

# 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

### FUNDING

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.

Recommended citation: Animal Law Reform South Africa, *Laying Down the Facts* (August 2023 updated September 2024). Available at: [www.animallawreformsouthafrica.org](http://www.animallawreformsouthafrica.org)

This Initial Report and other information relating to the Project are accessible at: [www.animallawreformsouthafrica.org](http://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](mailto:outreach@animallawreform.org)

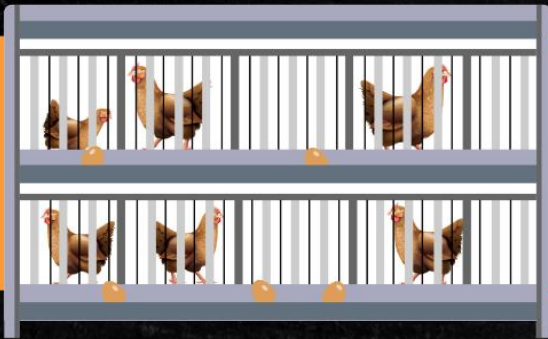
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# LIFE IN PRISON FOR COMMITTING NO CRIME

  
ANIMAL LAW REFORM  
SOUTH AFRICA

  
OPEN WING  
ALLIANCE®



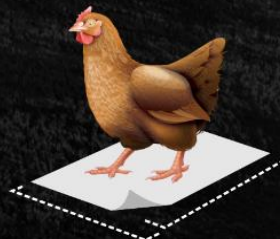
## DID YOU KNOW?

MORE THAN 86% of egg-laying hens in SA's egg industry are kept in battery cages.<sup>1</sup>

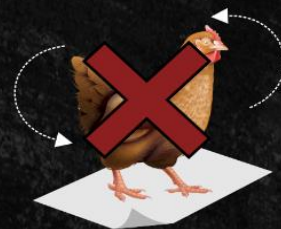
## WHAT IS IT LIKE LIVING IN A CAGE?



Similar to  
**wired prison cells**  
for these animals



Each hen has less  
living space than a  
standard **A4 page** of paper



Unable to turn around,  
stretch their wings  
or **move freely**



**Crammed tightly**  
with other  
chickens



**Forced** to stand, sleep,  
and stick their head  
through the wire structure  
of the battery cage



**Restricted**  
biological functions



Accumulation of  
**excretion and waste**



Failure to meet  
**nutritional needs**



**DENIAL OF BASIC BEHAVIOURS CRITICAL TO THEIR WELFARE:**  
No foraging | No preening | No dust bathes | No exercise | No perching

## PILLAR 1: FREE AS A BIRD?

### ANIMAL WELFARE: THE CAGED MOTHER AND THE PERSECUTED CHICK

**According to reports, over 86% of egg-laying hens in South Africa are confined to live in Battery Cages.**

“Across the globe there is mounting pressure on poultry farmers to change to more humane housing systems for hens.” – South African Poultry Association 2021 Annual Report<sup>66</sup>

## PART A: LAYING THE FOUNDATIONS

### I. INTRODUCTION

This Animal Welfare Pillar contains a high-level summary of some of the animal welfare and well-being issues applicable to the Egg Industry in South Africa, as well as the regulation thereof. It is intended to provide an overview of selected matters and is non-exhaustive of all of the relevant animal welfare and well-being considerations and law and policy relevant to the Egg Industry.<sup>67</sup>

For this Pillar, this Part A seeks to lay the foundations on animal welfare and well-being, more specifically the constitutional foundations as to how these matters intersect with several guaranteed human rights and how the courts have interpreted these issues (such as the right to have the environment protected; the right to access to information and the right to freedom of expression), and discusses the constitutional and legislative competencies of relevant government entities. Part B sets out background information as to how the Pillar connects with the Egg Industry by highlighting important capacities and capabilities and qualities of chickens, including but not limited to their sentience. It further highlights globally accepted markers of welfare, including the Five Freedoms and Five Domains, and contrasts these against Cruel Practices within the Egg Industry. Part C provides an overview of selected governance issues associated with this Pillar in the context of the Egg Supply Chain, including in terms of national policies; national legislation; provincial legislation; local legislation; industry standards and international law. Part D provides examples of the other Parts in

<sup>66</sup> <https://www.sapoultry.co.za/wp-content/uploads/2022/06/SAPA-ANNUAL-REPORT-2021.pdf>.

<sup>67</sup> For a more detailed analysis of Animal Welfare 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.



practice, specifically when it comes to the enforcement of existing animal protection legislation, and the primary entity responsible for animal welfare in South Africa, the NSPCA (more on this is set out in Appendix I).

Our research reveals that South Africa is trailing behind other countries, both in the Global North and South, its region and even neighbouring countries regarding its position on animal welfare. Evidence of this derives from among others, the Animal Protection Index (“API”) composed by World Animal Protection. The API conducts assessments of various countries’ animal protection standards and assigns a ranking to each country according to their legislation and policy commitments to protecting animals<sup>68</sup> with their four main rating criteria being: recognition of animal sentience and prohibition of animal suffering; presence of animal welfare legislation; establishment of supportive government bodies; support for international animal welfare standards.<sup>69</sup> This is done in an effort to support lobbying efforts for the promotion of stronger laws to better protect animals.<sup>70</sup> South Africa was awarded the ranking of “E” in 2020 (A rating of “A” represents the highest results and “G” identifies countries with the most room for improvement).

In its executive summary, the API states:

*“The self-regulation of industries using animals in South Africa is also an obstacle to progress in animal welfare. The confinement of farm animals, including farrowing crates for sows and cages for broiler chicken and Egg-Laying Hens, is allowed in the country.”*

It further provides:

*“The Government of South Africa is urged to ban the worst forms of confinement for animals reared in farming and to mandate humane slaughter for all livestock animal species... Overall, the Government of South Africa is strongly encouraged to align its current legislation with OIE”.*<sup>71</sup>

As a starting point, South African animal law generally, including agricultural animal law, is fragmented and scattered across various laws regulated by different government departments.<sup>72</sup> The focus of this Pillar is primarily on issues which impact the welfare and well-being of animals utilised in the Egg Industry (as opposed to environmental, food health and safety, and consumer protection which are dealt with under different Pillars). The Egg Industry in South Africa is regulated through a combination of several sources of hard and soft laws across national, provincial and local levels. There

<sup>68</sup> Animal Protection Index Indicators available at <https://api.worldanimalprotection.org/methodology>.

<sup>69</sup> <https://api.worldanimalprotection.org/indicators>.

<sup>70</sup> <https://api.worldanimalprotection.org/about>.

<sup>71</sup> Animal Protection Index 2020 – South-africa---\_0.pdf available at <https://api.worldanimalprotection.org/country/south-africa>.

<sup>72</sup> For more information on animal law: A.P Wilson Animal Law in South Africa: “Until the lions have their own lawyers, the law will continue to protect the hunter” dA. Derecho Animal (Forum of Animal Law Studies) 10/1 (2019) - DOI <https://doi.org/10.5565/rev/da.399> ; and Centre for Environmental Rights & Endangered Wildlife Trust: Fair Game. Available at <https://cer.org.za/wp-content/uploads/2018/06/CER-EWT-Regulation-of-Wildlife-Welfare-Report-25-June-2018.pdf> and Bilchitz D and Wilson A ‘Key Animal Law in South Africa’ in Routledge Handbook of Animal Welfare 1 ed (2022) 433.

is a plethora of legislation that regulates foodstuffs and agriculture in the country, as well as other incidental matters relating to this industry (ranging across areas from occupational health and safety to consumer protection). For purposes of this Initial Report, only the most significant will be highlighted.

