

LAYING DOWN THE FACTS **V2**

ANIMAL WELFARE STANDARDS
OF THE COMPANIES
PROVIDING YOUR FAVOURITE FOODS



CORPORATE ACCOUNTABILITY
AND THE EGG INDUSTRY IN
SOUTH AFRICA

***NOTE:** This is Version 2 of the report titled “*Laying Down the Facts: Animal Welfare Standards of the Companies Providing Your Favourite Foods*” originally published in August 2023 (“**Version 1 of the Initial Report**”). Revisions are indicated throughout this report in red font, with red asterisks and/or yellow highlighting. For a full record of all changes, see the **Revision Note** on pages 281-283 below. Any reference to the Initial Report or “this report” made throughout this document should be regarded as a reference to Version 2, rather than Version 1 of the Initial Report.

ANIMAL LAW REFORM SOUTH AFRICA

Animal Law Reform South Africa (“**ALRSA**”) is South Africa's first and only dedicated animal law non-profit organisation. ALRSA envisages a society whose laws, courts, enforcement agencies and private entities advance the protection and flourishing of humans, non-human animals and the environment, and are held accountable.

ALRSA operates through three key Pillars being: **Animal Flourishing; Social Justice; the Law.**

ALRSA undertakes its work through three main “Mechanisms”, namely:

Education & Research; Legislative & Policy Reform; Litigation & Legal services.

Through these Mechanisms, ALRSA aims to contribute to the development of a robust animal law ecosystem in South Africa **which recognises the intrinsic worth of non-human animals as sentient beings.** Our work is grounded in our understanding that it is critical for a context-sensitive approach to be taken to the furtherance of animal protection in South Africa, and that the impact of our work is enhanced through an intersectional understanding of animal flourishing, social justice and environmental protection.

ALRSA is a civil society organisation and registered non-profit company and NPO acting in the public interest.

ACKNOWLEDGEMENTS

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Our work is in part funded by a grant from the Open Wing Alliance (“**OWA**”). Read more on their website: <https://openwingalliance.org/>.

CO-AUTHORS' DISCLAIMER

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*PLEASE READ OUR LEGAL AND DISCLAIMERS SECTION.

PLEASE CONSULT OUR GLOSSARY FOR A LIST OF DEFINED TERMS. Unless the context otherwise requires, capitalised terms have the meanings ascribed to them in the Glossary.

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This Initial Report and other information relating to the Project are accessible at: www.animallawreformsouthafrica.org

We welcome comments, corrections, suggestions on and proposed amendments to this Initial Report including by the Selected Stakeholders.

We remain committed to engaging in an open and transparent manner in respect of this Initial Report. We reserve the right to amend this Initial Report.

Please email: outreach@animallawreform.org

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PROTECTING YOUR RIGHTS AS A CONSUMER


ANIMAL LAW REFORM
SOUTH AFRICA

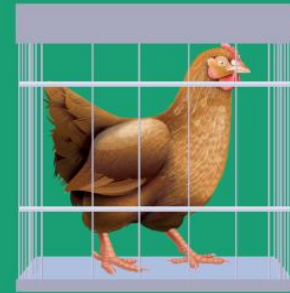

OPEN WING
ALLIANCE™

As a consumer in South Africa, you have legal rights – including to not be misled by the companies providing your food and products.



EXPECTATION

VS



REALITY

Many popular and well-known egg producers, retailers, brands, hotels, restaurants, and fast-food stores in South Africa are keeping their consumers in the dark and even misleading them regarding the conditions the chickens in the egg industry are kept in.

DON'T BE A VICTIM OF "WASHING"!

HUMANE-WASHING

Is a practice when false, misleading or confusing claims are made about animals used for products including their treatment or conditions of their birth, life or slaughter.

This can be done using images of happy animals or misleading terms such as "humane", "happy", "humanely raised", "ethically sourced", "high-welfare", and others.

GREEN-WASHING

Like humane-washing, green-washing is when false, exaggerated, misleading or confusing statements or claims are made which focus on the environmental aspects or environmental benefits of animal products such as "sustainable", "eco-friendly", "farm grown", "country eggs" and others.

The use of these images of terms, which often have no specific legal meaning are used to mislead / deceive consumers.

FREE RANGE

"Free-range" is a term used by industry where consumers may think that the animals roam around freely in open green fields for most of their life. This is not the case! For example, according to the NSPCA, due to Avian Influenza outbreaks, free-range layer hens are often 'quarantined' indoors for 24 weeks, yet the eggs are still sold to the public as "free range"¹

PILLAR 5: BIRD IN A GILDED CAGE?

CONSUMER PROTECTION: *THE 'MYTH' OF THE HAPPY HEN*

PART A: LAYING THE FOUNDATIONS

This “Consumer Protection Pillar” contains a high-level summary of some of consumer protection issues applicable to the Egg Industry in South Africa, as well as the regulation thereof, more specifically how these issues intersect with animal welfare and well-being. It is intended to provide an overview of selected matters only and is non-exhaustive of all of the relevant consumer protection considerations and law and policy relevant to the Egg Industry.⁶²⁴ This Part A sets out the rationale for the selection of this Pillar; the main national government departments with mandates in respect thereof, and connects it with information from our Stakeholder Report in Section IV; Part B sets out background information as to how the Pillar connects with the Egg Supply Chain; Part C provides an overview of selected governance issues associated with this Pillar in the context of the Egg Supply Chain in South Africa; and Part D provides examples of the other Parts in practice.

