<sup>103</sup> Restrictions on justiciability must be prevented.<sup>104</sup> While the specifics of each nation's governance approach will differ depending on local circumstances, fulfilment of human rights obligations at a domestic level requires:</p> <ol style="list-style-type: none"> <li>1. a legal structure to be put in place;</li> <li>2. implementation of a process resulting in outcomes compatible with human rights; and</li> <li>3. available remedies in the event the structure or the process falls short.<sup>105</sup></li> </ol>
<b>Dignity</b>	<p>The right to food is 'indivisibly linked to the inherent dignity of the human person'.<sup>106</sup> The duty to fulfill the right is not just about eliminating hunger and malnutrition; it extends to ensuring that everyone lives – and eats – with dignity.<sup>107</sup> This includes, inter alia, combating poverty and promoting social inclusion;<sup>108</sup> recognising and protecting the cultural values associated with diets;<sup>109</sup> and providing dignified food assistance that does not disempower or create shame.<sup>110</sup> Ultimately, dignity comes from being able to provide for oneself, not from being fed.<sup>111</sup></p>

Many of the principles are interlinked or have significant overlap. For example, the creation of a legal and regulatory framework (*legality*) provides avenues for holding the government to account (*accountability*); involvement in processes (*participation*) can allow individuals to affect system change (*empowerment*). Developing the framework showed us that governance of food relief cannot be considered in isolation from broader considerations around governance of food security, the right to food, and poverty more broadly. Thus, in the Appendix we

102 Elver, *Access to Justice and the Right to Food* (n 80) 9 [26]; Fakhri, *2021 Interim Report* (n 80) 6 [15]; Measuring What Matters Submission (n 82) 5 [13].

103 Elver, *Access to Justice and the Right to Food* (n 80) 9 [26], 9–10 [28]–[29], 20–1 [72]; *General Comment No 12* (n 1) 8 [32]–[33]; *Concluding Observations on the Fifth Periodic Report* (n 81) 2 [5]–[6].

104 Elver, *Access to Justice and the Right to Food* (n 80) 9 [26].

105 Boyle (n 82) 15.

106 *General Comment No 12* (n 1) 2 [4]. All human beings are born equal in dignity: *UDHR* (n 50) art 1. Human rights derive from the inherent dignity of the human person: *ICESCR* (n 49) Preamble.

107 Fakhri, *Right to Food* (n 80) 10 [51].

108 *Concluding Observations on the Fifth Periodic Report* (n 81) 8 [40].

109 'FAO Voluntary Guidelines' (n 70) 22 [10.10].

110 Booth (n 45) 15; Graham Riches, 'Food Banks and Food Security: Welfare Reform, Human Rights and Social Policy. Lessons from Canada?' (2002) 36(6) *Social Policy and Administration* 648, 650 <<https://doi.org/10.1111/1467-9515.00309>> ('Food Banks and Food Security'); Christina M Pollard and Sue Booth, 'Food Insecurity and Hunger in Rich Countries: It Is Time for Action against Inequality' (2019) 16(10) *International Journal of Environmental Research and Public Health* 1804:1–13, 5 <<https://doi.org/10.3390/ijerph16101804>>; Sue Booth and Jillian Whelan, 'Hungry for Change: The Food Banking Industry in Australia' (2014) 116(9) *British Food Journal* 1392, 1400 <<https://doi.org/10.1108/bfj-01-2014-0037>>.

111 Booth and Whelan (n 110) 1400.

have identified best practice examples that operationalise an effective HRBA to governance of food relief. These best practice examples are not exclusive and focus on food relief and food security in a high-income country context.

In addition to the specific principles of our framework, as outlined above, a HRBA to governance is based on all human rights being *interdependent*, *interrelated* and *indivisible*.<sup>112</sup> Our particular focus is on interdependence. To describe rights as interdependent means that ‘the enjoyment of any right or group of rights requires enjoyment of others – which may or may not be part of the same category’ (eg, civil and political rights versus ESC rights).<sup>113</sup> In this regard, the right to food is essential for the fulfilment of other human rights, and cannot itself be achieved without also addressing, for example, rights to social security, housing and health.<sup>114</sup> Analysis of the right to food under the HRBA in this paper will thus extend, at times, to consideration of other key human rights and associated initiatives.



Figure 1: PANELD – a human rights-based framework for analysis of food relief governance which includes dignity.

112 *Vienna Declaration and Programme of Action*, UN Doc A/CONF.157/23 (12 July 1993); Elver, *Critical Perspective on Food Systems* (n 80) 15 [64].

113 Daniel J Whelan, *Indivisible Human Rights: A History* (University of Pennsylvania Press, 2010) 3 <<https://doi.org/10.9783/9780812205404>>.

114 *General Comment No 12* (n 1) 2 [4]; Elver, *Critical Perspective on Food Systems* (n 80) 15 [64].

## IV FEDERAL GOVERNANCE ARRANGEMENTS FOR FOOD RELIEF

This Part presents findings from a human rights-based analysis of Commonwealth law and policy that intersects with food relief using the PANELD framework. It reveals the lack of an overall legal framework for the right to adequate food and food security, the absence of federal-level laws or policies dealing with food relief, and a reliance on the charitable sector as the main governance response. We also identified gaps in specific food standards, rules and practices regarding food donations. Finally, we found that food relief was brought into federal policies and policy discourse regarding food waste, which can be problematic for effectively addressing the two issues.

### A Gaps in the National Framework for the Right to Food and Food Security

Australia's governance approach to food security and the right to food at the national level has significant gaps. Australia has accepted obligations under international law to respect, protect and fulfil the right to adequate food, and these obligations should be incorporated (transformed) into our domestic legal order.<sup>115</sup> However, to date, Australia has failed to implement a domestic governance framework for the right to food which appropriately reflects its human rights obligations – food security and the right to adequate food ‘is not inscribed into Australian policy or law’.<sup>116</sup>

This regulatory gap in the right to food space does not exist in isolation; Australia's domestic legal framework with respect to human rights in general is patchy.<sup>117</sup> Australia has been proactive in ratifying rights treaties on the international stage but is wary of enshrining those rights in domestic legislation, an essential step in a dualist system.<sup>118</sup> Domenico Zipoli suggests that Australia's approach to protecting human rights is ‘Janus-faced’ – it champions human rights principles in the international sphere while resisting their full incorporation domestically.<sup>119</sup> This may be indicative of political attitudes in Australia that human rights are foreign or global norms with little suitability to local circumstances. Political leaders in Australia have historically taken the view that individual rights are adequately

115 *General Comment No 12* (n 1) 8 [33]. In Australia, the rights and obligations in an international treaty will only become part of domestic law if implementing legislation incorporates (transforms) its provisions: *Dietrich v The Queen* (1992) 177 CLR 292, 305 (Mason CJ, McHugh J); *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 286–7 (Mason CJ, Deane J).

116 Richards, Kjærnes and Vik (n 10) 68.

117 Domenico Zipoli, ‘The Australian National Human Rights System: An Overview’ in Bertrand Ramcharan et al (eds), *A Global Handbook on National Human Rights Protection Systems* (Brill Nijhoff, 2023) 385 <[https://doi.org/10.1163/9789004535053\\_017](https://doi.org/10.1163/9789004535053_017)>.

118 Ibid 387–8; Russell Solomon, *Australia's Engagement with Economic and Social Rights: A Case of Institutional Avoidance* (Palgrave Macmillan, 2021) 276 <<https://doi.org/10.1007/978-981-16-0033-3>>.

119 This leads to a ‘clear disconnect between Australia's legal obligations under ratified human rights treaties and national laws’: Zipoli (n 117) 411.

protected through the doctrine of responsible government; there is an underlying assumption that Parliament can be relied upon to provide the protections needed.<sup>120</sup>

The *Australian Constitution* has a structural focus. It defines the relationship between the Commonwealth and the states in a federal system, establishes fundamental legal principles, and creates governing institutions.<sup>121</sup> The *Constitution* pays scant attention to individuals; the nation's guiding legal document has 'little to say about the relationship between government and the governed'.<sup>122</sup> It does not contain a Bill of Rights, and there is very limited protection for a small number of fundamental rights, mainly relating to respecting rights (ie, protecting them from interference) rather than declaring them positively.<sup>123</sup> There are no constitutional provisions or protections specifically concerning the right to food, and Australia does not have a Charter of Rights in statutory form.<sup>124</sup> Australia does have a national human rights institution, the Australian Human Rights Commission ('AHRC'), but the rights contained in the *ICESCR* do not fall within the AHRC's jurisdiction, and as such, it cannot hear complaints with respect to the right to food.<sup>125</sup> There is also no pathway for individual complaints from Australian citizens regarding the right to food at the international level; Australia still needs to ratify the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, which establishes an individual complaints procedure for breaches of ESC rights to the CESCR.<sup>126</sup>

Consequently, individual rights-holders are disempowered; there is no recourse available to legal measures to hold government to account where there is a failure to fulfil the right to food. Neither the right to adequate food nor the broader right to an adequate standard of living was even mentioned in Australia's latest report to the CESCR on its implementation of *ICESCR* rights.<sup>127</sup> By contrast, civil and political rights do fall within the jurisdiction of the AHRC,<sup>128</sup> and Australia has ratified the *Optional Protocol to the International Covenant on Civil and Political*

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120 Ibid 386–7.

121 See John Pyke, *Government Powers under a Federal Constitution: Constitutional Law in Australia* (Lawbook, 1<sup>st</sup> ed, 2017) ch 4.

122 Chief Justice Robert French, 'Protecting Human Rights without a Bill of Rights' (2009) 43(3) *John Marshall Law Review* 769, 774.

123 Ibid 774–9; Australian Human Rights Commission, 'Free and Equal: A Human Rights Act for Australia' (Position Paper, December 2022) 11 <[https://humanrights.gov.au/sites/default/files/free\\_equal\\_hra\\_2022\\_-\\_main\\_report\\_rgb\\_0\\_0.pdf](https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf)> ('A Human Rights Act for Australia').

124 Australia is the only Commonwealth country without one: 'A Human Rights Act For Australia' (n 123) 7; French (n 122) 769.

125 *Australian Human Rights Commission Act 1986* (Cth) s 46A ('*AHRC Act*'). See also Zipoli (n 117) 403. The AHRC has 'long advocated for *ICESCR* to be given the same status in the *AHRC Act* as the other core human rights treaties': Rosalind Croucher, 'A New National Human Rights Framework for Australia' (Speech, Annual Castan Centre for Human Rights Law Conference, 21 July 2023) <<https://humanrights.gov.au/about/news/speeches/new-national-human-rights-framework-australia>>.

126 Office of the High Commissioner for Human Rights, 'Ratification of 18 International Human Rights Treaties', *Status of Ratification Interactive Dashboard* (Web Page) <<https://indicators.ohchr.org/>> ('Ratification of 18 Treaties').

127 Committee on Economic, Social and Cultural Rights, *Sixth Periodic Report Submitted by Australia under Articles 16 and 17 of the Covenant, Due in 2022*, UN Doc E/C.12/AUS/6 (20 November 2023).

128 Alongside several other human rights conventions: *AHRC Act* (n 125) schs 1–5.

*Rights*, allowing for individual complaints about breaches of the rights contained therein to the UN Human Rights Committee.<sup>129</sup>

There is also no Commonwealth framework law enshrining the right to food, nor any laws explicitly addressing national food security.<sup>130</sup> Australia does not have a national food security Act like, for example, India.<sup>131</sup> Australia does have a Parliamentary Joint Committee on Human Rights ('PJCHR'), established under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). However, the PJCHR only works on domestic legislative development; it has no direct engagement with international human rights instruments or mechanisms.<sup>132</sup> Further, the PJCHR can only assess a law once introduced; it does not comment on the *need* for a particular law in a specific sector.

In sum, with no domestic legal recognition or structure and no recourse to remedies, legality and accountability – critical components of the PANELD framework – are absent in Australia's right to food space. This situation contrasts with other countries, with the FAO estimating that approximately 23 countries explicitly recognise the right to food in their constitutions, while in a further 33 countries there is implicit recognition of the right to food in national constitutions.<sup>133</sup>

Gaps also exist at the policy level.<sup>134</sup> The Australian Government does not have a coordinated policy approach to governing our national food system, nor is there a clear policy platform directing the goal of individual and household food security and fulfilment of the right to food.<sup>135</sup> Australia's institutional structure for food policy may be described as the 'antithesis of a systems approach'.<sup>136</sup> No national

129 'Ratification of 18 Treaties' (n 126). Russell Solomon describes Australia's approach to the domestic implementation of its rights obligations under international law as 'something of a "light touch" ... with a focus on civil and political rights, representative government and a market economy': Solomon (n 118) 275.

130 There are currently seven principal federal laws in force with the word 'food' in their title. Five relate to imported food controls and charges, one is the *Food Standards Australia New Zealand Act 1991* (Cth) ('*Food Standards Act*'), and the other is the *United Nations Food and Agriculture Organization Act 1944* (Cth). Based on a search of Commonwealth laws conducted on 5 August 2024: *Federal Register of Legislation* (Website) <<https://www.legislation.gov.au/>>.