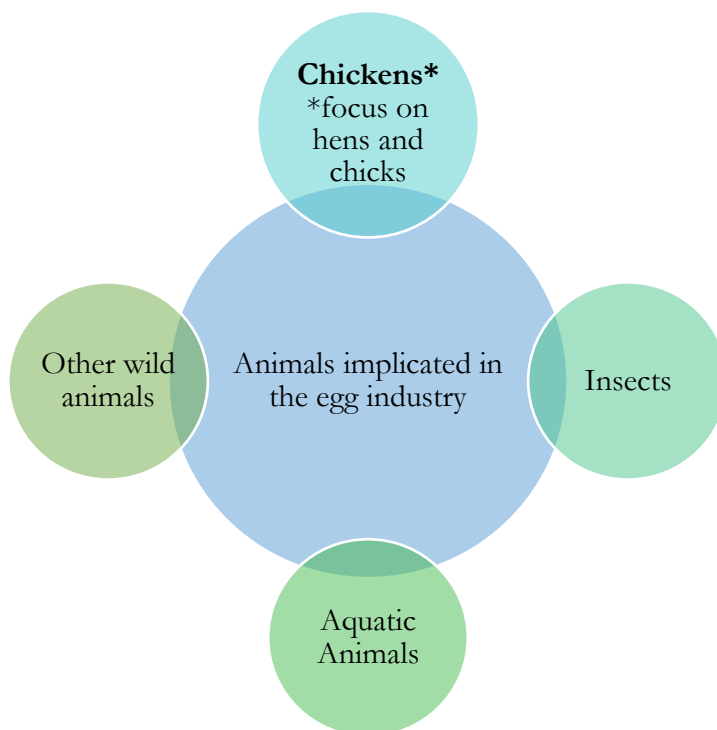
The focus for this section is on “Cruel Practices” as defined in our Glossary as: “Practices involved in the Egg Supply Chain that cause suffering and pain to layer-hens including, but not limited to the use of Battery Cages, beak trimming, de-toeing, and/or overstocking within cages and in relation to male Chicks - culling. Many of these practices have been banned or are being phased out elsewhere in the world due to their cruel nature”. More specifically, we place emphasis on the cruel use of Battery Cages.

The below section highlights that Cruel Practices done to Egg Laying Hens and Chicks in the Egg Supply Chain are arguably in contravention of some statutes, including for example the Animals Protection Act (“**APA**”),<sup>73</sup> but this question would need to be brought before a court for proper adjudication. In the interim, it appears as if Cruel Practices, which are routinely utilised by the Egg Industry, are largely accepted as lawful, and not challenged. Even by those enforcing relevant legislation, such as the NSPCA and individual SPCAs, reporting on animal welfare issues does not routinely report in its inspections on all Cruel Practices. See more in Part D “Enforcement”.

Before delving into this Animal Welfare Pillar, and while the focus of this Initial Report is predominantly on Egg-Laying Hens and Chicks, it is important to note that numerous animals are implicated by the Egg Industry. Fishes and other aquatic species are utilised in some animal feeds; insects are also utilised in feed; insects are killed through the use of pesticides; and wild animals are impacted (including through the killing of predators and impacts on wild animals utilised in the production of feed and for clearing of facilities, among others). Therefore, in addition to the over 1 billion animals killed directly in the Egg Industry, unquantifiable numbers of other animal lives are lost for the production of eggs. While these are important matters that warrant further research, these issues are not further discussed for purposes of this Section nor Report more broadly.

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<sup>73</sup> Act 71 of 1962 <https://www.gov.za/documents/animals-protection-act-22-jun-1963-0000>.



## II. CONSTITUTIONAL FRAMING

### 1. INTRODUCTION

This section provides a framing for animal protection and welfare and corporate accountability within the Constitution. The Constitution is the supreme law of the land. It is often referred to as the “birth certificate” of the new democracy of the country, following the Interim Constitution. It was officially adopted in 1996, and is one of the most progressive and transformative constitutional texts in the world. It seeks to advance social justice, human dignity, equality and freedom. To be valid, all law and conduct must be consistent with it, and it is enforced and upheld, by among others, the courts, including the Constitutional Court, the highest court in the country.

In terms of section 8, Application of the Constitution (emphasis added):

“A provision of the Bill of Rights binds a natural or **a juristic person** if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.”



This means that the Constitution applies **horizontally**, including to “juristic persons” such as corporations. This is important as many constitutional rights only prevent interference by the state with persons and entities in a country, and do not impose obligations within the private sphere – such that non-state actors (e.g. Corporations) are not responsible for the fulfilment of human rights. BUT this is not the case under the Constitution: the state and Corporations **must** respect, protect, promote and fulfil many of the rights enshrined in the Bill of Rights, including the environmental right and the right of access to information.

Animals are not explicitly mentioned in the Bill of Rights of the Constitution, but only in the Schedules dealing with which spheres of government have legislative and executive competence over various matters. However, recent jurisprudence has shown that human rights in the Constitution can and are being interpreted to apply to animals, which are part of “the environment” as defined in the National Environmental Management Act 107 of 1998 (“**NEMA**”), South Africa’s framework environmental legislation. This shows an expansion of the law beyond its application to humans, and that increasingly, duties may be owed outside of the human species. Relevant constitutional rights include: the right to have the environment protected (section 24); the right to access to information (section 32) and the right to freedom of expression (section 16).

The transformative nature of South Africa’s robust Constitution presents many opportunities to challenge the harsh realities of the Egg Industry and test relevant provisions, including those in the Bill of Rights, against such realities. In theory, all of the laws discussed in this Initial Report ought to be aligned with the Constitution’s vision of a caring and egalitarian society, including towards animals. However, as discussed below, there is still much need for animal law reform.

## A. THE RIGHT TO ENVIRONMENT

The right to have the environment protected as contained in section 24 of the Constitution provides:

### 24. Environment

Everyone has the right

- a. to an environment that is not harmful to their health or well-being; and
- b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
  - i. prevent pollution and ecological degradation;
  - ii. promote conservation; and
  - iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

In interpreting this right and legislation aimed at animal protection, the courts in South Africa have increasingly shown support for animal welfare and for the view that the prevention of animal cruelty be carefully considered as required by the environmental right. A few examples of judicial pronouncements are discussed below.

### NSPCA Case

In the *National Society for Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another*<sup>74</sup> (the “**NSPCA Case**”), the court interpreted the right to the environment to include **animal welfare**. It said that

“[t]his integrative approach correctly links the suffering of individual animals to conservation, and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts. Animal welfare and animal conservation together reflect two intertwined values”.<sup>75</sup>

In this judgment, the court was seized with the issue of whether the NSPCA had the power to privately prosecute cruelty towards camels. In finding that relevant legislation should be interpreted to confer such power on the NSPCA, the Constitutional Court also referenced, with approval, several earlier judgments, incorporating them into its reasoning, including (emphasis added):

Referencing the *Lemthongthai case (2015)*<sup>76</sup> the Constitutional Court in the *NSPCA Case* stated (emphasis added):

<sup>74</sup> *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016).

<sup>75</sup> *Ibid* at para 58.

<sup>76</sup> *S v Lemthongthai* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA).

“The Supreme Court of Appeal in *Lemthongthai* explained in the context of rhino poaching, that ‘[c]onstitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general’. The Court concluded further that this obligation was especially pertinent because of our history. Therefore, the rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals. The court further stated that animal welfare is connected with the constitutional right to have the ‘environment protected through legislative and other means’”.

Referencing the *Openshaw case (2008)*<sup>77</sup> the Constitutional Court in the *NSPCA Case* stated (emphasis added):

“Cameron JA’s minority judgment in *Openshaw* recognised that animals are worthy of protection not only because of the reflection that this has on human values, but because animals ‘are sentient beings that are capable of suffering and of experiencing pain’”.

Notably, the *Openshaw* case was the first time South African courts expressly acknowledged the sentience of animals.