Matters already dealt with in detail in other Pillars or sections of this Initial Report and have not been repeated.

This Pillar has been selected for purposes of the Project because consumers are often unaware of, or even misled or deceived by Corporations, including within the animal agriculture industry as to where their food comes from. This can include misinformation relating to anything from methods of production to the subjective feelings of animals. By asking Corporations questions and for specific information such as their Public Statements⁶²⁵ about animal welfare or even the environment, we aim to interrogate whether they are being transparent and accountable to their consumers and members of the public, specifically in respect of duties owed to consumers.

⁶²⁴ For a more detailed analysis of Consumer Protection matters applicable to animal agriculture in South Africa, please refer to ALRSA’s Food System Working Paper <https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf> and White Paper (October 2022) <https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf> respectively.

⁶²⁵ A statement made by a Selected Stakeholder available in the public domain and provided to ALRSA in response to a request for access to information in which it discloses its sourcing practices in respect of the Egg Supply Chain (as a distributor or user thereof) and/or its production system in respect of eggs (as applicable). It does not include statements not provided to ALRSA.

While the well-known nursery rhyme “Old MacDonald” may have inculcated the idea that chickens live happily and healthily on idyllic farms, the reality is unfortunately far from this.⁶²⁶ As discussed in the Animal Welfare Pillar, the modern approach of confinement agriculture — where vast numbers of chickens are raised in limited controlled environments — causes inhumane physical suffering to chickens as well as psychological deprivation through the lack of space, lack of companionship for social animals, inability to move freely, boredom and stress.⁶²⁷

It is important that Companies making claims about their products (such as eggs), regardless of whether these are made on the product itself (labeling), in the advertising or marketing thereof, or in any other activity relating thereto, are clear, transparent, truthful and that their claims are not exaggerated or otherwise misleading to consumers. This is both in terms of legal obligations (such as is required by the Egg Labelling Regulations and Consumer Protection Act, (“CPA”) among others) but arguably also ethical or moral obligations towards their consumers.

Consumers deserve to know the truth about their products so that they can make informed decisions and are empowered to select products based on attributes that are important to them – whether this be in relation to animal welfare (such as the methods of production or inputs); environmental; health or otherwise. Furthermore, consumers have legal rights in terms of the products and services they purchase, and there are corresponding duties on Corporations. Failure to comply with these duties can cause financial liability, and have reputational impacts. Moreover, breaches of consumer protection duties, misinformation, and a lack of transparency can have far-reaching implications for consumers. For example, during the 2017-2018 listeriosis outbreak in South Africa over 1000 people lost their lives from purchasing contaminated meat products.

Some legislation discussed under this Pillar falls under the mandate of the DTIC, while other legislation is implemented by DALRRD.

For purposes of our PAIA Requests to our Selected Stakeholders, we requested any and all records of Public Statements made by Selected Stakeholders.

Our motivation for this request was that Public Statements could provide insight as to the disclosure of the practices Selected Stakeholders are currently undertaking in respect of their egg sourcing or production. Consumers ought to demand Comprehensive and accurate Public Statements in respect of their food purchased from retailers, fast food outlets and restaurants, wholesalers, and hotels. In the CPA, for example, section 24(2)(a) of the CPA states that a person must not knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or

⁶²⁶ Similarly, deceptive advertising and labelling continue to paint a misleading picture regarding how these animals are treated and managed on farms. <https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf> and the Charissa Kemp and 10 Others v Fair Cape Dairies (Pty) Ltd case.

⁶²⁷ Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. J Agric Environ Ethics(2015) 28:1159. DOI10.1007/s10806-015-9583-6.

expressed in that trade description. Additionally, section 29 of the CPA A producer, importer, distributor, retailer or service provider must not market any goods or services in a manner that is reasonably likely to imply a false or misleading representation concerning those goods or services, as contemplated in section 41.⁶²⁸ We expected that Public Statements made by Selected Stakeholders identified as producers would provide an accounting of current practices employed in their respective production systems, including the use of Cruel Practices and measures adopted in respect of Progressive Measures to address these, if any.

Responses received from Selected Stakeholders informed rating Criteria 6 (inclusive of Indicator 6.1, 6.2 and 6.3) with reference to whether Selected Stakeholders provided accurate and Comprehensive Public Statements in relation to their involvement in the Egg Industry. These were requested in order to indicate any misleading or inaccurate Public Statements and to enable consumers to be more aware of the practices of Selected Stakeholders, as highlighted in Public Statements (with reference to the other information provided by a Selected Stakeholder).

PART B: LAYING DOWN THE FACTS

A lack of public awareness about the vast harms of intensive animal agriculture, and the lack of adequate regulation and oversight may be exploited by Corporations when labelling, marketing, and advertising animal sourced foods. For customers to be empowered to make ethical and informed choices, they need to be informed of where their food comes from, and what and how the suppliers of their favourite foods are doing to ensure the requisite compliance and care. Accountability remains a powerful tool for consumers as it creates transparency and understanding of how food is produced and the overall sustainability of such supply chains. Further, it prevents Humane-washing and Greenwashing.