131 *National Food Security Act 2013* (India). The Act's long title is '[a]n Act to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto'.

132 Zipoli (n 117) 393.

133 Lidija Knuth and Margret Vidar, 'Constitutional and Legal Protection of the Right to Food around the World' (Study Paper, Food and Agriculture Organization of the United Nations, 2011) <<http://www.oda-alc.org/documents/1340937409.pdf>>.

134 *Australian Food Story* (n 4) 7 [2.2].

135 Ibid 13 [2.26]; Farmar-Bowers, Higgins and Millar, 'Food Security Problem' (n 15) 14; Commission for the Human Future, *The Need for Strategic Food Policy in Australia: Governing for a Healthy, Sustainable, Economically Viable and Resilient Food System* (Policy Report, June 2020) 2; 'National Food Security Strategy', *Foodbank* (Web Page) <<https://www.foodbank.org.au/national-food-security-strategy/>>.

136 Marion Nestle used this term to describe the US' approach to food policy. She also called it a system of 'regulatory fragmentation'. The US has a range of government agencies involved in overseeing food policies and programs, with some policies overseen by multiple agencies. Like Australia, there have been calls for a single food agency in the US: Marion Nestle, 'Food Politics and Policy' (17 July 2024) *Oxford Research Encyclopedias: Food Studies* 8 <<https://doi.org/10.1093/acrefore/9780197762530.013.19>>.

framework underpins food policy activity in Australia, and no single government department is responsible for coordinating it. A mapping exercise conducted in 2021 identified that at least 11 different federal government departments are involved in making food policy in Australia, with others having ancillary roles.<sup>137</sup> Those policies vary across diverse sectors, including agriculture, health, waste management, finance, food safety, consumer protection and social security.<sup>138</sup> The authors of that mapping exercise suggested that a unified food policy framework would ‘allow food-related activities and initiatives to be underpinned by the same set of goals and reduce the likelihood of policies/activities contradicting or undermining each other’.<sup>139</sup>

Their recommendation of developing a coordination mechanism and clear leadership from one federal department or agency was echoed by the Food Security Inquiry Committee, which recommended the creation of the role of Minister for Food, sitting within the Prime Minister and Cabinet portfolio.<sup>140</sup> Food relief was positioned as a sub-topic within this proposed coordinated approach. Food security and public health nutrition experts have similarly noted the need for a specific institution to take responsibility for the right to food.<sup>141</sup>

There is no national food security or right to food strategy in Australia. However, the federal government has declared an intention to develop a national strategy for food security in remote First Nations communities in partnership with state and territory governments.<sup>142</sup> In a discussion paper released to inform the First Nations food security strategy consultation process, a rights-based approach led by First Nations people was proposed to ‘better address the structural factors behind food insecurity, while removing stigma caused by ineffective frameworks that blame individuals’.<sup>143</sup> However, the discussion paper references the *Universal Declaration of Human Rights* and SDG Goal 2,<sup>144</sup> which do not impose legally binding obligations as such, and makes no mention of the *ICESCR*, which does.

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137 Pratibha Naudiyal et al, *Food Policy in Australia: The Role of Different Federal Government Organisations* (Report, December 2021) 4–5 <<https://www.sydney.edu.au/content/dam/corporate/documents/charles-perkins-centre/food-policy-in-australia-december-2021.pdf>>.

138 Ibid.

139 Ibid 3.

140 *Australian Food Story* (n 4) 21 [2.57].

141 Lindberg et al, ‘Revising a Right to Food Road Map’ (n 5) 3.

142 The strategy is in response to recommendation 10 of the parliamentary inquiry into food pricing and food security in remote Indigenous communities, and will be managed by the National Indigenous Australians Agency (‘NIAA’): Strategy Partners, ‘National Strategy for Food Security in Remote First Nations Communities’ (Discussion Paper, 2024) 4 <<https://www.niaa.gov.au/sites/default/files/documents/2024-06/food-security-discussion-paper-7-6-2024.pdf>> (‘Strategy Discussion Paper’). Consultations about the proposed strategy were held during the period May to August 2024, with 400 people participating in forums and discussions across 31 locations. More than 25 written submissions were received by the NIAA: National Indigenous Australians Agency, ‘National Strategy for Food Security in Remote Aboriginal and Torres Strait Islander Communities: 2025–2035’ (Strategy Paper, 2025) <[https://www.niaa.gov.au/sites/default/files/documents/2025-03/National-Strategy-for-Food-Security-in-Remote-Aboriginal-and-Torres-Strait-Islander-communities\\_0.pdf](https://www.niaa.gov.au/sites/default/files/documents/2025-03/National-Strategy-for-Food-Security-in-Remote-Aboriginal-and-Torres-Strait-Islander-communities_0.pdf)>. The results of the consultation are yet to be released at the time of writing.

143 ‘Strategy Discussion Paper’ (n 142) 5.

144 Ibid.

This indicates an ongoing failure to link *binding* human rights obligations with governance approaches.

## B Food Relief Governance

As with the broader governance framework for food security and the right to adequate food, significant gaps and issues exist specifically concerning food relief. There are no Commonwealth laws specifically addressing food relief in Australia, and no national food relief policy or plan, nor any public indication of an intention to develop one. This is at odds with food relief's current pivotal role in addressing food insecurity and further reflects a lack of legality and accountability in the system.

Responsibility for funding and coordinating emergency relief services, including food relief, is managed at the Commonwealth level by the Department of Social Services ('DSS').<sup>145</sup> The DSS funds three national food rescue and food banking organisations – OzHarvest, SecondBite and Foodbank – to ensure food items are available to an extensive network of emergency relief providers, which then directly deliver food support to individuals and households in need.<sup>146</sup> Grant information indicates the DSS provides millions of dollars in funding to these food relief organisations.<sup>147</sup> However, there appears to be no publicly available information about the existence of a DSS strategy or policy towards food relief grants, nor is there published information regarding the terms of the grants. Food relief was only briefly mentioned once in the DSS's most recent annual report – the report noted that the Department intends to 'provide Emergency Relief and Food Relief to Australian individuals and families' but provided no other information.<sup>148</sup> Hence, there is a significant lack of transparency in the government's approach to food relief, which is a vital component of the accountability principle under the PANELD framework.

Food safety is directly related to food adequacy, a key element of the right to food.<sup>149</sup> A HRBA requires people to have equal access to food that is safe for human consumption.<sup>150</sup> However, in Australia, food safety laws at the federal level lack clarity concerning food donated for the purposes of food relief. There is no explicit reference to donated foods in the *Australia New Zealand Food Standards Code* (Cth) ('*Food Standards Code*'),<sup>151</sup> which contains food standards enforced at

145 'Food Relief' (n 38).

146 Ibid.

147 This is done via a closed, non-competitive selection process to increase the access of emergency relief organisations to 'a cost-effective supply of food items': 'Grant Award View: GA325652-V4', *GrantConnect* (Web Page) <<https://www.grants.gov.au/Ga/Show/3483512b-18aa-4cbe-bffd-31ceda32d76e>> (SecondBite); 'Grant Award View: GA325653-V4', *GrantConnect* (Web Page) <<https://www.grants.gov.au/Ga/Show/dbc9a056-c9c9-4f00-b4c0-d039952a9c44>> (Oz Harvest Limited); 'Grant Award View: GA325654-V4', *GrantConnect* (Web Page) <<https://www.grants.gov.au/Ga/Show/616d2223-0a8e-477b-98dc-20728b135b16>> (Foodbank Australia Limited).

148 Department of Social Services (Cth), *Annual Report 2022–23* (Report, 2023) 3 <[https://www.aph.gov.au/Parliamentary\\_Business/Tabled\\_Documents/3928](https://www.aph.gov.au/Parliamentary_Business/Tabled_Documents/3928)>.

149 'The Right to Adequate Food' (n 57) 3.

150 'CFS Voluntary Guidelines' (n 79) 17 [56].

151 The Code comprises a series of standards passed as legislative instruments: *Food Standards Act* (n 130) s 94. The standards are read together as a single instrument: *Australia New Zealand Food Standards Code* (Cth)

state and territory levels, and no other federal laws regulate food donation safety.<sup>152</sup> Whether food rescue organisations are captured as a ‘food business’ under the *Food Standards Code* is not clear.<sup>153</sup> Compliance with the Code’s provisions by donors when donating food is presumed, but not explicit.<sup>154</sup> The lack of governance around donated food safety creates ‘a fragmented approach’ to the charitable food system compared with the mainstream food supply chain.<sup>155</sup> Australia is not unique in this regard; the divergence in control management practices for food donated for relief purposes is a problem that has been observed internationally.<sup>156</sup>

This lack of regulation regarding food safety in a food relief context is problematic as there are documented safety issues relating to food relief donations in Australia. Research has shown that supermarkets are the main source of food donated to food banks which is categorised as unsuitable, potentially unsafe and unsafe (‘UUP’). In one study, supermarkets were responsible for 90% of UUP donations received by a food bank.<sup>157</sup> Decisions about food donations by retailers may be largely informal and inconsistent.<sup>158</sup> In this regard, there appears to be a power imbalance between food relief organisations and large food businesses and supermarkets,<sup>159</sup> with the former relying on the latter with little to no control over the supply chain or its quality. A HRBA requires Australia to address such power imbalances which undermine good governance and threaten the health of rights holders.<sup>160</sup> Further, judgments about the safety of donated food received by food relief agencies are generally made by workers (usually volunteers) with limited training and knowledge of food safety.<sup>161</sup> Decisions to keep or reject donated food are based on aesthetics, not scientific methods of testing or analysis.<sup>162</sup>

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standard 1.1.1–2(1) (‘*Food Standards Code*’). The Code is enforced under application Acts in each state and territory, and under Commonwealth legislation for imported food: at standard 1.1.1, div 4, note 1.

152 Note that civil liability protections for donated foods are dealt with at the state and territory level – this is not enacted at the Commonwealth level: Joseph S Beckmann et al, *Australia: Legal Guide, Food Donation Law and Policy* (Report, June 2022) 8–10 <<https://atlas.foodbanking.org/wp-content/uploads/2023/11/Australia-Legal-Guide-6.22.22.pdf>>.

153 Ibid 8.

154 Ibid.

155 Mossenson et al (n 23) 3.

156 A global scoping review on controls in charitable food relief programs found divergence between food control management by the conventional food supply chain compared with that of food relief, and gaps in legislation governing food relief programs to ensure food safety and general hygiene. Food relief practice was described as ‘a detour from the conventional food supply chain’, and that ‘in matters of food control, food safety, and general hygiene [it] is often overlooked by the food safety regulatory authorities’: Sizwe Makhunga et al, ‘Evidence on Food Control in Charitable Food Assistance Programs: A Systematic Scoping Review’ [2019] 8 *Systematic Reviews* 240:1–8, 5 <<https://doi.org/10.1186/s13643-019-1164-8>>.

157 A five-day audit of food donated to an Australian food bank in 2023 found that 38% of all donations had products categorised as unsafe or unsuitable, accounting for 4% by weight of the total donations received. Supermarkets were responsible for 67% of all donations containing products categorised as UUP, making up 90% of the total weight of UUP donations received. In one instance, 300 kilograms of salami was donated four months past its use-by date: Mossenson et al (n 23) 5.

158 Ibid 2.

159 Ibid.

160 Elver, *Critical Perspective on Food Systems* (n 80) 15 [65].

161 Mossenson et al (n 23) 8.

162 Makhunga et al (n 156) 5.

Consequently, current donation and receiving practices could threaten the health of vulnerable clients who are already more susceptible to foodborne illnesses.<sup>163</sup> Sharona Mossenson et al note the ‘urgent need’ for food safety guidance to protect food banks from UUP food which poses a risk to their clients.<sup>164</sup>

Despite these gaps and risks, the regulatory approach seems to be less about ensuring the activities of market players and civil society conform with the right to food and providing safe food<sup>165</sup> and more about encouraging a greater volume of food donations from businesses. In reflection of this, a Bill has been introduced to the Commonwealth Parliament that provides tax incentives for businesses donating to food relief.<sup>166</sup> While the primary purpose is to facilitate donations, the Bill does contain a proviso that tax offsets are only available in relation to food that is ‘fit for human consumption’.<sup>167</sup> However, it does not specify any further details in this regard.<sup>168</sup> This emphasis on the volume of donations makes sense given the reliance on voluntary food donations to address food insecurity in Australia (as opposed to State-based approaches), but it carries the risk of undermining the adequacy of food in the sense of safety and potentially nutrition.

While specific policies regarding food relief are lacking, food relief is commonly mentioned in policies and policy discourse related to food waste. Thus, Australia has closely linked the problem of food wastage with food relief. Australia has a National Food Waste Strategy, which emphasises that wasted or surplus food can

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163 Mossenson et al (n 23) 7.