Referencing the *South African Predator Breeders Association case (2009)*,<sup>78</sup> the Constitutional Court in the *NSPCA Case* stated (emphasis added)

“The High Court in [*South African Predator Breeders Association*] championed this view. A unanimous Full Bench found that canned hunting of lions is ‘abhorrent and repulsive’ ‘due to the animals’ suffering. On appeal, the Supreme Court of Appeal did not dispute this finding”.

Additional older cases (before the new constitutional dispensation) were also referenced by the Constitutional Court in recognising that our courts now afford increasingly robust protection to animal welfare.

Referencing the *Masow Case (1940)*<sup>79</sup> the Constitutional Court in the *NSPCA Case* stated (emphasis added):

“The Court explained that this was an ethical decision on behalf of the Legislature to entrench the need to protect animals against cruel treatment”.

Referencing the *Smit Case (1929)*<sup>80</sup> the Constitutional Court in the *NSPCA Case* stated (emphasis added):

“In the 1929 decision of *R v Smit* illustrates the emergence of this approach. The offender, convicted of an animal cruelty offence, had beaten a dog for half an hour with a pole and spade, before pelting it with stones, and finally shooting it in

<sup>77</sup> *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw (2008) (5) SA 339 (SCA)*.

<sup>78</sup> *South African Predator Breeders Association v Minister of Environmental Affairs and Tourism [2009] ZAFSHC 68*.

<sup>79</sup> *Ex Parte: The Minister of Justice: In re Rex v Masow 1940 AD 75 at 81*.

<sup>80</sup> *R v Smit 1929 TPD 397*.

*its kennel. The Court found that, even if the dog had legal status as the man's property, which he was entitled to destroy, the man was compelled to do so "humanely" while causing "as little suffering as possible"*".

Referencing the **Moato Case (1947)**<sup>81</sup> the Constitutional Court in the *NSPCA Case* stated (emphasis added):

*"Underscoring the conclusions in Smit and Mason, the Court in Moato found that "[t]he object [of the APA] was plainly to prohibit one legal subject behaving so cruelly to animals that he offends the finer feelings and sensibilities of his fellow humans"*".

Referencing the **Edmunds Case (1968)**<sup>82</sup> the Constitutional Court in the *NSPCA Case* stated (emphasis added)

*"This approach was endorsed with increased fervour by Miller J in Edmunds, who held that cruelty was prohibited so as to "prevent degeneration of the finer human values in the sphere of treatment of animals"*".

## Lion Bones Case

In *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others*<sup>83</sup> (the "**Lion Bones Case**") the North Gauteng High Court further built on the **NSPCA Case**. This case concerned a government decision for the export quotas of lion skeletons. Several statements by the court are notable:<sup>84</sup>

*"in dealing with the powers of the NSPCA in instituting a private prosecution had the opportunity to consider the matter of cruelty to animals within the broader context of the constitutional values that stood at the doorway of our society as well as the connection between animal welfare and the right to have the environment protected. Its views are located in the recognition that animal cruelty was prohibited both because of the intrinsic values we place on animals as individuals but also to safeguard and prevent the degeneration of the moral status of humans."* The court noted that: *"These unambiguous and compelling sentiments require careful consideration in that not only do they provide guidance in terms of the legal conduct that is expected of us but rather that it also speaks to the kind of custodial care we are enjoined to show to the environment for the benefit of this and future generations"*.

*"When one then has regard to the connection between welfare interests of animals and conservation as reflected in the judgments of both the Supreme Court of Appeal and the Constitutional Court in Lemthongthai and NSPCA respectively, then it is inconceivable that the State Respondents could have ignored welfare considerations of lions in captivity in setting the annual export quota. What in essence occurs is that the quota is a signalling to the world at large and the captive lion industry in particular that the state will allow exports in a determined quantity of lion bone. It cannot be correct to assert that such signalling can occur at the*

<sup>81</sup> R v Moato 1947 (1) SA 490 (O).

<sup>82</sup> S v Edmunds 1968 (2) PH H398 (N).

<sup>83</sup> *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* [2019] ZAGPPHC 337. Available at <http://www.saflii.org/za/cases/ZAGPPHC/2019/337.html>.

<sup>84</sup> *Lion Bones Case* at para 74.



*same time as indicating to the world at large and to the same industry that the manner in which lions in captivity are kept will remain an irrelevant consideration in how the quota is set. **It is illogical, irrational and against the spirit of Section 24 and how our courts have included animal welfare concerns in the interpretation of Section 24.** Simply put if as a country we have decided to engage in trade in lion bone, which appears to be the case for now, **then at the very least our constitutional and legal obligations that arise from Section 24, NEMBA and the Plan require the consideration of animal welfare issues**".*

The environmental right in the context of the Project is important as it is the foundation on which PAIA Requests were based. Given the interconnected nature of the environmental right and animal welfare as set out above, we believe that information in respect of animal welfare could be requested because it impacts on the environmental right. This is particularly so in the Egg Industry, which not only has known impacts on the environment, but also implicates the welfare and well-being of the millions of chickens utilised in the Egg Industry. Environmental protection and animal welfare are intertwined in the Egg Industry. When animals suffer, the environment suffers.

## B. The Right to Access to Information

The Right to Access to Information as contained in Section 32 of the Bill of Rights in the Constitution provides:

### 32. Access to information

1. Everyone has the right of access to
  - a. any information held by the state; and
  - b. any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

National legislation giving effect to section 32 includes the **PAIA**, which empowers the public to make requests for access to records to public bodies and private bodies, and imposes duties on those bodies to provide access (subject to a number of grounds of refusal listed in PAIA) in fulfilment of the right.

PAIA and the right to access to information were important for purposes of the Project, as it was in terms thereof that ALRSA was able to request information from Corporations within the Egg Industry, for the purposes of protecting the environmental right discussed above. ALRSA sent PAIA Requests to 36 (or 3 dozen) Selected Stakeholders, as well as the NSPCA. Several judgments have grappled with the interpretation of the right to access to information and PAIA.

## Smuts v MEX ECDEDEAT Case

The case of *Smuts v MEC ECDEDEAT*,<sup>85</sup> concerned requests in terms of PAIA for access to permits from a governmental entity in relation to activities which were being done to wild animals. These PAIA Requests were refused on the basis that granting access would entail the unreasonable disclosure of personal information of third parties. The refusal was challenged in court.

The court stated that:

*“Access to information is also inevitably linked to the realisation of other rights guaranteed in the Bill of Rights. In this instance, the information required is related to the constitutional right to a healthy environment. This right encompasses the broad notions of ‘animal welfare’ and ‘conservation’. There are various reasons for this, including the relationship between animal protection, the environment, and human values. Animal welfare is related to questions of biodiversity and thereby connected with the constitutional right ‘to have the environment protected, for the benefit of present and future generations, through legislative and other measures... that promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development’”.*

The court stated that:

*“The right to access to information is directly related to the cultivation of an accountable, responsive, and open society, as promised by the founding provisions of the Constitution. One of the basic values and principles governing public administration is transparency, which ‘must be fostered by providing the public with timely, accessible and accurate information’”.*

Further stating that:<sup>86</sup>

*“The subject matter of the application for access to information involved permits issued in relation to a vulnerable indigenous species facing a high risk of extinction in the medium-term. The application was brought by the Foundation for purposes of obtaining information relevant to the management and conservation of the leopard species. It is accepted that state management in conservation of threatened and protected species invokes a public interest dimension. The right of access to information is closely linked to the cultivation of an accountable, responsive and open society and to the realisation of other constitutional rights, including the right to a healthy environment. Animal welfare and conservation form part of this right. Access to information is the norm, rather than the exception”<sup>87</sup>.*

The court ordered that access to the records must be granted to the requestor. Importantly, the court acknowledged that the right to access to information includes the right to an environment, which includes animal welfare.

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<sup>85</sup> *Smuts N.O. and Others v Member of the Executive Council: Eastern Cape Department of Economic Development Environmental Affairs and Tourism and Others* (1199/2021) [2022] ZAECKMKHC 42 (26 July 2022).