As per our Glossary, “Humane-washing” is:

“[t]he practice of making a false, misleading, or exaggerated claim about the treatment of animals or the conditions in which they are born, raised, transported, or killed, creating the (false) impression that animals are treated with compassion or in a humane manner”.

⁶²⁸ Section 29 read with section 41 of the CPA. Section 41 deals with “False, misleading or deceptive representations” and contains a list of various matters in respect of both goods and services that can be deemed as such.

As per our Glossary, “Greenwashing” is:

“[t]he practice of making a false, misleading, or exaggerated action or set of claims made by a Selected Stakeholder about the positive impact that a company, product or service has on the environment”.

To govern Humane-washing and Greenwashing, South Africa has introduced consumer protection laws as further discussed in Part C, such as the Consumer Protection Act, 2008, Marketing of Agricultural Products Act 47 of 1996, Agricultural Products Standards Act 119 of 1990⁶²⁹ and its Regulations Regarding the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of South Africa (the “**Egg Labelling Regulations**”),⁶³⁰ and Codes of the Advertising Regulatory Board.

PART C: LAYING DOWN THE LAW

REGULATION OF THE EGG INDUSTRY: THROUGH A CONSUMER PROTECTION LENS

I. CONSUMER PROTECTION ACT

The Consumer Protection Act (“**CPA**”), as the name suggests, aims at protecting consumers and their interests in a variety of ways, including because apartheid and discriminatory laws of the past have resulted in consumer vulnerability due to high levels of poverty, illiteracy and other forms of social and economic inequality. This recognition centres the protection of consumer rights as an issue of social justice. As a result, the Act aims to:

1. promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose to establish national norms and standards relating to consumer protection,
2. provide for improved standards of consumer information,
3. prohibit unfair marketing and business practices,
4. promote responsible consumer behaviour,
5. promote a consistent legislative and enforcement framework relating to consumer transactions and agreements,
6. establish the National Consumer Commission.

⁶²⁹ <https://www.gov.za/documents/agricultural-product-standards-act-6-mar-2015-1127>.

⁶³⁰ Regulations Regarding the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of South Africa published in Government Gazette No. 43108 of Notice R.345 on 20 March 2020, available at https://www.gov.za/sites/default/files/gcis_document/202003/43108rg11055gon.345.pdf.

The Act sets out specific rights for consumers, including but not limited to: the right of equality in the consumer market;⁶³¹ consumers' rights to privacy;⁶³² the right to disclosure and information;⁶³³ the right to fair and responsible marketing;⁶³⁴ the right to fair and honest dealing;⁶³⁵ the right to fair, just and reasonable terms and conditions;⁶³⁶ the right to fair value, good quality and safety;⁶³⁷ and consumers' rights to safe, good quality goods.⁶³⁸

It also sets out liability including but not limited to liability for damage caused by goods (section 61)⁶³⁹ and vicarious liability (section 113). As a consumer product sold in South Africa, eggs fall under the ambit and definition of “goods” regulated and therefore all relevant provisions of the CPA referencing “goods”⁶⁴⁰ apply to the industry and the consumers, as appropriate.

The CPA (and other relevant legislation) has been relied upon in the listeria class action case currently taking place.⁶⁴¹ Tiger Brands, one of our Selected Stakeholders, is the entity against which the class action has been initiated.

II. AGRICULTURAL PRODUCT STANDARDS ACT AND EGG LABELLING REGULATIONS

This legislation has been discussed under the Animal Welfare Pillar, in relation to the types of eggs and how these must be identified on the outer containers of eggs as well as the requirements for each type of egg: Cage Eggs; Free Range Eggs and Barn Eggs.

It promotes transparent labelling, which helps consumers become more aware of the welfare considerations of Layer Hens on the part of producers and retailers. This, in turn, may encourage relevant role-players in the Egg Supply Chain to shift from inhumane cage systems to better welfare systems that not only improves Layer Hen welfare, but will concomitantly protect their commercial and reputational interests, and demonstrate their commitment to corporate accountability.

⁶³¹ Part A of the Consumer Protection Act.

⁶³² Part B of the Consumer Protection Act.

⁶³³ Part D of the Consumer Protection Act.

⁶³⁴ Part E of the Consumer Protection Act.

⁶³⁵ Part F of the Consumer Protection Act.

⁶³⁶ Part G of the Consumer Protection Act.

⁶³⁷ Part H of the Consumer Protection Act.

⁶³⁸ Section 55 of the Consumer Protection Act.

⁶³⁹ For example it states that except to the extent contemplated in subsection (4), the producer or importer, distributor or retailer of any goods is liable for any harm, as described in subsection(5), caused wholly or partly as a consequence of (a) supplying any unsafe goods; (b) a product failure, defect or hazard in any goods; or (c) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor or retailer, as the case may be.

⁶⁴⁰ Goods are referenced throughout the entirety of the CPA, as compared to “services”. Generally, throughout the CPA for all provisions, both goods and services are mentioned, although each also has particular sections which apply to them only. For example, in relation to goods – Pyramid and related schemes (section 43).