164 Ibid.

165 *General Comment No 12* (n 1) 7 [27]; Fakhri, *Food System Recovery* (n 80) 16–17 [76]–[79]; ‘FAO Voluntary Guidelines’ (n 70) 13 [4.3].

166 Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024 (Cth) (‘Tax Laws Amendment Bill’). The Bill introduces a tax offset for companies that are constitutional corporations for certain expenditure incurred in undertaking food donation activities for registered food charities: Explanatory Memorandum, Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024 (Cth). The Bill was referred to the Senate Economics Legislation Committee for inquiry, which received 63 submissions. The Bill is strongly supported by the food relief sector and Australian food industry: see, eg, Foodbank, OzHarvest and SecondBite, Submission No 43 to Senate Standing Committee on Economics, Parliament of Australia, *Inquiry into Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024* (27 August 2024); Australian Food and Grocery Council, Submission No 6 to Senate Standing Committee on Economics, Parliament of Australia, *Inquiry into Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024* (20 August 2024); Mars Food & Nutrition Australia, Submission No 59 to Senate Standing Committee on Economics, Parliament of Australia, *Inquiry into Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024* (31 July 2024). Food security researchers, by contrast, provide cautious and caveated support. They acknowledge the need for broader policy instruments that address individual and household food security beyond food relief (eg, poverty alleviation and social protection measures, and sustainable food systems initiatives). They also insist on recognising that redirecting corporate food waste is not alone a solution to food insecurity: see, eg, Centre for Social Impact, Flinders University, Submission No 7 to Senate Standing Committee on Economics, Parliament of Australia, *Inquiry into Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024* (20 August 2024); Rebecca Lindberg et al, Submission No 15 to Senate Standing Committee on Economics, Parliament of Australia, *Inquiry into Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024* (20 August 2024).

167 This was in the suggested addition of section 419-15(1)(a) to the *Income Tax Act 1977* (Cth): Tax Laws Amendment Bill (n 166) sch 1 pt 1 item 1.

168 Ibid.

relieve food insecurity through its redistribution.<sup>169</sup> The strategy positions the food industry as responsible for donating food that would otherwise be wasted to food rescue organisations and commends these organisations for their partnerships in contributing to action on food waste.<sup>170</sup> This melding of food waste with food relief was also reflected in the Food Security Inquiry's report, which concluded that '[b]etter connecting vulnerable food consumers with the supply chain through food donation' is one way to better manage food waste.<sup>171</sup> We discuss the implications of this approach further in Part VI.

In the absence of concrete food security and food relief laws and policies, considering Australia's social security practices becomes particularly relevant for assessing whether the government is strengthening food security and people's access to the resources and means to ensure it.<sup>172</sup> In line with the key human rights concept of interdependence, as outlined above, the right to social security can be an essential contributor to the realisation of other ESC rights, such as the right to food.<sup>173</sup> Human rights require social security benefits to be adequate in amount and duration so that everyone can realise their right to an adequate standard of living.<sup>174</sup> However, high levels of poverty among households reliant on social security payments in Australia are primarily because those payments mostly sit below the poverty line; the base rate of many social security payments is too low to sustain an adequate standard of living.<sup>175</sup>

As a result, many individuals receiving social assistance payments, such as job seekers, students, people with disabilities and carers, have been shown to have higher rates of food insecurity and to be at significantly higher risk of food insecurity than the general population.<sup>176</sup> Increases in costs of living have further

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169 Department of the Environment and Energy (Cth), *National Food Waste Strategy: Halving Australia's Food Waste by 2030* (Report, November 2017) 7 <<https://www.dceew.gov.au/sites/default/files/documents/national-food-waste-strategy.pdf>>.

170 *Ibid* 12–13.

171 *Australian Food Story* (n 4) iii–v.

172 Social security is of fundamental importance for human dignity, and can play a crucial role in alleviating poverty and promoting social inclusion: Committee on Economic, Social and Cultural Rights, *General Comment No 19: The Right to Social Security (Art 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008, adopted 23 November 2007) 2 [3], 12–13 [41] ('*General Comment No 19*').

173 *Ibid* 9 [28]. The right to social security is recognised in the *UDHR* (n 50) and enshrined in a range of other human rights treaties: *ICESCR* (n 49) art 9; *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 5(e)(iv); *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 11(1)(e).

174 *General Comment No 19* (n 172) 7 [22].

175 Ben Phillips and Vivikth Narayanan, 'Financial Stress and Social Security Settings in Australia' (Research Paper, Australian National University Centre for Social Research and Methods, April 2021) 1 <<https://csrcm.cass.anu.edu.au/research/publications/financial-stress-and-social-security-settings-australia>>; Peter Davidson, Bruce Bradbury and Melissa Wong, *Poverty in Australia 2023: Who Is Affected* (Report, March 2023) 48 <[https://povertyandinequality.acoss.org.au/wp-content/uploads/2023/03/Poverty-in-Australia-2023\\_Who-is-affected.pdf](https://povertyandinequality.acoss.org.au/wp-content/uploads/2023/03/Poverty-in-Australia-2023_Who-is-affected.pdf)>; Australian Council of Social Service, Submission No 23 to Senate Select Committee on the Cost of Living, Parliament of Australia, *Inquiry into the Extent and Nature of Poverty in Australia* (February 2023) 3.

176 Temple, Booth and Pollard (n 14) 5–6; Kleve et al (n 87) 6.

exacerbated food insecurity because they have not been matched by commensurate increases in social security payments,<sup>177</sup> nor are factors like higher food costs in remote locations adequately provided for.<sup>178</sup> Notably, poverty decreased sharply when the Australian Government increased and introduced income support payments in the fourth quarter of 2019–20 because of the COVID-19 pandemic.<sup>179</sup>

## V STATE-LEVEL GOVERNANCE ARRANGEMENTS FOR FOOD RELIEF

### A The Queensland Approach to Food Relief

#### 1 *Lack of a State-Based Framework for the Right to Food and Food Security*

As in other states and territories in Australia, Queensland's *Constitution* does not expressly provide for human rights.<sup>180</sup> Queensland does have a statutory human rights charter, the *Human Rights Act 2019* (Qld) ('*Qld HRA*'), which has been in force since 2020 and is based on the dialogue model of human rights protections.<sup>181</sup> However, the Act focuses on civil and political rights, with only 2 out of 23 recognised rights drawn from the *ICESCR*, neither being the right to food.<sup>182</sup> The Queensland Human Rights Commission's jurisdiction under the *Qld*

177 Richards, Kjærnes and Vik (n 10) 65, 68.

178 'Strategy Discussion Paper' (n 142) 45; National Indigenous Australians Agency, Supplementary Submission No 36.1 to House Standing Committee on Indigenous Affairs, Parliament of Australia, *Inquiry into Food Pricing and Food Security in Remote Indigenous Communities* (23 July 2020) 2; Northern Territory Government, *Northern Territory Market Basket Survey 2021* (Summary Report, 1 July 2022) 4 <<https://digitallibrary.health.nt.gov.au/nthealthserver/api/core/bitstreams/32568ab8-d6f3-41c9-bd03-13b613b4b01b/content>>.

179 Davidson, Bradbury and Wong (n 175) 20. Similarly, food insecurity declined dramatically in the US during the peak of COVID-19 with temporarily expanded government relief payments (eg, the Child Tax Credit and Pandemic-EBT) and enhanced access to food relief programs, including the Supplemental Nutrition Assistance Program and school meals. By 2021, with additional support measures in place, levels of food insecurity were the lowest on record since 1998. When most of these additional support measures were terminated at the end of 2022, food insecurity increased again sharply: Diane Schanzenbach, 'The Pandemic Drop in Food Insecurity among Families with Children', *Econofact* (online, 13 October 2022) <<https://econofact.org/the-pandemic-drop-in-food-insecurity-among-households-with-children>>; Nestle (n 136) 14.

180 *Constitution Act 1867* (Qld); *Constitution Act Amendment Act 1934* (Qld); *Constitution of Queensland 2001* (Qld).

181 The dialogue model is aimed at prevention rather than litigation and retains the sovereignty of Parliament. The courts can inform the government if legislation is inconsistent with human rights, but the courts cannot invalidate legislation. The model provides for each arm of government to have a distinct role to play in relation to human rights, with a dialogue between them: Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) 165–7 [7.3]–[7.6] <[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc\\_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf)>; 'The Role of Parliament', *Queensland Human Rights Commission* (Web Page, 29 June 2019) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/the-role-of-parliament>>.

182 The right to education is found in section 36, and the right to health services in section 37: *Human Rights Act 2019* (Qld) ('*Qld HRA*'). See also 'Human Rights', *Queensland Human Rights Commission* (Web Page, 21 September 2021) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law>>. Although

*HRA* is limited to the rights contained therein and thus does not extend to the right to food.<sup>183</sup> Similar to the federal level, human rights-based legislative responses to the right to food are absent.

Consistent with the federal approach, Queensland has no laws that directly manage or provide for food security or food relief.<sup>184</sup> Queensland does not have one single overarching food security strategy or policy. However, a range of current and former initiatives directly relate to, or, more commonly, touch on or are ancillary to, food security.<sup>185</sup> These initiatives are managed by different government portfolios such as health and agriculture. While food security is sometimes mentioned briefly within policies, on the whole, the weight of potentially relevant policies regarding food security and the right to food are focused on agriculture and economic benefits to the State. For example, the ‘Queensland Food and Fibre Policy’ focuses

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section 37 is based on article 12 of the *ICESCR* (n 49), it ‘is not intended to encompass rights in relation to underlying determinants of health, such as food and water, social security, housing and environmental factors’: Explanatory Notes, Human Rights Bill 2018 (Qld) 28.

183 *Qld HRA* (n 182) pt 2 divs 1–2. The Commission can support the resolution of disputes through dispute resolution procedures (eg, conciliation), but it is not empowered to make binding rulings about complaints, nor is it an enforcement body: ‘About Us’, *Queensland Human Rights Commission* (Web Page, 28 June 2019) <<https://www.qhrc.qld.gov.au/about-us>>.

184 Queensland has only two current laws with the word ‘food’ in their title: the *Food Act 2006* (Qld) (*‘Qld Food Act’*) and the *Food Production (Safety) Act 2000* (Qld) (*‘Qld Food Production Act’*). Neither law mentions food security, food relief, food aid, food assistance or food donation. The purposes of the *Qld Food Act* (n 184) are to ensure food for sale is safe and suitable for human consumption, to prevent misleading conduct relating to the sale of food, and to apply the *Food Standards Code* (n 151): *Qld Food Act* (n 184) s 8. The objects of the *Qld Food Production Act* (n 184) are to establish Safe Food Production QLD, to ensure the production of primary produce makes food fit for human or animal consumption and maintains food quality, and to provide for food safety measures for primary produce production consistent with other Queensland laws: at s 3.

185 See, eg, The Queensland Plan, released in 2014 as the State’s ‘aspirational ... vision’ for its community over the next 30 years: Queensland Government, ‘The Queensland Plan: Queenslanders’ 30-Year Vision’ (Strategy Paper, 2014) iii. Food security and food aid are implicitly – though not explicitly – referenced within Goal 5, ‘[i]n Queensland nobody gets left behind’, and Goal 16, ‘[w]e are physically and mentally healthy’, of the plan’s 35 total goals: at 4–5. The current Department of Primary Industries (‘DPI’) strategic plan for 2024–28 outlines ‘leading global food security and sustainability’ as its vision. Respecting human rights is listed as one of the DPI’s six values in the plan, but it makes no specific mention of the right to food: Department of Primary Industries (Qld), ‘Strategic Plan 2024–2028’ (Strategy Paper, April 2025) <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/7487166b-5be7-4713-8300-c020853d7674/dpi-strategic-plan-2024-2028.pdf>>. The ‘Queensland AgTech Roadmap: 2023–2028’ focuses on accelerating agricultural technology innovation and adoption in Queensland and claims that food security in Queensland, Australia and the world will be strengthened by ‘[t]he accelerated adoption of AgTech along the value chain’: Queensland Government, ‘Queensland AgTech Roadmap: 2023–2028’ (Roadmap, October 2023) 11. Various food industry plans or strategies have been introduced in the State over the past 15 years from both sides of the political divide. For example, the Labor Government launched ‘Food for a Growing Economy’ as a food industry plan in 2011, only for it to be replaced shortly after that by the new Liberal–National Coalition Government’s ‘Queensland’s Agriculture Strategy: A 2040 Vision to Double Agricultural Production’. The former only briefly touched on food security, while the latter did not mention food security at all; both focused on the economic benefits of agriculture as ‘a pillar of the Queensland economy’. Neither made any mention of the right to food: Department of Employment, Economic Development and Innovation (Qld), ‘Food for a Growing Economy: An Economic Development Framework for the Queensland Food Industry’ (Draft Policy Framework, 2011); Department of Agriculture, Fisheries and Forestry (Qld), ‘Queensland’s Agriculture Strategy: A 2040 Vision to Double Agricultural Production’ (Strategy Paper, 2013).

on the economic contributions of the food and fibre sectors, aiming to increase ‘productivity and prosperity, and drive long-term job creation in regional and rural Queensland’.<sup>186</sup> It makes no mention of food security. Similarly, the newly released ‘Queensland Biosecurity Strategy 2024–2029’ states that contributing to Queensland’s food security is one of its goals, though it does not thereafter mention food security and makes no mention of the right to food.<sup>187</sup> This emphasis is consistent with research on food policy discourse, which shows that food security tends to be interpreted in ways that focus on increasing agricultural production instead of food access.<sup>188</sup>

One Queensland food policy that does have a focus on human rights is the new ‘Gather + Grow 2023–2032: Queensland Remote Food Security Strategy’, which aims to change systems to improve food security in remote Aboriginal and Torres Strait Islander communities in the State.<sup>189</sup> The framework recognises the human right to adequate food and the components of food security and is guided by key principles such as equity, community-centring and respect.<sup>190</sup> However, this policy, like the other initiatives, is not based in law and does not provide for enforceable rights. There is no justiciable pathway of action for Queenslanders to uphold or enforce their right to food. As at the federal level, fulfilment of the right to food in accordance with key PANELD principles like legality and accountability is missing in Queensland.