<sup>86</sup> At para 12.

<sup>87</sup> At para 38.

## ArcelorMittal Case

The case of *Arcelormittal v Vaal Environmental Justice Alliance*<sup>88</sup> concerned a refusal by ArcelorMittal South Africa, one of South Africa’s major industrial corporations producing 90 percent of the country’s steel products, to grant access to records to Vaal Environmental Justice Alliance (VEJA), a non-profit voluntary association in terms of a PAIA request.<sup>89</sup> The records requested by VEJA related to ArcelorMittal’s past and present activities, including documented historical operational and strategic approach to the protection of the environment in the areas which they operate major steel plants.<sup>90</sup> In the court of first instance, the High Court referred to *Biomatch Trust v Registrar, Genetic Resources & others*<sup>91</sup> and stated that a refusal of VEJA’s application would hamper the organisation in championing the preservation and protection of the environment and further stated “*it has clearly been established that the participation of public interests groups is vital for the protection of the environment.*”<sup>92</sup> The High Court held inter alia that the refusal by ArcelorMittal South Africa to grant access to the records requested by VEJA was invalid and set aside and ordered the steel corporation to provide VEJA with copies of all records requested in terms of PAIA.<sup>93</sup> The matter was then taken on appeal to the SCA. In deciding this appeal, the court stated:

*“[c]orporations operating within our borders, whether local or international, must be left in no doubt that in relation to the environment in circumstances such as those under discussion, there is no room for secrecy and that constitutional values will be enforced”.*<sup>94</sup>

The SCA held that there was no material flaw in the essential reasoning of the High Court and dismissed the appeal brought by ArcelorMittal South Africa.<sup>95</sup>

<sup>88</sup> *Company Secretary of Arcelormittal South Africa v Vaal Environmental Justice Alliance* (69/2014) {2014} ZASCA 184 (26 November 2014).

<sup>89</sup> At para 2.

<sup>90</sup> At para 2.

<sup>91</sup> *Biomatch Trust v Registrar, Genetic Resources & Others* 2009 (6) SA 323 (CC).

<sup>92</sup> At para 42.

<sup>93</sup> At para 48.

<sup>94</sup> At para 82.

<sup>95</sup> At para 85.

## C. The Right to Freedom of Expression

The right to freedom of expression as contained in Section 16 of the Constitution provides:

### 16. Freedom of expression

1. Everyone has the right to freedom of expression, which includes
  - a. freedom of the press and other media;
  - b. freedom to receive or impart information or ideas;
  - c. freedom of artistic creativity; and
  - d. academic freedom and freedom of scientific research.
2. The right in subsection (1) does not extend to
  - a. propaganda for war;
  - b. incitement of imminent violence; or
  - c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

### Smuts and Another v Botha Case

The 2022 case *Smuts and Another v Botha*<sup>96</sup> involved two conflicting human rights in relation to animals – the first being Botha’s right to privacy as adjudicated against Smut’s freedom of expression. The case involved the publication of photographs by Smuts and the Landmark Leopard and Predator Project-South Africa (Landmark Leopard) on Facebook of cages containing dead animals, namely a baboon and porcupine and information of animal cruelty occurring on a farm owned by Botha. Botha instituted an urgent interdict to prohibit Smuts and Landmark Leopard from publishing defamatory statements about him.<sup>97</sup> Initially, the High Court ruled in favour of Botha, however, upon appeal, the Supreme Court of Appeal (“SCA”) held inter alia that “the effect of limitation which the high court imposed in this case is substantial, affecting as it does, the right of *activists* such as Smut and that of the public to receive, information, views and opinions. It cannot be denied that the public has a right to be informed about the animal practices at Mr Botha’s farm”.<sup>98</sup> The SCA found in favour of the right to freedom of expression of Smuts, and made several important statements about animal protection, the rights of activists to express information, and the rights of the public to receive information.

<sup>96</sup> *Smuts and Another v Botha* (887/2020) [2022] ZASCA 3; 2022 (2) SA 425 (SCA) (10 January 2022).

<sup>97</sup> At para 4 and 5.

<sup>98</sup> At para 22.



Key statements and conclusions of the Supreme Court of Appeal are highlighted below:<sup>99</sup>

1. The right to freedom of expression in s 16 of the Bill of Rights protects every citizen to express himself or herself and to receive information and ideas. The same right is accorded to activists to disseminate information to the public;
2. The Constitution recognises that individuals in our society need to be able to hear, form and express opinions freely, on a wide range of topics;
3. Honest information and publication of animal trappings (the trapping of animals) is no exception;
4. In this case, the animal activist [Mr Smuts] had a right to expose what he considered to be the cruel and inhumane treatment of animals at the farm [Mr Botha's];
5. This was fair comment and the public interest was best served by publicising the truth rather than suppressing it;
6. The public has a right to be informed of the humane or inhumane treatment of animals at the farm [Mr Botha];
7. Members of the public have the freedom to decide which commercial enterprise they support and which they do not; and
8. That freedom of choice can only be exercised if activities happening at the farm [Mr Botha's] are laid bare for the public.

The statements by the Supreme Court of Appeal have several positive implications for activists attempting to expose animal cruelty in the public domain and exercising their right to freedom of expression.

This right is important in the context of the Project, as in the publication of this Initial Report, ALRSA is exercising its right to freedom of expression. It is doing so in the public interest in pursuit of the aforementioned other rights, the right to have the environment protected and the right to access to information.

## **D. Other**

Notably, several other rights are also implicated by intensive animal agriculture, including the Egg Industry and hold the potential to further expand the jurisprudence of human rights beyond humans. These are further discussed under the Social Issues and Rights Pillar.

### **I. Constitutional and Legal Mandates for Animal Welfare and Well-being**

#### **Functional Areas of Legislative Competence**

The Schedules to the Constitution set out functional areas in respect of national, provincial and municipal (local) government competence. Animal issues, including those impacted by the Egg

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<sup>99</sup> At para 25.

Industry span across national, provincial and local government. For example, Schedule 4 sets out functional areas of concurrent national and provincial legislative competence and includes: agriculture; animal control and diseases; consumer protection; environment; nature conservation; pollution control; soil conservation; trade (Part A); and the following local government matters as applicable: air pollution; water & sanitation services (Part B).

Schedule 5 sets out Functional areas of Exclusive Provincial Legislative Competence, including: abattoirs and veterinary services, excluding regulation of the profession (Part A) and control of public nuisances; licensing and control of undertakings that sell food to the public; and municipal abattoirs (Part B). The competencies listed in Part B are municipal or local government competencies.

Provincial legislation is not discussed for purposes of this Initial Report as no provincial legislation impacts directly on animal welfare and well-being (besides provincial biodiversity legislation mentioned in the Environmental Pillar) although there are some competencies which indirectly impact on animal welfare which should be further explored. Provincial departments are implementing authorities in respect of some of the national legislation discussed in this Pillar.

### **National and Provincial Government Department Mandates**

Given the above competencies, since 1997, the mandate to implement animal welfare legislation falls primarily under the national DALRRD (it was transferred from the Department of Justice in 1997). One of the major barriers to protecting animals in South Africa, specifically farmed animals, is that the mandate of animal welfare falls under DALRRD, since animal welfare sits uncomfortably with other roles of DALRRD. Other departments at national, provincial and municipal levels have mandates relating to certain animal matters which inevitably impact on their welfare.