⁶⁴¹ <https://listeriaclassaction.co.za/>.

Section 6 of the Act states:

“No illustration, depiction, logo or other method of visual expression that constitutes a misrepresentation, or either directly or by implication creates or may create a misleading impression regarding the contents, quality, origin, grade, size group, production method or diet shall be indicated on a container or outer container containing eggs”.

The Egg Labeling Regulations promulgated in terms of the Act further restrict what can be included on the outer container of eggs. These restrictions can help prevent Humane-washing and Greenwashing.

In terms of regulation 13(1)(a):

“No name, mark or any other method of expression using the following words or wording shall be indicated on a container or outer container containing eggs: ...

(ii) A message of veterinary medicine-free or which indicates the more humane treatment or rearing of poultry or which creates an impression that the eggs are safer or that poultry was fed a special diet such as, but not limited to, ‘antibiotic free’, ‘fed a diet free of hormones’, ‘cage free’, ‘furnished cage’, ‘safe’, ‘pure’, ‘grass fed’, ‘pasture fed’, ‘forage fed’, ‘canola fed’, ‘grain fed’, ‘mixed grain’, ‘organic’, ...

(iii) Any other wording not addressed in sub-paragraphs (i) and (ii) above that constitutes a misrepresentation or either directly or by implication creates or may create a misleading impression regarding the contents, quality, origin, grade, size group, production method or diet”.

These restrictions relate only to what may be displayed on the outer packaging and do not speak to the advertising and marking of eggs.

III. MARKETING OF AGRICULTURAL PRODUCTS ACT 47 OF 1996

The purpose of this Act⁶⁴² is to authorise the establishment and enforcement of measures to intervene in the marketing of agricultural products; including the introduction of levies on agricultural products; to establish a National Agricultural Marketing Council; and to provide for matters connected therewith. Section 15 of this Act allows for the introduction of “levies” subject to certain conditions being met.

Due to a declining membership of Egg Organisation over several years, SAPA indicated that the only way to fund the organisation was through a statutory egg levy. SAPA, with the support of the producers of more than 66% of the country’s eggs, successfully applied to the NAMC.⁶⁴³ Regulations

⁶⁴² https://www.gov.za/sites/default/files/gcis_document/201409/act47of1996.pdf.

⁶⁴³ <https://www.namc.co.za/> . NAMC is a statutory body reporting to the Minister of DALRRD and was established in terms of the Marketing of Agricultural Products Act No. 47 of 1996, as amended by Act No 59 of 1997 and Act No. 52 of 2001.

in terms of this Act thus introduced a statutory levy to be paid on all eggs sold in the Republic to SAPA. The egg levy came into force from 27 July 2018. It requires that all egg producers and packing stations contribute 1.5 c/dozen eggs traded. Subsequent levies were successfully applied for by SAPA to the NAMC in other years, the latest of which will lapse in March 2026⁶⁴⁴ (as further set out in the table below).

In respect of levies collected, they should be used as follows (emphasis added):

- “a) Approximately 70% of the funds are required to be used for functions relating to **consumer communication and education, consumer assurance, research, industry information and liaison and production development**;*
- b) At least 20% of the funds are required to be used for **transformation**; and*
- c) Not more than 10% of the funds may used for **administrative costs**”.*⁶⁴⁵

Based on 2017 numbers, the total levy should amount to around R9 million, in an industry likely to have revenues of well over R15 billion.⁶⁴⁶ This means a substantial amount of money (over R6million) is available to SAPA for consumer communication, education, etc. Please refer to the section on SAPA above in respect of the NAMC Study relating to cage free egg production.

In terms of a 2022 Government Gazette⁶⁴⁷ with three separate notices,⁶⁴⁸ specifically relating to the Marketing of Agricultural Products Act, a levy is payable on “table eggs and egg products” being non-fertile eggs of the species *gallus domesticus* for domestic consumption. The Government Gazette, at 2 states (emphasis added):⁶⁴⁹

*“The purpose and aim of this statutory measure is to **compel establishments selling table eggs to the trade to register with the levy administrator [namely SAPA]**. This is necessary to ensure all role-players have access to market information which is an essential ingredient in any agricultural development, **access to accurate market information** is very crucial in any decision-making process. Continuous and accurate market information relating to eggs sold to the trade should be available to all market participants.*

⁶⁴⁴ SAPA Industry Profile 2021.

⁶⁴⁵ https://www.gov.za/sites/default/files/gcis_document/202201/45771gon1682.pdf at 3.

⁶⁴⁶ <https://www.news24.com/news24/bi-archive/new-egg-levy-for-marketing-and-empowerment-to-sa-poultry-association-now-active-2018-8>.

⁶⁴⁷ https://www.gov.za/sites/default/files/gcis_document/202201/45771gon1682.pdf.

⁶⁴⁸ 679 Marketing of Agricultural Products Act (47/1996): Continuation of Statutory Levies on Table Eggs as prescribed by Regulation R345, as amended and on Egg Products sold to the Trade and Determination of Guideline Price 45771; 1680 Marketing of Agricultural Products Act (47/1996): Continuation of Statutory measure regarding the Registration of Sellers of Table Eggs as Prescribed by Regulation R354, as amended and Egg Products sold to the Trade 45771; and 1681 Marketing of Agricultural Products Act (47/1996): Continuation of Statutory Measure regarding Records and Returns by Sellers of Table Eggs as prescribed by Regulation R345, as amended and Egg Products Sold to the Trade 45771.