## 2 Food Relief Governance

The structure of food relief in Queensland tends to mirror the federal level. There is no specific law governing food relief, nor is there a policy guiding food relief initiatives in the State. Similar to the federal response, this lack of food relief regulation is an issue from a human rights perspective because there is no formal process in which rights-holders can participate and be heard, no mechanism available to hold government to account, and no recourse to remedies when rights are not fulfilled. Where there is no development of law and policy, the PANELD principles are not met.

One exception where the law does touch on food relief is the *Civil Liability Act 2003* (Qld), which contains ‘Good Samaritan’ protections against civil liability for donors in certain circumstances where harm results from the consumption of

186 Department of Agriculture and Fisheries (Qld), ‘Queensland Food and Fibre Policy’ (Policy Paper, 31 July 2015) 6.

187 Department of Primary Industries (Qld), ‘Queensland Biosecurity Strategy 2024–2029’ (Strategy Paper, 2024) <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/e3869c8e-55b6-4578-95f2-43b4dbaeeb97/qld-biosecurity-strategy.pdf>>.

188 See, eg, Isobel Tomlinson, ‘Doubling Food Production to Feed the 9 Billion: A Critical Perspective on a Key Discourse of Food Security in the UK’ (2013) 29 *Journal of Rural Studies* 81 <<https://doi.org/10.1016/j.jrurstud.2011.09.001>>; Sheehy and Chen (n 5) 638–42.

189 Health and Wellbeing Queensland, ‘Gather + Grow 2023–2032: Queensland Remote Food Security Strategy’ (Strategy Paper, October 2023) <<https://hw.qld.gov.au/wp-content/uploads/2024/05/Gather-Grow-Strategy-2023-2032.pdf>>.

190 Ibid 14.

donated food.<sup>191</sup> Research discussed prior shows that supermarkets are the main source of UUP food donated to food banks, so the practical application of this exception to food businesses would require close examination. Like several other states and territories in Australia, this law only protects food donors – it does not protect from liability the organisations that receive and distribute the donated food.<sup>192</sup> This may be problematic from the perspective of enabling food relief organisations because it means commercial donors are protected from private causes of action while charities are not.

Importantly, the inclusion of donated foods in civil liability protections raises broader tensions from a human rights perspective. On the one hand, food insecure people currently rely on food relief to meet immediate needs, while food relief relies on donations, and corporate donors may only engage in voluntary food donation schemes if legal risks are assessed as acceptable. On the other hand, a HRBA requires that food insecurity be treated as a rights-based issue, not a charitable one. The PANELD principles dictate that individuals must be able to assert their rights, that restrictions on doing so must be prevented, and that remedies must be available when rights are not met (such as in the case of unsafe food).<sup>193</sup>

The Queensland Government does not appear to conduct food insecurity monitoring or data collection state-wide. Measuring and assessing the degree of food insecurity and its causes in the population is one example of best practice under the PANELD framework because it provides an evidence base for policy action to fulfil the right to food.<sup>194</sup> Perhaps because there is no government-led data collection and no regulation, combined with the geography of the state and its social demographic composition, access to food relief is highly unequal in Queensland. There are limited services offering food relief in Northern and Central Queensland compared to South-East Queensland, even though data collected by civil society indicates people in those regions are, on average, 20% more likely to experience food insecurity than the rest of Queensland combined.<sup>195</sup>

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191 *Civil Liability Act 2003* (Qld) ss 38A–38C (*'Qld CLA'*). See also Beckmann et al (n 152) 18.

192 *Qld CLA* (n 191) s 38A. The laws of Victoria, WA, the Northern Territory and the Australian Capital Territory (*'ACT'*) also exclude agencies that distribute food donated by others from civil liability protection: Beckmann et al (n 152) 10.

193 Elver, *Access to Justice and the Right to Food* (n 80) 9 [26]; Boyle (n 82) 15.

194 This should include disaggregated analysis on the food insecurity and vulnerability of different groups in society: *'FAO Voluntary Guidelines'* (n 70) 10 [2.2], 30 [17.5].

195 A study by the McKell Institute found that every central and northern state electorate is in the worst half of the State for food insecurity while the most advantaged electorates are in the south-east corner of the State: Rachel Nolan and Esther Rajadurai, McKell Institute Queensland, *Mapping Food Insecurity: An Index for Central and North Queensland* (Report, July 2020) 31 <<https://mckellinstitute.org.au/research/reports/mapping-food-insecurity/>>. Another study of five remote Torres Strait Islander communities found that 'recommended diets' would be unaffordable for households on median income, costing 35% of gross income, and for those on welfare, 48% of disposable income, compared to Greater Brisbane, where the recommended diet would cost 21% of the gross income of households on median income and 36% of the disposable income of welfare-only income households: Amanda J Lee et al, 'Cost and Affordability of Healthy, Equitable and More Sustainable Diets in the Torres Strait Islands' (2022) 46(3) *Australian and New Zealand Journal of Public Health* 340, 342 <<https://doi.org/10.1111/1753-6405.13225>>.

The federal and state governments fund food relief services where they do exist in Queensland.<sup>196</sup> The State Government's primary funding is through its Emergency Relief Program, which is delivered by not-for-profit emergency relief providers that provide financial and material support to Queenslanders in financial crisis. The government itself is not involved in direct service delivery. There are 179 NGOs across the State that people can contact for assistance.<sup>197</sup> Available services from those organisations include vouchers for food and the provision of food parcels.<sup>198</sup> In the budget for 2024–25, in response to 'unprecedented cost-of-living pressures',<sup>199</sup> the Queensland Government dedicated an additional almost \$9 million to not-for-profit food relief initiatives, including \$2.8 million to Foodbank Queensland over four years to establish operations in Townsville and expand its existing Brisbane operations.<sup>200</sup> As Townsville is in North Queensland, this funding may help address inequalities in access to food relief.

In Queensland, as at the federal level, food relief and food waste initiatives are closely intertwined. In addition to the government's funding for food relief, it also funds food rescue initiatives to contribute to its 'Waste Management and Resource Recovery Strategy'<sup>201</sup> and its Queensland Organics Strategy.<sup>202</sup> The government's Food Rescue Grant Program gives grants to not-for-profit organisations to cover costs associated with diverting surplus food from landfill and redistributing it.<sup>203</sup>

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196 Nolan and Rajadurai (n 195) 21.

197 'Emergency Relief Program', *Queensland Government* (Web Page, 28 March 2025) <<https://www.qld.gov.au/community/cost-of-living-support/emergency-relief-program>>.

198 Ibid.

199 Steven Miles and Leeanne Enoch, 'Miles Doing What Matters: Budget Backs Bigger, Better Foodbank for Queenslanders in Need' (Media Statement, 23 June 2024) <<https://statements.qld.gov.au/statements/100664>>.

200 Ibid.

201 Queensland Government, 'Waste Management and Resource Recovery Strategy' (Strategy Paper, July 2019) <[https://www.qld.gov.au/\\_data/assets/pdf\\_file/0028/103798/qld-waste-management-resource-recovery-strategy.pdf](https://www.qld.gov.au/_data/assets/pdf_file/0028/103798/qld-waste-management-resource-recovery-strategy.pdf)>.

202 The Queensland Organics Strategy states that organic materials are a valuable resource that can be used to reduce food insecurity, and 'there is an urgent need to improve and increase the diversion of edible food to people in need': Office of Resource Recovery, Department of Environment and Science (Qld), 'Queensland Organics Strategy 2022–2032: A Strategy to Improve the Management of Organic Materials along the Organics Supply and Consumption Chain' (Strategy Paper, February 2022) 9 <[https://www.qld.gov.au/\\_data/assets/pdf\\_file/0024/240747/organics-strategy-2022-2032.pdf](https://www.qld.gov.au/_data/assets/pdf_file/0024/240747/organics-strategy-2022-2032.pdf)>. The strategy aims to 'improve food security through increased and effective redistribution of food to Queenslanders in need': at 12. The 'Queensland Organics Action Plan 2022–2032' has several action points relating to food rescue, including increasing food rescue capacity by providing ongoing funding to food rescue organisations to divert food from landfill and redistribute it to Queenslanders in need; exploring opportunities to increase connections between food rescue organisations, businesses and recipients to increase the diversion of surplus edible food; and identifying financial instruments that could encourage greater participation in food donation programs: Office of Resource Recovery, Department of Environment and Science (Qld), 'Queensland Organics Action Plan 2022–2032' (Strategy Paper, February 2022) <[https://www.qld.gov.au/\\_data/assets/pdf\\_file/0023/240746/organics-action-plan.pdf](https://www.qld.gov.au/_data/assets/pdf_file/0023/240746/organics-action-plan.pdf)>.

203 The objectives of the Food Rescue Grant program are twofold – to '[i]ncrease the diversion of food waste from landfill in Queensland to assist in meeting the actions and objectives of the Organics Strategy' and to '[s]upport food rescue organisations to increase their capacity to rescue more food and provide it to Queenslanders in need': Queensland Government, 'Food Rescue Grants: Round 2 Program Guidelines' (Guidelines, November 2022) 2. In 2020, Round 1 of the Food Rescue Grant Program provided over

The 10 organisations listed as receiving funds in Round 2 of the Food Rescue Grant Program are all based in South-East Queensland – nine within the Greater Brisbane area and one in Toowoomba.<sup>204</sup> None are in Central or Northern Queensland. Given the under-developed nature of food relief services in rural and remote Queensland, this raises human rights concerns from an equality and non-discrimination perspective.

Schools are increasingly active in the food relief space in Queensland via the School and Community Food Relief Program (‘SCFRP’), with funding support provided by the Queensland Government for school breakfast and lunch food programs.<sup>205</sup> Dignified access to nutritious, free school meals is strongly supported by human rights, where accompanied by broader initiatives to address underlying causes of food insecurity.<sup>206</sup> An additional \$15 million in funding was included in the 2024–25 state budget for the SCFRP and the establishment of a School and Community Food Taskforce to provide advice on options to support Queensland families’ access to healthy food and drink.<sup>207</sup> A recent change of government following the October 2024 State election may impact all of these food relief funding initiatives.

## B Analysis: The SA Approach

Compared with Queensland, SA takes a more coordinated and evidence-based approach to managing food insecurity and food relief services that is better aligned with the PANELD principles. Our analysis below indicates that while there are aspects to develop further, the SA approach has greater capacity to ensure dignity

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\$900,000 to six organisations: at 1. In 2022–24, Round 2 offered individual grants of up to \$500,000 for ‘infrastructure, equipment and operational costs to divert additional food from landfill and redistribute it to Queenslanders in need’: ‘Food Rescue Grant Program’ (n 39). Examples of initiatives funded under Round 2 of the program include \$491,639 to SecondBite in Brisbane for upgrading freezer infrastructure and purchasing a truck for distribution of meals; \$486,035 to Twin Rivers Community Care in Logan to expand leased storage and shop space; and \$408,096 to Foodbank Queensland in Brisbane to purchase a refrigerated vehicle and upgrade their coldroom: Annastacia Palaszczuk and Meaghan Scanlon, ‘Food Rescue Helps People in Need and Saves Food from Landfill’ (Media Statement, 15 March 2023) <<https://statements.qld.gov.au/statements/97371>>.

204 Palaszczuk and Scanlon (n 203).

205 In 2023, the Queensland Government funded 861 schools for school food programs for their students. Grants were also paid to external organisations to deliver school food programs across the State: ‘School Food Programs’, *Queensland Department of Education* (Web Page, 11 October 2024) <<https://web.archive.org/web/20250116184908/https://education.qld.gov.au/students/student-health-safety-wellbeing/student-health/school-food-programs>>.

206 ‘CFS Voluntary Guidelines’ (n 79) guideline 3.3.2; Fakhri, *2021 Interim Report* (n 80) 23–4 [93]; ‘Strategy Discussion Paper’ (n 142) 26.