For instance, DALRRD's mandates include increasing food security and creating employment in the agricultural sector and improving agriculture production and food safety. Unfortunately, this has generally meant increased animal agriculture and the expansion of various animal enterprises, with little regard for animal welfare (see for example the Poultry Master Plan). As increasing animal production through industrialised animal operations generally and historically equates to lower animal welfare, there appears to be an inherent conflict. Over the 26 years that DALRRD has held this animal welfare mandate, they have done little to improve it or ensure it is a priority. This can be seen from various actions and inactions, for example: despite having powers to do so (in terms of section 10 of the APA), the Minister of Agriculture, Land Reform and Rural Development has failed to promulgate any specific animal regulations (which has led to a proliferation of non-enforceable, voluntary soft law); and elected not to ban Cruel Practices largely agreed to be the most abhorrent and cruel (including many Cruel Practices banned by other jurisdictions). In addition, DALRRD officials rarely engage with the animal protection and animal welfare sector, as compared to animal use-industries, and tend to implement policies that increase animal use. It would appear that if any positive progress is to be made for animals in South Africa in terms of improved welfare and well-being, DALRRD needs to either make a drastic change to its stance on animal welfare and animal production or the

mandate for animal welfare needs to be moved to a more suitable department that seeks justice for sentient beings.

The Department of Environment, Forestry and Fisheries (“**DFFE**”) is mandated to implement environmental laws, several of which impact directly on animals, their welfare and well-being, such as the National Environmental Management: Biodiversity Act 10 of 2004 (“**NEM:BA**”). Problematically, despite its constitutional competence in respect of the environment, which includes animals, the DFFE has repeatedly denied having any mandate (including a legislative mandate) to protect animal welfare, indicating that this is an issue for DALRRD. This has led to many governance loopholes and gaps. With the promulgation of National Environmental Management Laws Amendment Act 2 of 2022 (“**NEMLAA**”) in 2023, it is now clear that DFFE has a legislative mandate for animal well-being.

This issue of the DFFE’s mandate and how the courts have interpreted it can be seen from the *Lion Bones Case*, which dealt with DFFE’s process relating to the setting of annual export quotas for trade in lion bone for commercial purposes derived from captive breeding operations in South Africa.<sup>100</sup> The NSPCA had expressed concerns about the welfare of lions and the process followed given that the welfare of animals had not been considered by the DFFE. In their written submission, the NSPCA noted the DFFE’s position in respect of establishing the quota, to only consider concerns of a scientific nature (to the exclusion of animal welfare). The DFFE’s attempt to dissociate themselves from the welfare considerations of lions in captivity was found to be implausible by the court, as further set out below.<sup>101</sup>

The DFFE contended that it did not have the responsibility in law for regulating and enforcing welfare standards for wild animals and that accordingly, the welfare of these animals was not a factor regarded as relevant in determining these quotas. They pointed out that the responsibility for the administration of the APA fell within the legislative mandate of the (now) DALRRD.<sup>102</sup> They further contended that the NSPCA and DALRRD had the power and the authority in terms of the APA to investigate conditions under which captive wild animals were kept, to carry out arrests if necessary and to make regulations for the manner in which these animals should be kept.<sup>103</sup>

In deciding whether animal welfare considerations relating to lions in captivity were relevant in the determination of the annual export quotas for lion bone, the court cited the Constitutional Court in the above *2016 NSPCA Case*. The court held that this judgment recognised that animal cruelty was prohibited both because of the intrinsic value we place on animals as individuals, but also to safeguard and prevent the degeneration of the moral status of humans.<sup>104</sup>

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<sup>100</sup> At para 1.

<sup>101</sup> At para 24-25.

<sup>102</sup> At para 26.

<sup>103</sup> At para 27.

<sup>104</sup> At para 64.

The court further reasoned that even though the welfare mandate **may substantially reside** with the DALRRD, the court noted the difference in law which existed between the legal mandate and responsibility for animal welfare, and taking animal welfare into account.<sup>105</sup> It stated that the latter did not depend on the legal responsibility to set and enforce standards and did not preclude a decision maker from considering them if they were indeed relevant.<sup>106</sup>

The court stated:

*“It would then be artificial and hierarchical to argue that while we should share a collective concern about lions in the wild our concern for the well-being of lions in captivity must rest on a different footing. Even if they are ultimately bred for trophy hunting and for commercial purposes, their suffering, the conditions under which they are kept and the like remain a matter of public concern and are inextricably linked to how we instil respect for animals and the environment of which lions in captivity are an integral part of. Certainly in South Africa their numbers are double those of lions in the wild and it would constitute a contradiction if we are to suggest that different standards and considerations should apply to our treatment of lions (depending on whether they were in the wild or in captivity)”.*<sup>107</sup>

The lion bone industry and the Poultry Industry are similar in nature as both deal with the issues including but not limited to the farming of animals in captivity, cruelty towards animals and the consumption of animals. As such, applying the sentiments expressed by the court in the *Lion Bones* Case to the Egg Industry, even if animals (including chickens) are ultimately bred for consumption or production of products, “their suffering, the conditions under which they are kept and the like remain a matter of public concern and are inextricably linked to how we instil respect for animals and the environment” of which animals are a part of.

Ultimately, the court decided that the exclusion of animal welfare considerations by the DFFE was irrational and would have to be reviewed on the basis that all relevant considerations were not taken into account.<sup>108</sup>

Now with the promulgation of the National Environmental Management Amendment Act, NEMLAA, specific reference is made to animal “well-being” thereby creating a legislative mandate for the DFFE in this respect. NEMLAA came into force on 30 June 2023. This is discussed in further detail in the Environmental Pillar.

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<sup>105</sup> At para 67.

<sup>106</sup> At para 67.

<sup>107</sup> At para 71.

<sup>108</sup> At para 75.



## PART B: LAYING DOWN THE FACTS

### AN INTRODUCTION TO ANIMAL WELFARE AND WELL-BEING IN THE EGG INDUSTRY

#### I. Introduction

Against the constitutional foundations established in Part A, this Part B sets out background information as to how animal welfare is connected with the Egg Industry. It starts by discussing concepts of sentience and suffering in the context of industrial farming, as well as the capacities and capabilities of chickens. It then expands on concepts of animal welfare (as well as well-being and flourishing) and how animal welfare is commonly captured in principles such as the Five Freedoms and the Five Domains, which are commonly referenced by role-players in the Egg Industry, including in industry standards. In the final component of this Part, Cruel Practices within the Egg Industry are highlighted. Part C will delve into how these are captured in national law and policy in South Africa as well as bylaws. Provincial legislation is not discussed for purposes of this Pillar, as no provincial legislation impacts directly on animal welfare and well-being (provincial biodiversity legislation is mentioned in the Environmental Pillar). Provincial departments are nevertheless implementing authorities in respect of some of the national legislation discussed in this Pillar. Part D will highlight enforcement issues in practice.

#### II. The Rise of Factory Farms and the Fall of Protecting Animal Interests: Sentience and Animal Suffering

This discussion should be viewed with reference to the Industry Component of the Report in Section II above. The terms “intensive farming” and “factory farming” describe a method of commercially producing animals often known as “livestock” through the use of, among other things, Battery Cages. These cages restrict movement to allow for a higher packing density,<sup>109</sup> and selective breeding of animals to increase yield with reduced inputs. In the Egg Industry, these practices are aimed at producing more eggs and maximising profits.<sup>110</sup>

In this form of farming, the Layer Hen is generally perceived as a commodity rather than a living being, with wilful disregard of her most basic and natural behaviours, which results in the ineluctable abuse of animals.<sup>111</sup> This is problematic as chickens, including Layer Hens, are sentient beings, and

<sup>109</sup> Packing density refers to the number of hens kept in a certain amount of space.

<sup>110</sup> <https://www.fairr.org/article/intensive-factory-farming/>; <https://ffacoalition.org/articles/intensive-agriculture/>; and <https://www.animallawreform.org/wp-content/uploads/2021/12/LiveKinder-Farm-Animal-SA-Report-1.pdf>.

<sup>111</sup> M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa’s Food

accordingly should benefit from prohibitions and restrictions on their suffering as well as requirements to provide for certain positive experiences including to express natural behaviours.