⁶⁴⁹ https://www.gov.za/sites/default/files/gcis_document/202201/45771gon1682.pdf at 2.

The establishment of the statutory measure should assist in promoting the efficiency of the marketing of table eggs both local and abroad. The viability of the Egg Industry should thus be enhanced through the introduction of statutory measures.

The measure is not detrimental to any objectives of the Act and, in particular, shall not be detrimental to the number of employment opportunities or fair labour practice in the Egg Industry.⁶⁵⁰

Confidential information of any person subject to this statutory measure obtained by the levy administrator through the implementation, administration and enforcement of this statutory measure shall be dealt with in accordance with section 23(2) of the Act.⁶⁵¹

The measure shall be administered by the levy administrator who will appoint a third party to assist them with the registration of the identified role-players. The latter shall act in terms of the mandate and on behalf of SAPA”.

Furthermore, the Government Gazette states that the levy ought to fund:

- (a) Transformation in the developing sector;
- (b) Consumer communication and education;
- (c) Consumer assurance;
- (d) Research and Development
- (e) Industry information and liaison;
- (f) Production development; and
- (g) Administration cost.

AMOUNT OF LEVY

The amount of the levy payable:

	Dozen of Table Eggs
From 1 April 2022 to 31 March 2023	R0, 018 (VAT excluded)
From 1 April 2023 to 31 March 2024	R0, 018 (VAT excluded)
From 1 April 2024 to 31 March 2025	R0, 018 (VAT excluded)
From 1 April 2025 to 31 March 2026	R0, 018 (VAT excluded)

This levy appears to cement the role of SAPA as the primary mouthpiece for the Egg Industry and through these levies (promulgated in government documents), SAPA is empowered with financial means to promote the Egg Industry. This could potentially have the effect of consolidating power and potentially creating

⁶⁵⁰ https://www.gov.za/sites/default/files/gcis_document/202201/45771gon1682.pdf at 2.

⁶⁵¹ Section 23(2) of the Marketing of Agricultural Products Act No. 47 of 1996 states that “No person shall, except in the performance of his or her functions under this Act, or unless required to do so by a court of law or in terms of any law, or with the written consent of the Minister, disclose to any other person information, pertaining to any 15 person, institution or body of persons, collected under section 18 or otherwise acquired in the performance of functions in terms of this Act”.

further barriers to engagement with civil society and transparency of information, given that SAPA has already refused information on ground discussed above.

IV. ADVERTISING REGULATORY BOARD

According to its website, the Advertising Regulatory Board (“**ARB**”) was set up by the broader marketing and communications industry to protect the South African consumer through the self-regulation of advertising, including packaging. The ARB administers the widely-accredited Code of Advertising Practice which regulates the content of South African advertising.⁶⁵² There is a specific code for “Food and Beverage” applicable to egg products.⁶⁵³

Importantly, a 2022 decision the Supreme Court of Appeal confirmed that the ARB is entitled to consider the advertising of non-members, and issue decisions thereon, for the guidance of its members.⁶⁵⁴

There are several important provisions in the Code that aim to protect consumers and hold Corporations involved in advertising products accountable. These are not discussed in further detail for purposes of this Initial Report, save to highlight that, these codes have been utilised in several cases involving advertising in the animal agriculture sector. Some challenges were unsuccessful and at least one has been successful.⁶⁵⁵ The successful challenge involved an ARB Appeals Committee ruling that a dairy company in South Africa could not utilise the terms “humane” and “#happycows” in their advertising due to this being in contravention of the Codes.

⁶⁵² <https://www.arb.org.za/#codes>.

⁶⁵³ [https://www.arb.org.za/assets/appendix-j-food---beverage-\(2022\).pdf](https://www.arb.org.za/assets/appendix-j-food---beverage-(2022).pdf).

⁶⁵⁴ Advertising Regulatory Board NPC and Others v Bliss Brands (Pty) Ltd (786/21) [2022] ZASCA 51; [2022] 2 All SA 607 (SCA); 2022 (4) SA 57 (SCA) (12 April 2022). <https://www.saflii.org/cgibin/dispatch.pl?file=za/cases/ZASCA/2022/51.html>.

⁶⁵⁵ ‘Statement on Advertising Appeals Committee decision on complaint Fair Cape Dairies vs Kemp, Fairbrother, others, issued on 5 May 2020’ available at: <https://medium.com/@joannefairbrother/statement-on-advertising-appealscommittee-decision-on-complaint-fair-cape-dairies-vs-kemp-1173775edd14>.

**PART D: EGG-SAMPLES OF EGG PACKAGING, STATEMENTS AND
MARKETING AND ADVERTISING IN SOUTH AFRICA**

WELCOME TO TOPLAY

Which comes first, the chicken or the egg? At TopLay our hens come first! Our hens are treated with extra special care and are fed the highest quality feed to give you the eggs you trust.