207 Steven Miles et al, ‘Tip-Top Announcement for Queensland Kids: State Budget to Fund Food Relief’ (Media Statement, 30 May 2024) <<https://statements.qld.gov.au/statements/100434>>. The SCFRP is aligned with the ‘Smart Choices: Healthy Food and Drink Supply Strategy for Queensland Schools’, a traffic-light guide for schools based on the Australian Dietary Guidelines, the National Healthy School Canteens Guidelines and the Australian Guide to Healthy Eating, to ensure that any food and drinks provided in the school environment are healthy: Department of Education (Qld), ‘Smart Choices: Healthy Food and Drink Supply Strategy for Queensland Schools’ (Strategy Paper, January 2020) 3 <<https://education.qld.gov.au/student/Documents/smart-choices-strategy.pdf>>.

for food relief participants and to address necessary structural change towards reducing the need for people to rely on food relief in the first place.

### ***1 The State-Based Framework for the Right to Food and Food Security***

As in Queensland and other jurisdictions in Australia, the *Constitution of SA* does not expressly recognise or protect human rights as a body of rights in general.<sup>208</sup> Attempts to introduce a state-based statutory human rights charter (and an associated human rights commission) have yet to be successful.<sup>209</sup> However, the State is now exploring the feasibility of introducing a formal human rights scheme governed by a Human Rights Act.<sup>210</sup> If it proceeds, SA will become the fourth state or territory jurisdiction to have a statutory human rights charter in Australia, after the Australian Capital Territory, Queensland and Victoria.<sup>211</sup> If it follows the lead of those that came before it, there will be few, if any, ESC rights in the SA Act, and no enshrinement of the right to food.<sup>212</sup>

SA does not have a food security framework law, reflecting the same deficiency in legality and accountability under the PANELD framework as Queensland and the Commonwealth. As in other state and territory jurisdictions, the *Food Act 2001* (SA) and its associated regulations focus on food safety and suitability; they do not mention food security.<sup>213</sup> However, SA is progressing towards a food security strategy or policy. The government's Secure Food Systems project is underway to develop an evidence-informed response to food insecurity in the State. The process includes extensive community and lived experience consultation.<sup>214</sup> The government

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208 Though it notably does enshrine certain rights, such as the right of women to vote and to stand for election: *Constitution Act 1934* (SA) ss 48–48A.

209 For example, the Charter of Human Rights and Responsibilities Bill 2020 (SA), introduced by former Greens parliamentarian the Hon Mark Parnell, lapsed without a second reading. See also Sarah Moulds and Mark Knight, 'Legislating for Human Security: Could South Australia Lead the Way Again?' (2023) 48(1) *Alternative Law Journal* 38, 39 <<https://doi.org/10.1177/1037969X221149124>>.

210 In December 2023, the Social Development Committee of the SA Parliament announced an inquiry into the potential for a Human Rights Act for the State. The Committee has recently released its report and recommendations: Social Development Committee, Parliament of South Australia, *Inquiry into the Potential for a Human Rights Act for South Australia* (Report No 49, 29 April 2025).

211 *Human Rights Act 2004* (ACT); *Qld HRA* (n 182) *Charter of Human Rights and Responsibilities Act 2006* (Vic).

212 The three existing state-based laws are focused on civil and political rights, with limited ESC rights. The Queensland Act enshrines health and education rights. The ACT Act formalises education and work rights. The Victorian Act includes the right to freedom from forced work. All three recognise a general right to culture. They are otherwise silent as to ESC rights. None of them enshrine the right to food or the right to an adequate standard of living.

213 The long title of the *Food Act 2001* (SA) is '[a]n Act to provide for the safety and suitability of food; and for other purposes'. There are seven other laws or regulations in SA with the word 'food' in their title; all relate to food safety. Based on a search of SA laws conducted on 1 October 2024: 'South Australian Legislation', *Government of South Australia* (Web Page) <<https://www.legislation.sa.gov.au/>>.

214 The government is undertaking a two-stage project in 2024 to better understand the experiences of food insecurity in the State and possible solutions. The first stage was an evidence summary prepared by academics; the second stage was a public consultation process with people who have lived experience of food insecurity and the broader community. It builds on existing work done to date with the food relief sector and sees Wellbeing SA and the Department of Human Services working together with academia (Centre for Social Impact, Flinders University): 'Secure Food Systems for South Australians', *Research*

planned to release a discussion paper in late 2024, which would form the basis for collaboration with non-governmental stakeholders on the development of a long-term food security strategy for the State to identify ‘secure food system models that support equitable, culturally appropriate and dignified access to nutritious food in food insecure communities’.<sup>215</sup> This multi-stakeholder, participatory approach to policy development strongly aligns with human rights best practices under the PANELD framework for the right to food,<sup>216</sup> and provides a model which could be adopted by Queensland and other jurisdictions to better support food insecure people.

Continuing with best practices for developing right-to-food policy responses, SA also takes a comparatively proactive approach to monitoring food insecurity. This is done via two platforms: the annual statewide population health survey, which asks a single question about food insecurity;<sup>217</sup> and the more specialised Population Health Survey Module System, which is an ad-hoc, bespoke omnibus survey.<sup>218</sup>

## 2 Food Relief Governance

SA recognises that food insecurity is a threat to the health and well-being of its people.<sup>219</sup> Compared to Queensland, it has formed a more coordinated approach to managing food insecurity and associated food relief initiatives via its Food Security Initiative (‘FSI’), a Public Health Partnership Authority (‘PHPA’) between Wellbeing SA and the SA Department of Human Services (‘SADHS’) that actively collaborates with civil society, academia, other state government agencies and local governments.<sup>220</sup> Notably, the FSI recognises the limitations of food relief as a solution to food insecurity; it aims to go beyond the short-term, emergency focus of traditional food relief to take a systems approach to address the broader range of factors underlying the food insecurity experience.<sup>221</sup> Stakeholders have also

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@Flinders (Web Page) <<https://researchnow.flinders.edu.au/en/projects/secure-food-systems-for-south-australians>>; Government of South Australia, ‘Food Secure Communities in South Australia’ (Summary Paper, 26 April 2024) (‘SA Food Secure Communities’).

215 Government of South Australia, ‘Banking on Food Security for Cost-of-Living Relief’ (Media Release, 5 September 2024) <<https://www.premier.sa.gov.au/media-releases/news-items/banking-on-food-security-for-cost-of-living-relief>>.

216 ‘FAO Voluntary Guidelines’ (n 70) 15 [5.4], [6.1], 21 [10.3], 30 [17.1].

217 Each year, the SA Government conducts monthly surveys of approximately 7,000 SA adults and 2,000 children to monitor the health of the population. Respondents are asked a single question about food security: had there been any time in the past 12 months when they had run out of food and could not afford to buy more?: ‘South Australian Population Health Survey’, *Preventive Health SA* (Web Page) <<https://www.preventivehealth.sa.gov.au/evidence-data/about-our-data-collections/sa-population-health-survey>>.

218 The Population Health Survey Module System collected modules in 2020 and 2023 on food insecurity using the comprehensive US Department of Agriculture Household Food Security Survey Module: Emails from Rebecca Nolan, Preventive Health SA to Katherine Keane, 27 September – 1 October 2024.

219 Matt Fisher, Toby Freeman, and Fran Baum, *Developing a Systems View of the Wellbeing SA: Department of Human Services Food Security Initiative* (Project Report, 2024) 1 <<https://www.adelaide.edu.au/stretton/ua/media/729/systems-view-wbsa-dhs-food-security-initiative-project-report.pdf>>. This cross-sectoral partnership was formed in 2015 to address food insecurity in SA and strengthen the charitable food relief sector, and is seen by stakeholders as successful and durable: at 2, 4.

220 *Ibid* 2, 4.

221 *Ibid* 4.

acknowledged that as food insecurity is a symptom of poverty and inequality, the underlying determinants of food insecurity must be addressed to make progress.<sup>222</sup> This is critical from a right-to-food perspective as dignity and empowerment, key PANELD principles, are realised not from being fed but from being able to provide for oneself.<sup>223</sup>

Related to this longer-term approach to food relief and food insecurity, the PHPA recently funded a pilot social supermarket project with a view to moving food security initiatives away from direct food relief provision towards more dignified, client-centred service models that do not just provide food but also offer access to, for example, supports and services to address underlying determinants of food insecurity, and capacity and skill building.<sup>224</sup>

Like Queensland, the only law directly relating to food relief in SA is the *Civil Liability Act 1936* (SA) with its ‘Good Samaritan’ provisions. Introduced in 2008, these amendments encourage the donation of surplus foods for food relief. Unlike Queensland, the provisions protect both the food donor *and* the recipient entity that distributes the food from civil liability for ‘loss of life or personal injury arising from consumption of the food donated or distributed’.<sup>225</sup> The same human rights tensions addressed in relation to Queensland’s civil liability laws in this regard apply to SA.

As with the federal level and Queensland, SA links food waste policy with food relief. SA’s Strategy to Reduce and Divert Household and Business Food Waste states that food loss and waste have two main effects: food insecurity and hunger and deleterious environmental impacts. This food waste strategy acknowledges that food rescue and redistribution alone is not a long-term solution to food insecurity. Still, food rescue and redistribution is seen as an important part of the ‘reuse’ level of the food waste management hierarchy.<sup>226</sup> However, the causative link between food waste, food insecurity and hunger in this strategy is problematic. It implies that the problem is one of food *availability* because so much is going to waste, ie, that there is insufficient food available for people to eat because it is being dumped in bins and landfill. In reality, food insecurity in Australia is a food *access* problem caused, inter alia, by poverty and low income. Moreover, statements that link food insecurity

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222 Ibid 6.

223 Booth and Whelan (n 110) 1400.

224 Tahna Lee Pettman et al, ‘Part Discount Grocer, Part Social Connection: Defining Elements of Social Supermarkets’ (2024) 53(5) *Nonprofit and Voluntary Sector Quarterly* 1306 <<https://doi.org/10.1177/08997640231210463>> (‘Part Discount Grocer’).

225 ‘A food donor or distributor incurs no civil liability for loss of life or personal injury arising from consumption of the food donated or distributed’: *Civil Liability Act 1936* (SA) s 74A(2). The immunity does not operate when the donor or distributor knew or was recklessly indifferent to the food being unsafe when it left their possession or control: at s 74A(3).

226 The strategy affirms that ‘food rescue and redistribution organisations are central to retaining the high-value of quality surplus food to provide to those in need’: Green Industries SA, ‘Valuing Our Food Waste: South Australia’s Strategy to Reduce and Divert Household and Business Food Waste 2020–2025’ (Strategy Paper, 2021) 13 <<https://www.greenindustries.sa.gov.au/resources/valuing-our-food-waste>>. Green Industries SA runs an Infrastructure Grants Program, which provides support to address storage or logistics barriers for food rescue operations, eg, improving cold store and freezer facilities: at 50.

with a lack of food availability are inconsistent with the other policy work of SA that emphasises the complexity of food insecurity as an issue beyond food.

The Government of SA funds grant programs that incorporate food relief alongside other emergency relief services and financial assistance initiatives.<sup>227</sup> In 2024, the SADHS granted an additional \$1 million in food security grants to 27 charitable organisations in recognition of the cost of living crisis to ‘support communities to move out of food insecurity in South Australia’.<sup>228</sup> The government said this commitment was a component of \$5 million over four years that had been included in the 2023–24 State Budget for food relief organisations and financial counselling.<sup>229</sup> The Department of Education also makes small food security grants available for SA government schools and preschools for sustainable health food projects that connect to learning about growing food, accessing food and/or preparing food.<sup>230</sup> The Department of Education also funds charities to provide breakfast programs to hundreds of schools and preschools across the State.<sup>231</sup> Guidelines and standards have been developed to guide food provided in schools, including that provided by way of food relief measures.<sup>232</sup>