Sentience refers to the capacity to have subjective experiences with positive or negative emotions, namely that of feeling good or bad on the part of the individual animal.<sup>112</sup> Examples of such feelings include the ability to feel pain, pleasure, anxiety, distress, boredom, hunger, thirst, excitement, joy, comfort, and pleasure.<sup>113</sup>

A global shift towards the express recognition of animal sentience has begun to take place, not only by animal welfare and animal rights organisations, but also by states and the general public. An example of this is the decided *N.R. Nair and Ors*<sup>114</sup> case in India in which it was held that no person has a right to carry on a trade or business that results in infliction of unnecessary pain or suffering of animals.

The court noted that (emphasis added):

*“It was then contended that the impugned notification invades the fundamental right of the petitioners to carry on their trade or business under Article 19(1)(g) of the Constitution of India. This argument, in our opinion, proceeds on a fallacious premise which cannot be countenanced in the eyes of the law... **the words ‘trade’ or ‘business’ as used in Article 19(1)(g) do not permit carrying on of an activity whether commercial or otherwise, if it results in infliction of unnecessary pain and suffering on the specified animals. No person has any right, much less a fundamental right to carry on a trade or business which results in infliction of unnecessary pain or suffering nor a right to carry on a trade or business in an activity which has been declared by law as an offence.** Neither the owners nor the employees of circus have a fundamental right to carry on trade or business in training and exhibiting endangered animals as the said trade is of such an obnoxious and pernicious activity geared towards mere entertainment which cannot be taken in the interest of general public to be a trade or business in the sense in which it is used in Article 19(1)(g) of the Constitution of India”.*

India’s Prevention of Cruelty to Animals Act 1960<sup>115</sup> recognises the ability of animals to suffer physically and mentally, and therefore provides partial recognition of sentience.<sup>116</sup> The recognition of sentience is an important foundation for the recognition of suffering of animals, prohibition of such

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System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: <http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf>

<sup>112</sup> Singer, P. (1979) Practical ethics *Cambridge University Press*. Also Browning H & Birch J (2020) Animal Sentience *Philosophy compass* 2022-05, Vol.17 (5).

<sup>113</sup> Available at <http://nspca.co.za/?s=five+freedoms> (accessed on 26 May 2021) and <https://cer.org.za/reports/fair-game> (accessed on 26 May 2021).

<sup>114</sup> *N.R. Nair And Ors. Etc. vs Union Of India (Uoi) And Ors.* on 6 June, 2000. <https://indiankanoon.org/doc/936999/>

<sup>115</sup>

[https://www.indiacode.nic.in/bitstream/123456789/11237/1/the\\_prevention\\_of\\_cruelty\\_to\\_animals\\_act%2C\\_1960.pdf](https://www.indiacode.nic.in/bitstream/123456789/11237/1/the_prevention_of_cruelty_to_animals_act%2C_1960.pdf).

<sup>116</sup> Animal Protection Index 2020 Report, available at <https://api.worldanimalprotection.org/sites/default/files/2020-India-UPLOADED.pdf>.

suffering occurring unjustifiably, as well as positive experiences of an animal, which should accordingly be reflected in law, as is the case with human rights.

Given the importance of sentience in respect of animal protection, the law should recognise animal sentience in animal law and policy with specific regulations made in respect of upholding this concept. Such legislation is important to ensure that animals are treated with care, respect, and dignity.<sup>117</sup>

According to Bilchitz:

*“The historical context of the Constitution provides strong reasons why the protection of human dignity was included as a core value: the appellation “human” was not designed, however, to exclude the recognition of other forms of dignity or worth. The fundamental grund-norm of non-discrimination would entail that the Constitution must be taken to recognize that all sentient creatures have worth rather than focusing only on those who belong to a particular grouping – namely, homo sapiens?”*<sup>118</sup>

According to World Animal Protection, the recognition of sentience in law and policy is “a simple recognition of scientific evidence and fact”.<sup>119</sup> The explicit recognition of sentience of animals is not captured directly in legislation for animals in South Africa, with the exception of elephants.<sup>120</sup>

Hens also have other capacities which are important in ensuring their welfare and well-being. If one refers to protecting the welfare and the well-being of an animal, due regard must be given to that animal’s sentience, specific capacities and needs.

According to Marino,<sup>121</sup> chickens have the following capacities or the potential for the following capacities based on scientific evidence (the evidence from peer-reviewed applied and basic comparative studies of chicken cognition, emotion, and sociality): sensory abilities; visual cognition and spatial orientation; recognizing partly occluded objects; Recognizing completely occluded objects; numerical abilities; time perception/anticipation of future events; perception of time intervals; episodic memory; self-control; reasoning and logical inference; self-awareness; communication; self-assessment; referential communication; social cognition and complexity; discriminating among individuals; perspective-taking and social manipulation; social learning; emotion; fear responses; emotional response during anticipation; emotions and cognitive bias; emotions and decision making; emotional contagion and empathy; and personality. In her paper, she identifies a wide range of

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<sup>117</sup> <https://www.worldanimalprotection.org/blogs/encouraging-animal-sentience-laws-around-world#:~:text=Encouraging%20animal%20sentience%20bills%20and,of%20scientific%20evidence%20and%20fact.>

<sup>118</sup> Bilchitz, D. Does transformative constitutionalism require the recognition of animal rights? *Southern African Public Law*, 25(2), 2-3 (2010).

<sup>119</sup> <https://www.worldanimalprotection.org/blogs/encouraging-animal-sentience-laws-around-world#:~:text=Encouraging%20animal%20sentience%20bills%20and,of%20scientific%20evidence%20and%20fact.>

<sup>120</sup> Norms and Standards for the Management of Elephants in South Africa, 2008.

<sup>121</sup> Marino, L. Thinking chickens: a review of cognition, emotion, and behavior in the domestic chicken. *Anim Cogn* 20, 127–147 (2017). <https://doi.org/10.1007/s10071-016-1064-4>.

scientifically documented examples of complex cognitive, emotional, communicative, and social behaviour in domestic chickens which should be the focus of further study. These capacities are, compellingly similar to what we see in other animals regarded as highly intelligent.

### III. Defining and Contextualising Animal Welfare, Well-being and Flourishing

For any animals utilised in agricultural operations, their welfare, well-being, and flourishing is impacted and there should be and are duties imposed on those who are in control of, or own, such animals (among others). In the context of large-scale industrialised animal agriculture, these become more important as the focus is on production and less on animal interests and ensuring the elimination or minimising of suffering and positive experiences throughout their lifetime. Below, we conceptualise these terms in the context of the Egg Supply Chains.

While the term “animal welfare” is not specifically defined in South African law, according to the World Organisation for Animal Health (“**WOAH**” formerly OIE) Terrestrial Code, animal welfare means “the physical and mental state of an animal in relation to the conditions in which it lives and dies”.<sup>122</sup>

Animal “well-being” has recently been defined in South African law in NEMLAA, as: “the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental health and quality of life, including the ability to cope with its environment”. NEMLAA came into force on 30 June 2023.

Similarly, animal flourishing is not defined in law but is one of ALRSA’s three core pillars. Broadly, flourishing means to thrive, to grow, to develop successfully, to be healthy and to be strong. It is a stronger requirement than simply requiring that animals are free from harm (such as in the Five Freedoms and as reflected in animal cruelty legislation such as the APA), and requires more than just circumstances and conditions being conducive, or that an animal is able to cope (such as in the definition of well-being). It means allowing animals to thrive and setting out duties on those who impact on them to ensure that flourishing is possible. ALRSA believes that all animals, including humans, as well as the environment ought to be permitted to flourish. This is the ideal state that any sentient being could hope to achieve, and similarly, it is one we hope for all animals, including those utilised in and impacted by the Egg Industry and beyond.