656



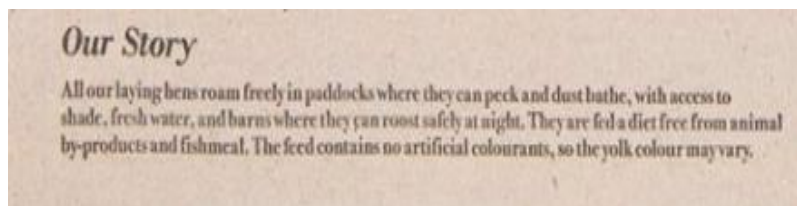
657

656 <https://toplay.co.za/>.

657 <https://www.eggbert.co.za/>.

WOOLWORTHS – STAKEHOLDER 4⁶⁵⁸

“All our laying hens roam freely in paddocks where they can peck and dust bathe, with access to shade, fresh water and barns where they can roost safely at night. They are fed a diet free from animal by-products and fish meal. The feed contains no artificial colourants, so the yolk colour may vary”.



Woolworths claims to be the only retailer that sells no caged eggs in these advertisements from 2019 and 2018 respectively: Sources: Woolworths SA.⁶⁵⁹



⁶⁵⁸ https://www.woolworths.co.za/prod/_/A-20175870

⁶⁵⁹ 2019: <https://www.pressreader.com/south-africa/woolworths-taste/20190701/285177244766349> and 2018: <https://www.pressreader.com/south-africa/woolworths-taste/20181001/281698320672126>



Example: Labelling Investigation

In 2019, an investigation was conducted into Pick n Pay’s claims around its free-range eggs by Testing of Products Initiated by Consumers (“**TOPIC SA**”).⁶⁶⁰ TOPIC SA is a consumer-led organisation funded by consumers and retailers that are committed to transparency. With the use of laboratory testing, farm and factory visits and any other means necessary to verify that ingredients and label claims are accurate.

According to TOPIC SA, “consumers buy free range eggs because they believe that the hens are ‘happier’, ‘healthier’ and the eggs ‘taste better’”. “Hen welfare is rated as ‘important’”. The difference in price between free-range and cage eggs is quite significant. Price differences on Pick n Pay online as of 14 January 2022 shows that shoppers will pay between 8% to 64% more for eggs labelled as free range over non-labelled cage eggs.⁶⁶¹

TOPIC SA undertook to investigate the accuracy of Pick n Pay’s free range egg labelling by requesting documentation which either supported or confirmed the free-range status of its eggs along with a farm visit to view the production facilities. In response, Pick n Pay stated that it has six suppliers producing its free-range eggs in various regions countrywide. Furthermore, Pick n Pay stated that “*all supplier packing facilities undergo external audit (FSA Intertek/GFSI Intermediate/GFSI Certification), where the premises and processes are audited*”. In respect of a farm visit, Pick n Pay relayed its suppliers’ reluctance to have customers on site due to bio security issues and the links to the Avian Influenza.

In early February 2020, TOPIC SA requested a copy of the report from the most recent external audit or inspection conducted on Pick n Pay free range egg suppliers. TOPIC SA expressed their understanding of the biosecurity concerns and had previously been fully compliant with a farm visit it had conducted in the previous year, requesting that Pick n Pay reconsider a farm visit to one of their Western Cape Suppliers.⁶⁶²

Pick n Pay provided authorisation in this respect to TOPIC SA, providing access to three of its free-range suppliers, namely Windmeul Eggs, Alzu and Quantum Foods respectively. TOPIC SA undertook to contact these suppliers to conduct farm visits. These visits, however, would not take place on any of these farms. This was due to numerous Avian Influenza outbreaks occurring during this investigation.

⁶⁶⁰ <https://topicsa.org.za/blog/free-range-pick-n-pay-eggs/>.

⁶⁶¹ Ibid.

⁶⁶² Ibid.

TOPIC SA, while engaging with Nulaid, the egg-layer division of Quantum Foods, stated:

“by May 2021, four different strains of bird flu has been detected at South African poultry farms. According to an IOL report from August 2021, nearly 2.7 million birds in the broiler and egg industries ‘were culled as a preventative measure which represents around 2% of the national flock’”.

A spokesperson for Windmeul Eggs further stated:

“Currently due to the high alert of HPAI, they [Layer Hens] are kept indoors. Normally the pop holes are open 24 hours, and we close certain farms under normal conditions at 20:00 due to natural predators”.

Furthermore, during the investigation, South Africa entered lock down due to the COVID-19 pandemic which further led suppliers to be reluctant to arrange farm visits with these suppliers.

In conclusion, TOPIC SA noted that both Windmeul Eggs and Nulaid stated that they are compliant with SAPA’s code of conduct and guidelines “and then would also appear to be compliant with the limited free range egg labelling legislation.”

It further stated:

“SAPA’s conditions make reasonable provision for the welfare of hens raised in free range production systems. They allow for adequate rest, expression of natural behaviours, protection from predators and from the sun, and six hours of continuous daytime access to vegetated areas, but SAPA does not monitor or audit its members. The TOPIC team has not received evidence to support the claims of conditions at Pick n Pay’s suppliers (whether from Pick n Pay or their suppliers, or from audits) and due to a combination of Covid-19 lockdowns, and farms not allowing visits due to the Avian influenza outbreaks, TOPIC has been unable to be on site to verify such claims”.