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- 227 The SA Government provides funding for a range of initiatives associated with financial assistance and food relief. Examples include: the SAcommunity information directory, which provides an A–Z index of food assistance services for people seeking support; and Affordable SA, funded by the Department of Human Services and facilitated by the Salvation Army, which provides free advice to South Australians struggling with affordability issues and helps them access information, resources and support, including financial counselling and food relief from food relief agencies: ‘Food Assistance’, *SAcommunity* (Web Page) <[https://sacommunity.org/az/14456-Food\\_Assistance](https://sacommunity.org/az/14456-Food_Assistance)>; ‘Emergency Relief’, *Affordable SA* (Web Page) <<https://www.affordablesa.com.au/categories/food/emergency-relief/>>; ‘Grants’, *South Australia Department of Human Services* (Web Page, 26 May 2023) <<https://dhs.sa.gov.au/how-we-help/grants/>>; Department of Human Services (SA), ‘Grants SA 2023–24 *Addressing Food Security* Funding Guidelines up to \$50,000’ (Guidelines, 2023) <[https://dhs.sa.gov.au/\\_\\_data/assets/pdf\\_file/0003/154695/2023-2024-Grants-SA-Addressing-Food-Security-Funding-Guidelines-For-PDF.pdf](https://dhs.sa.gov.au/__data/assets/pdf_file/0003/154695/2023-2024-Grants-SA-Addressing-Food-Security-Funding-Guidelines-For-PDF.pdf)> (‘Funding Guidelines up to \$50,000’); ‘Food Security Grants Go to Heart of Community’, *South Australia Department of Human Services* (Web Page, 1 April 2024) <<https://dhs.sa.gov.au/news/2024/food-security-grants-go-to-heart-of-community/>> (‘Heart of Community’); Government of South Australia, ‘Funding for Food Security and Financial Counselling’ (Media Release, 13 July 2023) <<https://www.premier.sa.gov.au/media-releases/news-archive/funding-for-food-security-and-financial-counselling/>> (‘Funding for Food Security’).
- 228 ‘Funding Guidelines up to \$50,000’ (n 227) 3; ‘Heart of Community’ (n 227); ‘Funding for Food Security’ (n 227).
- 229 Government of South Australia, ‘\$1.5 Million Grants Fund to Help South Australians Battle Food Insecurity’ (Media Release) <[https://www.premier.sa.gov.au/media-releases/news-archive/\\$1.5-million-grants-fund-to-help-south-australians-battle-food-insecurity/](https://www.premier.sa.gov.au/media-releases/news-archive/$1.5-million-grants-fund-to-help-south-australians-battle-food-insecurity/)>.
- 230 ‘Food Security Grants for South Australia Government Schools and Preschools’, *Department for Education South Australia* (Web Page, 18 March 2024) <<https://www.education.sa.gov.au/parents-and-families/safety-and-wellbeing/health/food-security-grants-for-south-australia-government-schools-and-preschools/>>.
- 231 ‘Breakfast Programs in South Australian Schools, Preschools and Children’s Services’, *Department for Education South Australia* (Web Page, 18 March 2024) <<https://www.education.sa.gov.au/parents-and-families/safety-and-wellbeing/health/breakfast-programs-in-south-australian-schools-and-education-services/>>.
- 232 ‘Right Bite Food and Drink Supply Standards for South Australian Schools’, *Department for Education South Australia* (Web Page, 15 October 2024) <<https://www.education.sa.gov.au/schools-and-educators/health-safety-and-wellbeing/right-bite-food-and-drink-supply-standards-for-south-australian-schools/>>; Preventive Health SA, ‘Food and Drink Classification Guide for South Australian Public Schools: A

### 3 The SA Food Relief Charter

In 2019, SA launched its *Food Relief Charter* ('SA Charter'). The *SA Charter* underpins the State's approach to governance of the food relief sector.<sup>233</sup> A charter is a policy tool often used as a governing document for a group of organisations. It may contain a commitment to shared values, and in service settings it commonly establishes standards that clients can expect in service delivery.<sup>234</sup> The *SA Charter* is the first government-led charter (or similar instrument) of its kind in Australia developed 'with and for' the food relief sector.<sup>235</sup>

The *SA Charter* is grounded in five guiding principles intended to guide 'best practice' human service delivery:

1. collaborating to build an effective and integrated food relief system;
2. focusing on nutrition and health;
3. delivering a service built on fairness and equity;
4. connecting people, building skills and confidence; and
5. monitoring and evaluating to measure collective impact.<sup>236</sup>

Community sector actors such as food banks and emergency relief agencies that sign the *SA Charter* make several commitments: to work in partnership to increase food and nutrition security for South Australians; to adopt best-practice food relief standards and build a skilled and sustainable food relief workforce; and to support people in building skills and capacity to move out of food insecurity.<sup>237</sup> The *SA Charter* is accompanied by the 'Nutrition Guidelines for the Food Relief Sector in South Australia', which aim to improve the nutritional quality of food available via food relief to support the health needs of recipients.<sup>238</sup>

Importantly, the *SA Charter* is expressly grounded in human rights. It recognises access to 'sufficient, safe, culturally appropriate, nutritious food' as a basic human right and has a rights-based focus in some of its guiding principles language around dignity, equity and empowerment.<sup>239</sup> The *SA Charter* was developed through a robust participatory partnership process between relevant government agencies, civil society and academia, and included the perspectives

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System for Classifying Foods and Drinks 2023' (Guide, 2023) <<https://www.preventivehealth.sa.gov.au/assets/downloads/HFEH/Food-and-Drink-Classification-Guide-Public-Schools.pdf>>.

233 Pettman et al, 'A Food Relief Charter for South Australia' (n 19) 9.

234 Ibid 3.

235 Ibid 9. The Charter did, however, take inspiration from the *WA Food Relief Framework* (n 41), which is similar to a charter.

236 Pettman et al, 'A Food Relief Charter for South Australia' (n 19) 6.

237 *South Australian Food Relief Charter* <[https://dhs.sa.gov.au/\\_data/assets/pdf\\_file/0009/169137/SA-Food-Relief-Charter.pdf](https://dhs.sa.gov.au/_data/assets/pdf_file/0009/169137/SA-Food-Relief-Charter.pdf)> ('SA Charter'). At its launch in 2019, 15 community sector organisations signed the Charter. How many more have done so at the time of writing is unknown.

238 The Guidelines aim to improve access to nutritious food for food relief recipients by increasing the supply of healthy food choices and reducing the supply of unhealthy food choices offered by food relief providers: Government of South Australia, 'Nutrition Guidelines for the Food Relief Sector in South Australia' (Guidelines) 1 <[https://dhs.sa.gov.au/\\_data/assets/pdf\\_file/0008/169136/Nutritional-Guidelines-for-the-Food-Relief-Sector-in-SA.pdf](https://dhs.sa.gov.au/_data/assets/pdf_file/0008/169136/Nutritional-Guidelines-for-the-Food-Relief-Sector-in-SA.pdf)>.

239 *SA Charter* (n 237). See, eg, principle 3, '[d]elivering a service built on fairness and equity'.

of food relief participants.<sup>240</sup> Tahna Pettman et al commend this collaborative and power-sharing approach as one that results in effective policy-making.<sup>241</sup> The *SA Charter* recognises the underlying economic and social factors driving food insecurity, emphasising food relief services' important role in connecting people to other support services. The *SA Charter* has a welcome focus on the complex and inter-related issues that lead to food insecurity and client pathways out of it – as such, it represents a move away from the standard 'solution' to food insecurity of providing a few days of emergency food.<sup>242</sup> Pettman et al consider it a step in the right direction 'towards an integrated optimal food relief system that goes beyond the provision of food'.<sup>243</sup>

**Table 2: The *SA Charter* and a HRBA to Food Relief Governance**

<b>Participation</b>	√	The Charter was developed through a participatory process between government, academia and civil society, incorporating recipient perspectives and feedback.
<b>Accountability</b>	X	No complaint, monitoring or accountability mechanisms are built into the Charter.
<b>Non-discrimination and equality</b>	√	The Charter does not expressly mention non-discrimination or equality, but it is based on the associated principles of fairness and equity for everyone in need.
<b>Empowerment</b>	√	The Charter has an express focus on empowerment of recipients and providing longer-term pathways out of food insecurity.
<b>Legality</b>	X	The Charter is non-binding and legally unenforceable.
<b>Dignity</b>	√	The Charter enshrines dignified service delivery as a <i>value</i> of food relief.

Of the three jurisdictions analysed, SA is the only one with both a formal governance approach to food relief and an approach overtly grounded in human rights. However, drawing on the human rights-based PANELD principles developed in Part III, this approach could be improved to further advance the right to food. The *SA Charter* does not provide for accountability or legality – it is non-binding, unenforceable and provides no recourse for those affected by a breach to complain or enforce rights. This is common where charters are used as a policy tool. They can be 'symbolic in their intent, providing aspirational principles and values for

240 Charter development processes included the signing of a PPHA agreement between the Department of Health and Wellbeing and the Department of Human Services to facilitate intergovernmental agency collaboration on the project; scoping research; sector consultations and engagement via roundtable discussions and surveys; a discussion paper; and a research project to garner food relief recipient perspectives: Pettman et al, 'A Food Relief Charter for South Australia' (n 19) 3–4.

241 Ibid 10.

242 Ibid.

243 Ibid 12.

signatories to work towards'.<sup>244</sup> As such, it is arguable that the *SA Charter* cannot be seen as a governance instrument 'in the true sense'.<sup>245</sup>

From a transparency perspective, there does not appear to be a publicly available list of Charter signatories. Further, the *SA Charter* seems to be directed more towards service providers than government. That is, it is oriented towards establishing service standards and values for food relief agencies, as opposed to imposing obligations on government to fulfil rights. The Charter does not provide for systemic change to the nature of the food relief system because civil society continues to bear responsibility for food insecurity when that responsibility should ultimately lie with government.

Further, the Charter adopts a values-based service delivery culture for food relief rather than a rights-based approach. It promotes the values of 'choice, safety, dignity, respect, compassion, transparency, privacy, cultural sensitivity, empowerment, and independence'.<sup>246</sup> In practice there is overlap between what the *SA Charter* describes as a values-based approach and a rights-based approach, eg, values like dignity and empowerment are also key human rights principles under the PANELD framework for the right to food. However, values are flexible and may be 'widened or narrowed according to current priorities'.<sup>247</sup> By contrast, human rights are inherent, universal and inviolable: 'no individual, no group, no authority, no state, can give them and no one can eliminate them'.<sup>248</sup> Importantly, human rights have a legal foundation, which Australia has repeatedly accepted internationally. Values as a foundation for governance do not impose legally binding obligations on governments to take positive action nor offer remedies for a failure to do so; human rights do this. The HRBA to governance requires that rights be legally embedded.

## VI DISCUSSION: RIGHTS OFF THE TABLE

In this Part, we identify fundamental issues in food relief governance in Australia revealed by our analysis and offer guidance for reform. As part of this, we illustrate how Australia is failing to meet its obligations to fulfil the right to adequate food both in specific features of its food relief governance and through the overall approach adopted.

Our analysis has shown an absence of government-based responses to food relief in Australia. The governance of food relief has no foundation in law (except for some civil liability protections for food donors), and food relief has an inconsistent and limited policy presence. This is problematic because there is

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244 Ibid 3.

245 It does not 'link to service delivery responsibilities or accountability reporting, and is not intended as an implementation instrument': *ibid* 9.

246 *SA Charter* (n 237) principle 3.

247 Costas Douzinas, 'The Paradoxes of Human Rights' (2008) 21(Suppl) *Philosophical Yearbook* 83, 94.

248 Romuald R Haule, 'Some Reflections on the Foundation of Human Rights: Are Human Rights an Alternative to Moral Values?' (2006) 10(1) *Max Planck Yearbook of United Nations Law* 367, 386 <<https://doi.org/10.1163/187574106x00083>>.

no way for people to enforce their right to food without a solid legal basis, and there is no overarching governmental accountability or coordination regarding food relief.<sup>249</sup> As a result of this lack of governmental response, the charitable sector takes almost the sole responsibility for managing food relief with little regulatory guidance and established long-term support.<sup>250</sup> Thus, the charitable food relief sector is left responsible for delivering ‘self-organised’ food-based solutions to a complex problem that goes beyond food. When Australian governments do focus on food relief, regulatory interventions tend to target enabling charitable food donations (eg, tax incentives and civil liability exemptions) or, relatedly, positioning food relief as a way to address food waste. Both are problematic as points of intervention.

In relation to the former, the way in which Australian governments have mainly intervened to enable donations entrenches philanthropic food relief as the primary response to food insecurity. In doing so, it reinforces the view of people as ‘passive recipients of charity’ when they should be treated as rights-holders entitled to adequate food and be supported by governmental plans to facilitate their long-term realisation of the right to food.<sup>251</sup> Thus, the singular emphasis on facilitating donations with no other approaches represents a failure to recognise the fundamental difference between legal entitlement and charity or moral responsibility.<sup>252</sup>

In relation to the latter, the policy focus on diverting food waste to food relief as a (or the) solution to food insecurity presents significant governance concerns and has been critiqued by scholars.<sup>253</sup> From a human rights perspective, food insecurity must be positioned not as a problem for households and businesses to solve via redistribution of food waste but rather as an issue of structural inequality that requires an appropriate governance response. In other words, governments should address why people lack an adequate standard of living and turn to food relief. Food waste is caused by various factors, including overproduction, supply chain structures and trading practices.<sup>254</sup> According to the food waste hierarchy, which is a widely used policy concept in Australia and internationally, the most preferable solution to food waste is to prevent food surplus and waste existing

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249 Similar observations, but without legal analysis, have been made in Pettman et al, ‘A Food Relief Charter for South Australia’ (n 19) 2.

250 Ibid.

251 Alice Willatt, Rosalind Beadle and Mary Brydon-Miller, ‘Reshaping the Food Aid Landscape’ in Henry Tam (ed), *Tomorrow’s Communities: Lessons for Community-Based Transformation in the Age of Global Crises* (Policy Press, 2021) 197, 199 <<https://doi.org/10.56687/9781447361138-015>>. See also Riches and Silvasti, ‘Hunger in the Rich World’ (n 24) 9–10; Rose et al (n 19) 14–15; Elver, *Critical Perspective on Food Systems* (n 80) 14 [60]. This is consistent with measures taken to fulfil other economic and social rights, such as the right to housing: Solomon (n 118) 278. Australia’s food welfare approach is ‘characterised by limited social rights ... and a strong government commitment to market-based solutions’: Richards, Kjærnes and Vik (n 10) 65.