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<sup>122</sup> Chapter 7.1. WOAH  
[https://www.woah.org/fileadmin/Home/eng/Health\\_standards/tahc/2018/en\\_chapitre\\_aw\\_introduction.htm#:~:text=Animal%20welfare%20means%20the%20physical,which%20it%20lives%20and%20dies.](https://www.woah.org/fileadmin/Home/eng/Health_standards/tahc/2018/en_chapitre_aw_introduction.htm#:~:text=Animal%20welfare%20means%20the%20physical,which%20it%20lives%20and%20dies.)

Welfare issues arise throughout the entirety of the lives of the animals utilised in factory farming and industrialised operations, including (\*note these are dependent on the species, the “products”, the facilities, the region and several other factors):

- **Breeding**

Examples include: Collection of genetic materials | genetic manipulation | artificial insemination | birth / laying | post-birth / laying | care of young | weaning | early maternal separation

- **Rearing**

Nutrition (food, water) | space | veterinary care | antibiotics | environmental (shelter, ventilation, air, water, conditions of confinement) | natural behaviours | mutilations | unnatural growth | injuries

- **Transportation**

Rest | access to food / water | shelter | space | length of time | temperature (hot / cold / rain) | ventilation

- **Slaughter**

Stunning | rendering unconscious | methodologies | timing

Two predominant models have emerged in relation to consideration of the welfare and well-being of animals (and specifically for the Five Domains, could apply to their flourishing too), being the “**Five Freedoms**” more traditionally, and the “**Five Domains**”, more recently. These are set out at a high level below and are included in this Initial Report for several reasons. The first is that the Five Freedoms represent a minimum globally recognised standard against which the welfare of animals used in the Egg Industry should be tested. They thus provide some understanding of what is viewed as acceptable or unacceptable treatment of these beings at a basic level. The Five Freedoms, while not explicitly mentioned in legislation, are included in several of the governance tools referenced below, including certain industry standards. However, it is often unclear whether these are included in a genuine manner or whether they are included in a manner that can be construed as Humane-washing. This is particularly relevant when one considers that the same governance measure can mention the promotion of the Five Freedoms while simultaneously allowing for several Cruel Practices. The final reason these have been included is to inform potential law reform and recommendations going forward.



## Five Freedoms

The Five Freedoms are internationally accepted standards of minimum care for animals, as developed by Britain's Farm Animal Welfare Council in 1965 which include:

1. Freedom from Hunger and Thirst;
2. Freedom from Discomfort;
3. Freedom from Pain, Injury or Disease;
4. Freedom to Express Normal Behaviour; and
5. Freedom from Fear and Distress.

Despite frequently referencing these Five Freedoms in industry standards, many animals in industrial animal agriculture are not guaranteed these minimum standards. This is true for Layer Hens in the commercial Egg Industry in South Africa who, despite the recommendations contained in the SAPA COP (as mentioned below), do not experience these freedoms. The vague wording of the Five Freedoms sets no measurable targets for the achievement of welfare and has no positive obligations or standards to compel producers. A significant aspect of livestock farming, especially that of Layer Hens not addressed by the Five Freedoms, is the practice of intensive confinement.

Due to several criticisms with the Five Freedoms, a more modern concept of the Five Domains is becoming increasingly prevalent. In the below section on Cruel Practices, we demonstrate that animals utilised in the Egg Industry, particularly Egg-Laying Hens, are not granted the Five Freedoms.

## Five Domains

An emerging form of welfare thinking is that of the more modern animal welfare concept of the Five Domains.<sup>123</sup> The Five Domains were developed as a tool for assessing the welfare of animals by considering both physical considerations and mental state, resulting in the following domains: nutrition, the environment, health, behaviour and mental state. These domains allow for the assessment of positive as well as negative experiences to encourage more opportunities for animals to experience positive states whilst minimising negative states,<sup>124</sup> thus ensuring the highest welfare throughout an animal's life.<sup>125</sup> To simplify, the Five Domains of animal welfare aim to bolster

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<sup>123</sup> For a brief history on the Five Domains Model available at <https://www.sciencedirect.com/science/article/pii/S1751731121002214>.

<sup>124</sup> <https://www.tandfonline.com/doi/full/10.1017/S0043933917000812>.

<sup>125</sup> Available at <https://www.spcacertified.nz/learn-more/article/five-freedoms-vs-five-domains>. Also <https://www.worldanimalprotection.us/blogs/five-domains-vs-five-freedoms-animal-welfare>.

conditions for animals under human control, while the Five Freedoms merely aimed at preventing negative conditions from taking place.<sup>126</sup> This thinking is found in some international standards on welfare which will be discussed in more detail below. The Five Domains of animal welfare are:

1. **Nutrition:** factors that involve the animal’s access to sufficient, balanced, varied, and clean food and water.
2. **Environment:** factors that enable comfort through temperature substrate, space, air, odour, noise, and predictability.
3. **Health:** factors that enable good health through the absence of disease, injury, impairment with a good fitness level.
4. **Behaviour:** factors that provide varied, novel, and engaging environmental challenges through sensory inputs, exploration, foraging, bonding, playing retreating, and others.<sup>127</sup>
5. **Mental state:** the mental state of the animal should benefit from predominantly positive states, such as pleasure, comfort, or vitality while reducing negative states such as fear, frustration, hunger, pain, or boredom.<sup>128</sup>

#### IV. Cruelty and Cruel Practices Within in the Egg Industry

Against the background of the sentience and capacities of chickens, as well as the concepts of animal welfare (well-being and flourishing) and how these are reflected in the Five Freedoms and Five Domains respectively, under this heading we explore common-place Cruel Practices occurring in the production of eggs.



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<sup>126</sup> <https://kb.rspca.org.au/knowledge-base/what-are-the-five-domains-and-how-do-they-differ-from-the-five-freedoms/>.

<sup>127</sup> <https://www.worldanimalprotection.us/blogs/five-domains-vs-five-freedoms-animal-welfare>.

<sup>128</sup> <https://www.worldanimalprotection.us/blogs/five-domains-vs-five-freedoms-animal-welfare>.

<sup>129</sup> <https://www.egg-truth.com/>.

These Cruel Practices occur across species in commercial farming systems and involve forms of mutilations, genetic manipulation (such as selective breeding practices), and harmful environments.<sup>130</sup> In respect of chickens, we believe that Cruel Practices (as defined in our Glossary which includes Battery Cages, beak trimming, de-toeing, and/or overstocking within cages and in relation to male Chicks – culling) which occur within the Egg Industry are in contravention of the APA. Against the background of the sentience of chickens and the various other capacities they have, as well as considering welfare and well-being as read with the Five Freedoms and the Five Domains, we will now explore how the Egg Supply Chain involves routinely conducting or participating in several Cruel Practices.<sup>131</sup>

## BATTERY CAGES

The use of cages is extremely harmful to Layer Hens' welfare for a range of reasons, a few of which are highlighted below. This includes Battery Cages as well as enriched cages. Enriched cages afford limited freedom to layer hens in respect of access to more cage space compared to Battery Cages, access to a nest, litter and perches.<sup>132</sup> However, use of the enriched colony cage for the productive lifetime of commercial hens impedes the performance of locomotion, exploring, dust bathing, foraging, wing flapping and stretching, which can lead to “sham” behaviours and feather pecking”.<sup>133</sup>

The section below focuses on the former, Battery Cages, which should be considered against the background of the capacities of capabilities of chickens as set out above, as well as the provisions of the Five Freedoms and the Five Domains.

### 1. Physical Harm as a Result of Battery Cage Structure

A Layer Hen is forced to stand, sleep, and stick her head through the wire structure of the Battery Cage, and this causes her inevitable physical harm.

The wire mesh floors of Battery Cages can cause a host of foot disorders, including toe pad hyperkeratosis, which develops due to pressure on certain areas of the feet thanks to the sloping floors of cages. This condition can lead to painful open lesions on their feet. Overgrown claws are also common, since chickens cannot engage in ground-scratching behaviours that keep nails short naturally.<sup>134</sup>

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<sup>130</sup> <https://thehumaneleague.org/article/factory-farming-animal-cruelty>.