While this investigation did not yield the desired results in confirming or refuting the free-range labelling claims of Pick n Pay, it is indicative of the harmful conditions associated with the commercial Poultry Industry. Pathogenic disease outbreaks in these operations occurring with such regularity that conducting a farm visit remains a difficult task, with Industry Associations such as SAPA not conducting audits nor monitoring of compliance on its members.⁶⁶³

⁶⁶³ <https://topicsa.org.za/blog/free-range-pick-n-pay-eggs/>.

LEGAL AND DISCLAIMERS

The focus for the Project is on the large scale, industrialised and intensive animal agricultural and production sector, specifically in relation to chickens in the Egg Industry, and where relevant other poultry (including broilers, among others). As such, this Initial Report does not include the informal sector, nor small scale and subsistence farming operations. Where appropriate, examples of other farmed animals, or examples from other jurisdictions have been incorporated, particularly where such information is not readily nor easily available in the South African context.

While government and public bodies have an essential role to play in ensuring the well-being and welfare of animals as well as the protection of the environment and human rights, the focus of this Initial Report is largely on the role of the private sector, specifically Corporations. Aspects of governmental and public body regulation and policies are highlighted and discussed; however, these aspects are not the focal point of this Initial Report.

As an organisation focused primarily on animal law, this is the predominant lens through which this Initial Report has been drafted and should be considered, i.e., the centering of animals, their interests, and their intrinsic worth in the dialogue. While social justice and environmental protection are critical components of the work of ALRSA, more research has been done in these areas as there are already a number of important organisations focusing on these aspects. As such, this Project aims to fill a gap within current research to additionally include animals and their welfare, flourishing and protection into this discussion, and the legal and policy tools which can be used to do this. This Initial Report does not intend to defame or harm the reputation of any company mentioned within.

This Initial Report is as a result of the preliminary research and the review performed by ALRSA and the co-authors and commenter as at the published date. It is published as at 3 August 2023 and is intended to provide only a summary of issues which may be relevant to the topic. It is limited in scope based on various factors. This is a non-exhaustive report intended to stimulate debate, research and law reform in the area of animal law and food systems and requiring further context and information in relation to all of the issues included herein.

ALRSA has focused on selected regulatory aspects and has not considered all legal, economic, political, social, environmental, technological, and other relevant aspects pertinent to some of these issues. All such factors should be considered when pursuing any further work or research.

It is also important to note that the focus of this Initial Report is on industrialised animal agricultural operations and practices occurring therein. Given the various types of systems, these all have different considerations and consequences. Statements, observations and recommendations do not and will not apply to small scale and extensive farming systems nor to other less harmful methods of animal agriculture including egg production and should not be constituted as allegations.

It is explicitly recognised that animal agriculture including egg production is not all conducted in the same manner, and it is dependent on the particular farmer, facility, method of farming, geographic location and various other factors. Therefore, only generalised statements and recommendations are made focusing on harmful potential impacts of industrialised animal agriculture and are representative of what is understood in that context which may not be applicable to or appropriate for all animal agriculture and animal production, nor appropriate to all of the role-players and stakeholders mentioned in this Initial Report. Statements made will not apply to all facilities and stakeholders and should not be construed as such.

This Initial Report does not contain a detailed description of all relevant laws and policies, papers and each document reviewed. Its purpose is to set out those legal issues which ALRSA considers to be material. Reliance should not be

placed solely on any of the summaries contained in this Initial Report, which are not intended to be exhaustive of the provisions of any document or circumstances. ALRSA reserves the right to amend and update this Initial Report including in light of new information and comments received.

Unless otherwise expressly agreed by ALRSA in writing, no person is entitled to rely on this Initial Report and neither ALRSA nor the co-authors or commenter shall have responsibility or liability to any party, whether in contract, delict (including negligence) or otherwise relating hereto.

This Project has been conducted and this Initial Report drafted by a civil society organisation in the public interest. In particular, with regard to the protection of guaranteed constitutional rights in mind and in exercising of ALRSA's freedom of expression as contained in the Constitution of the Republic of South Africa, 1996.

ALRSA is registered and established as a non-profit company and non-profit organisation. It is neither a registered law firm nor a law clinic. This Initial Report does not constitute legal advice.

Any views and opinions expressed in this Initial Report are those of the relevant co-author or commenter and do not necessarily reflect the views or positions of any entities they represent. Such opinions, views, comments, and expressions are protected under the right to freedom of expression as provided for in the Constitution. Neither ALRSA nor the co-authors or commenter accept any liability for any indirect or consequential loss or damage, or for any loss of data, profit, revenue or business (whether direct or indirect) in each case, or reputational damage, however caused, even if foreseeable.

Any resources or referenced materials, sources or sites included in this Initial Report do not constitute endorsement nor do ALRSA and/or the co-authors or commenter accept any responsibility for the content, or the use of same and we shall not be liable for any loss or damage caused or alleged to be caused by or in connection with use of or reliance on any content, goods or services available on or through any other resource.