252 Elver, *Critical Perspective on Food Systems* (n 80) 14 [60].

253 Pollard and Booth (n 110) 1.

254 Camila Colombo de Moraes et al, ‘Retail Food Waste: Mapping Causes and Reduction Practices’ (2020) 256 *Journal of Cleaner Production* 120124:1–16 <<https://doi.org/10.1016/j.jclepro.2020.120124>>; Michael Blakeney, *Food Loss and Food Waste: Causes and Solutions* (Edward Elgar Publishing, 2019).

in the first place.<sup>255</sup> Diversion of food waste to food relief significantly shifts the economic costs of waste management, which may otherwise influence corporate actions that cause food waste, to food rescue organisations which now must sort and dispose of food as well as transport and process it.<sup>256</sup> In sum, the representation of food waste and food relief as a ‘win/win’ situation fails to adequately address the complex problems they both pose.<sup>257</sup>

Additionally, food relief based largely on redistributed food waste does not align with the rights-based requirement for a dignified and empowering human rights-based food assistance system. Food relief foods, because they are ad hoc donations, are often not healthy or nutritious,<sup>258</sup> and feeding people with food waste risks undermining their dignity where the food lacks, or is perceived to lack, quality.<sup>259</sup> The creation of a secondary food market for food relief with sometimes lower-quality food is disempowering, restricting choice and representing the treatment of food-insecure people as lesser citizens.<sup>260</sup>

These issues, including the lack of State-based governance for food relief, the absence of long-term policy direction for food relief, and the emphasis on third-party charity-based responses and food waste, are emblematic of the fact that Australia’s approach to food relief governance is not grounded in human rights. A broader lack of institutionalised domestic human rights protections likely influences Australia’s governance approach to food relief in this regard. Human rights should be used to create action-oriented systems based on obligations grounded in law.<sup>261</sup> However, Australia’s overall human rights regime is affected by ‘institutional deficiencies’, including an insufficient legal framework for rights

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- 255 The food waste hierarchy positions diverting food waste to food relief as secondary to prevention. See, eg, Effie Papargyropoulou et al, ‘The Food Waste Hierarchy as a Framework for the Management of Food Surplus and Food Waste’ (2014) 76 *Journal of Cleaner Production* 106 <<https://doi.org/10.1016/j.jclepro.2014.04.020>>; Paul Perovic and Hope Johnson, ‘Food for Thought: An Assessment of Australian Law and Regulation for Combating Food Waste’ (2023) 39(4) *Environmental and Planning Law Journal* 354.
- 256 Mossenson et al (n 23) 2; Bethaney Turner and Daisy Tam, ‘Moving from Risky to Response-able Care’ (2022) 54(3) *Antipode* 914, 920 <<https://doi.org/10.1111/anti.12804>>.
- 257 Rudolf Messner, Carol Richards and Hope Johnson, ‘The “Prevention Paradox”: Food Waste Prevention and the Quandary of Systemic Surplus Production’ (2020) 37(3) *Agriculture and Human Values* 805, 809–10 <<https://doi.org/10.1007/s10460-019-10014-7>>; Carrie Bradshaw, ‘England’s Fresh Approach to Food Waste: Problem Frames in the Resources and Waste Strategy’ (2020) 40(2) *Legal Studies* 321 <<https://doi.org/10.1017/lst.2019.37>>.
- 258 Mercy N Mukoya, Fiona H McKay and Matthew Dunn, ‘Can Giving Clients a Choice in Food Selection Help to Meet Their Nutritional Needs?: Investigating a Novel Food Bank Approach for Asylum Seekers’ (2017) 18(4) *Journal of International Migration and Integration* 981, 987 <<https://doi.org/10.1007/s12134-017-0515-3>>; Pettman et al, ‘Part Discount Grocer’ (n 224); Turner and Tam (n 256) 925.
- 259 *WA Food Relief Framework* (n 41) 45; Riches and Silvasti, ‘Hunger in the Rich World’ (n 24) 9; Riches, ‘Food Banks and Food Security’ (n 110) 649–50; Booth and Whelan (n 110) 1400; Cresswell Riol and Connelly (n 42) 1232.
- 260 John D Lowrey, Timothy J Richards and Stephen F Hamilton, ‘Food Donations, Retail Operations, and Retail Pricing’ (2023) 25(2) *Manufacturing and Service Operations Management* 792, 792 <<https://doi.org/10.1287/msom.2022.1185>>; Cresswell Riol and Connelly (n 42); Willatt, Beadle and Brydon-Miller (n 251); Pollard and Booth (n 110); Andriessen and van der Velde (n 36).
- 261 Fakhri, 2021 *Interim Report* (n 80) 15 [55]; Elver, *Critical Perspective on Food Systems* (n 80) 15 [64].

protection,<sup>262</sup> whereby human rights protections are left mostly to the discretion of Parliament.<sup>263</sup> This is particularly the case for ESC rights, which have tended to be viewed as ‘peripheral’.<sup>264</sup> This has facilitated a situation where food relief and food insecurity are not perceived or addressed through a human rights lens.

As a consequence of this broader lack of a human rights approach, discourse related to food relief in Australia emphasises food security instead of the human right to food.<sup>265</sup> Research shows that food security tends to be interpreted in ways that support growing agricultural production instead of food access.<sup>266</sup> Even in jurisdictions where the right to food is acknowledged, such as SA, it remains peripheral to the governance focus.<sup>267</sup> This is problematic because, as noted above, food security is not a legal concept. It does not place legally binding obligations on governments or provide for enforceable individual entitlements. It is the *right to food*, for which food security is a precondition, which imposes legal obligations on governments to take initiatives with respect to hunger and malnutrition and work towards food security for all.<sup>268</sup> The fulfilment of the human right to adequate food is the appropriate end goal, not food security. A focus only on food security denies the human rights responsibilities Australia has committed to progress domestically.

Ultimately, the absence of a clear and coordinated governance framework for food relief, combined with the lack of a human-rights-based approach, shifts the responsibility for access to adequate food from government to individuals. In other words, food insecurity is dealt with as a problem of individual responsibility solved by individuals accessing charitable giving. Literature has broadly observed how definitions of social problems are often individualised in this way, with both the problem and solution (ie, classification and cure) seen as inherent in the individual.<sup>269</sup> Those who deviate from the expected social standard are responsible for their own problems.<sup>270</sup> With food insecurity, this personalisation of the issue depoliticises

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262 Solomon (n 118) 276.

263 Zipoli (n 117) 390.

264 Solomon (n 118) 275–6.

265 Richards, Kjærnes and Vik (n 10).

266 Geoffrey Lawrence, Carol Richards and Kristen Lyons, ‘Food Security in Australia in an Era of Neoliberalism, Productivism and Climate Change’ (2013) 29(2) *Journal of Rural Studies* 30 <<https://doi.org/10.1016/j.jrurstud.2011.12.005>>; Amber Bastian and John Coveney, ‘The Responsibilisation of Food Security: What Is the Problem Represented to Be?’ (2013) 22(2) *Health Sociology Review* 162 <<https://doi.org/10.5172/hesr.2013.22.2.162>>.

267 For example, a summary paper titled ‘Food Secure Communities in South Australia’ is part of a two-stage initiative from the Government of SA with the goal of better understanding how people are experiencing food insecurity and what would help them out of it. The government prepared the summary paper based on an evidential review by academics of best-practice food systems that considered the right to food as one of four viable options for a food security governance framework. The summary paper uses the terms ‘food security’ 15 times and ‘food insecurity’ 21 times. Still, there is no mention of the human right to food: ‘SA Food Secure Communities’ (n 214).

268 ‘The Right to Adequate Food’ (n 57) 4.

269 Nancy M Henley, ‘Women as a Social Problem: Conceptual and Practical Issues in Defining Social Problems’ in Edward Seidman and Julian Rappaport (eds), *Redefining Social Problems* (Springer, 1986) 65, 66 <[https://doi.org/10.1007/978-1-4899-2236-6\\_5](https://doi.org/10.1007/978-1-4899-2236-6_5)>.

270 Edward Seidman and Julian Rappaport, ‘Framing the Issues’ in Edward Seidman and Julian Rappaport (eds), *Redefining Social Problems* (Springer, 1986) 1, 3–4 <[https://doi.org/10.1007/978-1-4899-2236-6\\_1](https://doi.org/10.1007/978-1-4899-2236-6_1)>.

it and reduces the scope for debate about the systemic drivers underlying the problem.<sup>271</sup> As a consequence, the provision of food relief has followed a pathway of government-enabled ‘societal self-help’,<sup>272</sup> with a pivot from social assistance programs to charitable food philanthropy.<sup>273</sup>

This is problematic from a human rights perspective, as the government is responsible for facilitating the right to food. It is also problematic from the standpoint of effectively addressing the problem of food insecurity. Facilitating individual access to charitable food relief should not be the primary way governments understand and respond to food insecurity or implement their right to food obligations. Food relief is oriented towards food (its rescue, (re)distribution and provision) as a temporary resource to meet immediate individual needs.<sup>274</sup> It focuses on delivering material aid to individuals rather than on social outcomes.<sup>275</sup> Yet, as summarised in Part II, food insecurity in Australia is not a problem about food but stems from broader inequalities such as poverty and social exclusion. As a result, food relief is not on its own providing meaningful food security for Australians in need. Of the three jurisdictions analysed, SA has demonstrated the clearest understanding of the charitable food relief system as representing the treatment of ‘a long-term and systemic problem with short-term or emergency solutions’.<sup>276</sup> Food relief agencies, staffed mainly by volunteers, fill the void left by governments with stop-gap measures that permit those governments to ‘look the other way’ in relation to the underlying causes of food insecurity.<sup>277</sup> When viewed through this lens, the current reliance on charitable food relief is not a meaningful response to food insecurity or an effective way to achieve the right to food, but rather ‘part of the problem’.<sup>278</sup> Ultimately, it does not solve the fundamental problem of people needing to rely on food relief in the first instance.

Further, without a structural, government-led approach to the right to food, government funding of charitable food relief services can inadvertently entrench food-based inequality.<sup>279</sup> Most food relief services in Australia are based on

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271 This issue has been observed in other countries, including New Zealand, the United Kingdom and Canada: Cresswell Riol and Connelly (n 42); Willatt, Beadle and Brydon-Miller (n 251); Riches, ‘Food Banks and Food Security’ (n 110). The underlying issues are driven by modern neoliberal governance approaches, which focus on increasing the economic participation of citizens while keeping welfare benefits low: Riches and Silvasti, ‘Hunger in the Rich World’ (n 24) 3–4; Cresswell Riol and Connelly (n 42) 1224, 1233–4; Booth (n 45) 20; Fiona H McKay and Rebecca Lindberg, ‘The Important Role of Charity in the Welfare System for Those Who Are Food Insecure’ (2019) 43(4) *Australian and New Zealand Journal of Public Health* 310, 311 <<https://doi.org/10.1111/1753-6405.12916>>.

272 Richards, Kjærnes and Vik (n 10) 65.

273 Booth (n 45) 16; *ibid* 68.

274 Pettman et al, ‘A Food Relief Charter for South Australia’ (n 19) 2.

275 Pettman et al, ‘Part Discount Grocer’ (n 224) 2.

276 McKay et al (n 19) 2405.

277 Graham Riches, ‘Thinking and Acting Outside the Charitable Food Box: Hunger and the Right to Food in Rich Societies’ (2011) 21(4–5) *Development in Practice* 768, 772 <<https://doi.org/10.1080/09614524.2011.561295>>.

278 Riches and Silvasti, ‘Hunger in the Rich World’ (n 24) 12.

279 Brian Hamel and Moriah Harman addressed this ‘spatial inequality’ in the distribution of food relief services when they investigated whether government investment in charitable food relief organisations that directly deliver food to recipients in the US could decrease food security. They concluded that increased government

charitable agencies within a community that directly provide food to community members (eg, food boxes, food parcels, or pantries). The ability of this type of food relief to positively impact food insecurity is contingent upon each food-insecure community having a charitable infrastructure in the first place. Food relief organisations can only be effective in directly delivering food to communities in those places where the organisations operate. This becomes an issue when charitable food relief agencies and initiatives are not spread evenly around the country. For example, there are limited relief services in Central and Northern Queensland, which have higher rates of food insecurity, while the bulk of funding from the state government appears to go to the most populated part of the State, South-East Queensland, which has lower comparative rates of food insecurity but a higher concentration of food relief agencies.