None of the statements made or information presented in this Initial Report shall be considered as allegations against any person or entity, including the Selected Stakeholders of contravention of or offences in terms of any South African or international law and/or regulation. ALRSA declares that it has no malicious intent to defame, disparage, or harm the reputation of any person or entity, including the Selected Stakeholders, mentioned in this Initial Report. ALRSA aims to promote constructive dialogue and encourage responsible practices concerning animal welfare.

END.

REVISION NOTE: SEPTEMBER 2024

This revision note documents the updates made to the report titled *Laying Down the Facts: Animal Welfare Standards of the Companies Providing Your Favourite Foods*, originally published by ALRSA in August 2023 (“**Version 1 of the Initial Report**”) and republished with these amendments in September 2024, regarding Bidcorp, a Selected Stakeholder featured in the report. The revision aims to uphold transparency and accountability throughout the reporting process of ALRSA’s Corporate Accountability Project.

ALRSA’S ENGAGEMENT WITH BIDCORP

On 25 November 2022, ALRSA submitted a request for access to information from Bidcorp under PAIA. On 23 December 2022, Bidcorp requested that ALRSA pay a fee to process the request. In the same correspondence, Bidcorp refused to provide the requested records but stated it would reconsider if additional documents were supplied by ALRSA (“**Bidcorp’s Refusal Letter**”).

On 13 February 2023, ALRSA responded, urging Bidcorp to reconsider its decision, rebutting the grounds for refusal, and stressing the importance of transparency and accountability when engaging with civil society. ALRSA requested a response by 20 February 2023 on an urgent basis. Bidcorp did not respond by this deadline. The Initial Report was therefore prepared based on the correspondence received from Bidcorp as of 20 February 2023.

Following the publication of the Initial Report in August 2023, ALRSA commenced the second phase of its multi-phase Corporate Accountability Project. As part of this phase, ALRSA submitted a request for access to information from Bidcorp on 4 December 2023. Bidcorp responded on 20 December 2023, alleging that certain statements in the Initial Report regarding Bidcorp were inaccurate and requested written confirmation that the inaccuracies had been corrected.

CORRECTIONS REQUESTED BY BIDCORP

Bidcorp claimed that:

1. Version 1 of the Initial Report incorrectly implied that Bidcorp was not entitled to request a PAIA fee, emphasising that no exemption exists for non-profit organisations to pay a request fee under the law.
2. Version 1 of the Initial Report falsely asserted that Bidcorp did not respond to its request for information after receiving payment from ALRSA, as it submitted a response on 13 March 2023.

ALRSA maintains that the statements on page 236 of Version 1 of the Initial Report, regarding Bidcorp's PAIA fee request and being the only stakeholder to do so, are factually accurate. As such, no amendments are required in this regard.

However, we acknowledge Bidcorp's subsequent, belated correspondence received on 13 March 2023 ("**Bidcorp's Belated Response**"), which granted ALRSA partial access to the requested records. In light of this, and in the spirit of constructive stakeholder engagement, we issue this revision note to reflect the impact of Bidcorp's Belated Response on the Initial Report.

CHANGES MADE TO THE INITIAL REPORT IN RESPECT OF BIDCORP

The following amendments have been made in Version 2 of the Initial Report in respect of Bidcorp:

DESCRIPTION OF AMENDMENT	PAGE NUMBER: VERSION 1 OF THE INITIAL REPORT	PAGE NUMBER: VERSION 2 OF THE INITIAL REPORT
Amended the overall rating for Bidcorp: changed from Red to Orange .	12	12
Amended the overall rating for Bidcorp: changed from Red to Orange .	234	234
Removed statement regarding ALRSA's correspondence with Bidcorp post-payment of the PAIA request fee: <i>"[o]nly for Bidcorp, a major Corporation, to then refuse access to any of the records requested on spurious grounds and with limited justification. Upon ALRSA making this payment, and providing further substantiation for our request, Bidcorp acknowledged receipt of the requested payment and undertook to respond to our request but did not do so beyond this acknowledgement."</i>	236 & 237	237
Amended ratings for Indicators 1.1, 1.3, 2.1, 2.3 and 2.5 of Rating Criteria 1 and 2: Internal Policies and Annual Reports changed from Red to Green , Orange , Green , Orange , and Orange respectively.	238	238
Amended ratings for Indicators 3.1–3.2 and 4.1 of Rating Criteria 3 and 4: Compliance with Relevant Legislation and Evidence of Adverse Findings changed from all Red to all Green ratings.	241	241
Amended the colour rating for Indicator 5.3 of Rating Criteria 5 and 6: Evidence of Relevant Commitments and Contents of Public Statement changed from Green to Red . <i>*Note – The Green rating awarded to Bidcorp for</i>	244	244



DESCRIPTION OF AMENDMENT	PAGE NUMBER: VERSION 1 OF THE INITIAL REPORT	PAGE NUMBER: VERSION 2 OF THE INITIAL REPORT
<i>Indicator 5.3 in Version 1 of the Initial Report was incorrectly awarded; it should have been a Red rating.</i>		
Amended the colour rating for Indicator 6.1-6.3 of Rating Criteria 5 and 6: Evidence of Relevant Commitments and Contents of Public Statement changed from Red to Orange .	244	244
Amended the ratings for Indicators 9.4 and 10.1 of Rating Criteria 9 and 10: Transparency and Cooperation Compliance changed from Red to Orange .	249	250



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