Human rights law requires measures that prevent discrimination in access to food or resources for food and transparent eligibility criteria for food relief which are based on the principle of non-discrimination.<sup>280</sup> However, the ‘spatial inequality’ of services fails to ensure equitable access and imposes fundamental limitations on the potential positive effects of government investment in food relief.<sup>281</sup> Some communities have more food relief organisations than others, and food-insecure communities with more organisations receive more benefits than food-insecure communities with fewer organisations.<sup>282</sup> High-needs communities that lack charitable food infrastructure can be largely excluded from receiving food assistance.<sup>283</sup> As a consequence, directing government funding to food relief in this way has ‘at best, uneven effects’.<sup>284</sup>

As a starting point to address these governance gaps, there is a need to develop a coherent national framework for food relief that is based on human rights and responds to immediate food relief requirements as well as longer-term strategies to reduce reliance on food relief. Effective implementation of the right to food specifically requires governments propose ‘ways and tools’ by which fulfilment of the right will be achieved.<sup>285</sup> States are expected to adopt national right-to-food strategies and policies based on human rights principles and objectives.<sup>286</sup> The human rights-based PANELD framework, with its best practice examples in the Appendix, provides guidance regarding what strategies could be included. For Australia to embrace the fulfilment of the right to food as a governmental

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investment in food relief organisations could exacerbate, not reduce, inequalities in food access: Brian T Hamel and Moriah Harman, ‘Can Government Investment in Food Pantries Decrease Food Insecurity?’ (2023) 121 *Food Policy* 102541:1–10, 2, 8 <<https://doi.org/10.1016/j.foodpol.2023.102541>>.

280 ‘FAO Voluntary Guidelines’ (n 70) 25 [13.3]. See also *General Comment No 12* (n 1) 7 [26].

281 Hamel and Harman (n 279) 2.

282 *Ibid.*

283 The US’ Farmers to Families Food Box Program, initiated during the COVID-19 pandemic, involved the distribution of approximately 175 million boxes of food. An analysis found that high-need counties with many direct-delivery food relief organisations received the most food, compared to high-needs counties with fewer organisations: *ibid.*

284 *Ibid.* 3.

285 ‘FAO Voluntary Guidelines’ (n 70) 6–7 [19].

286 *General Comment No 12* (n 1) 6 [21]; Elver, *Critical Perspective on Food Systems* (n 80) 17 [75]; Elver, *Access to Justice and the Right to Food* (n 80) 21 [72].

responsibility under human rights law, it must establish policies, plans and laws enshrining governmental obligations. In particular, best practice requires legislative action to transform an aspirational right into a justiciable one.<sup>287</sup>

## VII CONCLUSION

Legal scholarship on food relief governance in Australia is limited. This article shows that part of the reason for that is that there is no comprehensive response from the State regarding food relief. As a result of this and the broader lack of a HRBA, governments in Australia are failing to govern food relief in the context of binding obligations to fulfil the right to food, though SA shows significant promise in this regard. Overall, there is significant room for improvement in food relief and food security laws and policies to meet those obligations. In particular, it is important that future improvements in food relief governance identify governmental responsibility, position individuals as rights-holders, and address immediate and long-term dimensions as well as spatial inequalities.

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287 Stephanie L Godrich, Liza Barbour and Rebecca Lindberg, 'Problems, Policy and Politics: Perspectives of Public Health Leaders on Food Insecurity and Human Rights in Australia' (2021) 21(1) *BMC Public Health* 1132:1–12, 2 <<https://doi.org/10.1186/s12889-021-11188-8>>; Booth (n 45) 16.

## APPENDIX: THE PANELD FRAMEWORK

**Table 3: Best Practice Examples**

Principle	Best Practice Examples
<b>Participation</b>	<ul style="list-style-type: none"> <li>• Food relief is provided with ‘the fullest possible participation of those affected’.<sup>288</sup></li> <li>• A multi-stakeholder approach to national food security is employed, including civil society and the private sector, to pull together knowledge and facilitate the efficient use of resources,<sup>289</sup> and to increase the consumption of healthy, nutritious foods.<sup>290</sup></li> <li>• Representatives of groups most affected by food insecurity have full and transparent participation in relevant institutions.<sup>291</sup></li> </ul>
<b>Accountability</b>	<ul style="list-style-type: none"> <li>• The degree of food insecurity and its causes in the population is measured and assessed.<sup>292</sup> Benchmarks are developed and applied along with appropriate indicators and mechanisms to monitor and verify progress in achieving them.<sup>293</sup></li> <li>• National food security strategies and policies that are based on human rights principles and objectives to ensure food security for all are adopted.<sup>294</sup></li> <li>• Corporate power is limited and corporations are held accountable. The activities of all market players and civil society are ensured to be in conformity with the right to food.<sup>295</sup> There are safeguards against conflicts of interest and power imbalances.<sup>296</sup></li> <li>• Effective anti-corruption legislation and policies are developed and maintained in the food sector, and accountability and administrative systems in food relief are implemented to prevent leakages and corruption.<sup>297</sup></li> <li>• Where necessary, the mandate, organisation and structure of public institutions is reformed, improved or established.<sup>298</sup></li> </ul>

288 ‘FAO Voluntary Guidelines’ (n 70) 26 [14.5].

289 Ibid 15 [6.1], 30 [17.1].

290 Ibid 21 [10.3].

291 Ibid 15 [5.4].

292 Ibid 10 [2.2], 30 [17.5].

293 *General Comment No 12* (n 1) 6 [21]–[22], 7–8 [29], [31]; *Concluding Observations on the Fifth Periodic Report* (n 81) 11–12 [62]; ‘FAO Voluntary Guidelines’ (n 70) 10 [2.1], 25 [13.2], 30 [17.1], [17.3].

294 *General Comment No 12* (n 1) 7–8 [21]; ‘FAO Voluntary Guidelines’ (n 70) 9 [1.2]; Elver, *2019 Interim Report* (n 64) 5 [6]; Elver, *Critical Perspective on Food Systems* (n 80) 17 [75].

295 *General Comment No 12* (n 1) 7 [27]; Fakhri, *Food System Recovery* (n 80) 16–17 [76]–[79]; ‘FAO Voluntary Guidelines’ (n 70) 13 [4.3].

296 ‘CFS Voluntary Guidelines’ (n 79) guideline 3.1.3(a).

297 ‘FAO Voluntary Guidelines’ (n 70) 15 [5.5], 25 [13.3].

298 Ibid 14 [5.1]–[5.2].

Principle	Best Practice Examples
<b>Non-discrimination and equality</b>	<ul style="list-style-type: none"> <li>• Measures are taken to ensure access to adequate food as part of social safety nets that target those in need.<sup>299</sup> Food safety nets connect with complementary interventions that promote longer-term food security.<sup>300</sup></li> <li>• Discrimination in access to food or resources for food is prevented,<sup>301</sup> and transparent eligibility criteria for food relief are established based on the principle of non-discrimination.<sup>302</sup></li> <li>• Access is provided to opportunities and economic resources for vulnerable groups to ensure they can participate fully and equally in the economy.<sup>303</sup></li> <li>• An enabling environment is created to generate change towards gender equality, eradicate discriminatory practices with respect to gender, and promote women's full and equal participation in the economy.<sup>304</sup></li> </ul>
<b>Empowerment</b>	<ul style="list-style-type: none"> <li>• Information is provided to individuals to strengthen both their participation in policy decisions that may affect them and their ability to challenge decisions that threaten their rights.<sup>305</sup></li> <li>• Measures (including policies and instruments) are implemented to support dietary diversity, affordability and accessibility of healthy diets and healthy eating habits, and food preparation.<sup>306</sup></li> <li>• Indigenous and local communities' food knowledge and food cultures are promoted and protected.<sup>307</sup></li> <li>• Policies are adopted that encourage stable employment in rural areas and promote investments to enhance the livelihoods of the urban poor.<sup>308</sup></li> </ul>
<b>Legality</b>	<ul style="list-style-type: none"> <li>• International instruments which further the availability of recourse for violations of economic, social and cultural rights are ratified.<sup>309</sup></li> <li>• Effective institutions and avenues for accountability are implemented domestically through a conducive legal and regulatory framework,<sup>310</sup> including adopting: <ul style="list-style-type: none"> <li>– constitutional principles that provide for progressive realisation of the right to food;<sup>311</sup></li> </ul> </li> </ul>

299 Ibid 10 [2.4], 26 [14.3].

300 Ibid 26 [14.4].

301 *General Comment No 12* (n 1) 7 [26].

302 'FAO Voluntary Guidelines' (n 70) 25 [13.3].

303 Ibid 16 [8.2]–[8.3].

304 'CFS Voluntary Guidelines' (n 79) guidelines 3.6.1(a)–(b), 3.6.2(a); Elver, *Access to Justice and the Right to Food* (n 80) 20–1 [72]; De Schutter (n 89) 18 [44], annex C(3).

305 'FAO Voluntary Guidelines' (n 70) 23 [11.5]; Elver, *Access to Justice and the Right to Food* (n 80) 20–1 [72].

306 'FAO Voluntary Guidelines' (n 70) 21 [10.1]; 'CFS Voluntary Guidelines' (n 79) guideline 3.3.2(a).

307 'CFS Voluntary Guidelines' (n 79) guidelines 3.5.2(b)–(c).

308 'FAO Voluntary Guidelines' (n 70) 10–11 [2.6]–[2.7].

309 *Concluding Observations on the Fifth Periodic Report* (n 81) 11 [59]; Elver, *Access to Justice and the Right to Food* (n 80) 20–1 [72].

310 'CFS Voluntary Guidelines' (n 79) guideline 3.1.3(a); 'FAO Voluntary Guidelines' (n 70) 10 [2.4].

311 'FAO Voluntary Guidelines' (n 70) 15–16 [7.1]–[7.2]; Elver, *Access to Justice and the Right to Food* (n 80) 5–6 [15], 20–1 [72]; De Schutter (n 89) annex C(1).

Principle	Best Practice Examples
<b>Legality (continued)</b>	<ul style="list-style-type: none"> <li>– a human rights-based national strategy for food security and realisation of the right to adequate food,<sup>312</sup></li> <li>– a framework law as a major instrument for implementation of the national strategy,<sup>313</sup> and</li> <li>– sectoral legislation for sectors which impact significantly on food security.<sup>314</sup></li> </ul> <ul style="list-style-type: none"> <li>• ICESCR rights, including the right to food, are included in the mandates of well-resourced national human rights institutions and other quasi-judicial bodies such as ombudspersons.<sup>315</sup></li> </ul>
<b>Dignity</b>	<ul style="list-style-type: none"> <li>• Food relief bridges the gap between the nutritional needs of individuals and their capacity to meet those needs themselves.<sup>316</sup></li> <li>• Food relief is: <ul style="list-style-type: none"> <li>– empowering for recipients, providing for independence and inclusion, and upholds dignity,<sup>317</sup></li> <li>– nutritionally adequate and safe; and</li> <li>– designed to take into account local circumstances, dietary traditions and cultures (practices, customs and traditions).<sup>318</sup></li> </ul> </li> <li>• The poorest sections of society are protected from budget reductions that negatively affect access to adequate foods.<sup>319</sup></li> <li>• Social safety nets and social protection programmes are adequate to facilitate access to basic needs, including food.<sup>320</sup></li> <li>• A national poverty reduction strategy based on comprehensive statistical data is adopted which addresses access to adequate food, with a particular focus on marginalised and disadvantaged groups.<sup>321</sup></li> </ul>

312 *General Comment No 12* (n 1) 6 [21]–[22], [25]; ‘FAO Voluntary Guidelines’ (n 70) 11 [3.1]–[3.2]; Fakhri, *Food System Recovery* (n 80) 15 [72].

313 *General Comment No 12* (n 1) 7–8 [29]; Elver, *Access to Justice and the Right to Food* (n 80) 20–1 [72].

314 Elver, *Access to Justice and the Right to Food* (n 80) 20–1 [72].

315 *Concluding Observations on the Fifth Periodic Report* (n 81) 2 [9]–[10]; ‘FAO Voluntary Guidelines’ (n 70) 31 [18.1]; Elver, *Access to Justice and the Right to Food* (n 80) 11 [37]; *General Comment No 12* (n 1) 8 [32]; Elver, *Critical Perspective on Food Systems* (n 80) 14 [61].

316 ‘FAO Voluntary Guidelines’ (n 70) 26 [14.5].

317 Riches and Silvasti, ‘Hunger in the Rich World’ (n 24).

318 ‘FAO Voluntary Guidelines’ (n 70) 26 [14.5], 22 [10.9]–[10.10].

319 *Ibid* 24 [12.3].

320 *Ibid* 10 [4.9]; Elver, *Access to Justice and the Right to Food* (n 80) 20–1 [72]; ‘CFS Voluntary Guidelines’ (n 79) guidelines 3.3.2(e)–(f); *Concluding Observations on the Eighth Periodic Report* (n 81) 13 [46(c)]; De Schutter (n 89) annex C(4).

321 *Concluding Observations on the Fifth Periodic Report* (n 81) 8 [39]–[40]; ‘FAO Voluntary Guidelines’ (n 70) 12 [3.4]–[3.6].