<sup>131</sup> Egg Truth Website: <https://www.egg-truth.com/>.

<sup>132</sup> See further specifications of enriched cages in Appendix 6 of South African Poultry Association, Code of Practice June 2022. <https://www.sapoultry.co.za/wp-content/uploads/2022/06/2022-SAPA-COP.pdf>.

<sup>133</sup> <https://www.thepoultrysite.com/articles/enriched-cages-do-not-provide-a-life-worth-living-for-laying-hens>.

<sup>134</sup> <https://thehumaneleague.org/article/battery-cages>.

## 2. Restricted biological function due to extreme confinement & osteoporosis

Battery Cage confinement also affects hen welfare and causes increased frustration, the development of “disuse osteoporosis” in their wings and metabolic disorders. Restrictions on movement within a cage cause frustration and prevent normal bone maintenance, particularly in the legs and wings.<sup>135</sup>

According to research conducted by the Humane League:

*“Osteoporosis can be caused by a lack of adequate movement and exercise, and it’s a common ailment among many species of captive animals, including elephants. In caged hens, this degenerative disease is a widespread problem. The inability to walk more than a few paces, to run, or even to properly stretch their wings leads to bone fragility and fractures, especially during transport”.*<sup>136</sup>

## 3. Harm caused to hens by accumulation of excretion

In large-scale industrialised operations involving Battery Cages, the presence of ammonia and other toxic products from hen faeces accumulates in the animal housing, and negatively impacts the hens’ health by causing chemical burns and contributing to toxic air quality.<sup>137</sup>

## 4. Failure to meet nutritional needs

Hens in Battery Cages often do not have access to clean drinking water or feeds that meet their reasonable nutritional needs.<sup>138</sup>

## 5. Inability to Express Natural Behaviours

Layer hens are driven by their biological function to perform behaviours like dustbathing, perching and nesting.<sup>139</sup> These natural behaviours are crucial as they assist in, *inter alia*, maintaining hygiene and are self-soothing for the hens. The limited cage space makes it impossible for hens to spread their wings, maintain personal hygiene or to self-soothe. Deprived of litter, caged hens are prevented from

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<sup>135</sup> Baxter MR. The welfare problems of laying hens in Battery Cages. Vet Rec. 1994 Jun 11;134(24):614-9. doi: 10.1136/vr.134.24.614. PMID: 7941260.

<sup>136</sup> <https://thehumaneleague.org/article/battery-cages>.

<sup>137</sup> Goran Gržinić, Agnieszka Piotrowicz-Cieślak, Agnieszka Klimkiewicz-Pawlas, Rafal L. Górny, Anna Ławniczek-Walczuk, Lidia Piechowicz, Ewa Olkowska, Marta Potrykus, Maciej Tankiewicz, Magdalena Krupka, Grzegorz Siebielec, Lidia Wolska, Intensive poultry farming: A review of the impact on the environment and human health, Science of The Total Environment, Volume 858, Part 3, 2023, 160014, ISSN 0048-9697, <https://doi.org/10.1016/j.scitotenv.2022.160014>. (<https://www.sciencedirect.com/science/article/pii/S0048969722071145>).

<sup>138</sup> M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa’s Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: <http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf>.

<sup>139</sup> K.M. Hartcher & B. Jones (2017) The welfare of Layer Hens in cage and cage-free housing systems, World’s Poultry Science Journal, 73:4, 767-782, DOI: 10.1017/S0043933917000812.

dust bathing and foraging. Without access to a nest site, nesting motivation is frustrated and without a perch, roosting is prevented.

## 6. Inability to Move and Move Away

Battery cages do not allow birds to move away from each other properly.<sup>140</sup>

## 7. Inability to Rest

Battery Cages mean that chickens are not given the opportunity to rest undisturbed.<sup>141</sup>

## 8. Reduced Life Span

Depending on the particular type of chicken or bird, they can generally live between 3 – 7 years. Layer Hens live to be about 18 to 24 months old before the industry considers them “spent”—unable to lay more eggs—and sends them to slaughter.<sup>142</sup>

## 9. Increased / Unnatural Egg Production

Due to genetic engineering and selective breeding, the bodies of Layer Hens are compelled to produce unnaturally high volumes of eggs as compared with populations in the wild, or those living in extensive agricultural conditions. This frequency leeches high levels of calcium from the skeletal system in order to produce eggshells, leading to bone fragility. In extreme cases, a syndrome called cage layer fatigue may develop, whereby birds can become paralyzed by calcium depletion combined with spinal collapse from their inability to properly stretch, walk, or stand up. Unable to reach waterspouts, they slowly die from thirst.<sup>143</sup>

Wild jungle fowl naturally lay 10-14 eggs yearly, but their domesticated descendants are forced to pump out a staggering average of **300 eggs annually**.<sup>144</sup>

## 10. Injurious Feather Pecking

Feather pecking is where hens peck and pull at the feathers of other hens, sometimes leading to serious injuries and even cannibalism. It can affect hens in any system and outbreaks can happen suddenly. Injurious pecking is believed to be a redirected foraging behaviour. The reasons behind it can vary but

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<sup>140</sup> <https://nspca.co.za/nspca-refutes-layer-hen-cage-sizes-in-south-africa/>.

<sup>141</sup> Four Paws Live Kinder Report 2021 available at <https://www.animallawreform.org/wp-content/uploads/2021/12/LiveKinder-Farm-Animal-SA-Report-1.pdf>.

<sup>142</sup> <https://thehumaneleague.org/article/how-long-do-chickens-live>.

<sup>143</sup> The Humane League: <https://thehumaneleague.org/article/battery-cages>.

<sup>144</sup> The Humane League: <https://thehumaneleague.org/article/battery-cages>.



include: environment; breed; nutrition; poor health and diseases; the way hens were reared before they began laying eggs; sudden changes in things such as their feed or environment.<sup>145</sup>

## 11. Forced Molting

According to research conducted by the Humane League:

*“Molting is a natural, seasonal process occurring once a year with the onset of winter, when chickens consume less food, replace their feathers, and produce fewer eggs. This decrease in egg production is unacceptable to industrial producers, so birds are either killed and sold as meat, or a forced molt is conducted. Hens are denied food and water to force them to produce more eggs. Forced molting involves withholding food, water, or both from chickens for a period of time, along with decreasing the hours of light within the barn. This starvation period halts the reproductive cycle, reduces body mass, and causes feathers to fall out. After the starvation period, chickens begin to produce eggs at even higher rates. Though intended to replicate natural processes, forced molting causes stress and discomfort to chickens.”<sup>146</sup>*

## 12. Light Manipulation

The Humane League highlights:

*“Because the number of daylight hours affects egg production in laying hens, light can be manipulated to artificially induce birds into ramping up production. Hens’ bodies are attuned to reach maximum egg-laying capability when there are 16 hours of daylight during summer, and in springtime at 14 hours per day. Industrial egg production facilities often provide artificial light in order to mimic a full 16 hours of daylight for as much of the hen’s life as possible.”<sup>147</sup>*

## BEAK TRIMMING AND DE-BEAKING

Hens use their beaks to explore and preen in nature, yet it is seen by commercial Layer Hen farmers as a behaviour that could cause damage within the flock. The act of pecking at other birds, particularly when confined to cages, is known as injurious pecking. To avoid this, the beaks of Chicks younger than 10 days are trimmed using the hot blade method. This action is incredibly cruel and harmful to the bird and causes unreasonable pain. The beak is a sensitive organ used in exploration of the environment, and trimming it hinders this natural behaviour.<sup>148</sup>

Beak trimming, sometimes called “beak tipping”, is often carried out on Chicks to reduce the risk of feather pecking injuries in later life.<sup>149</sup>

<sup>145</sup> RSPCA: <https://www.rspca.org.uk/adviceandwelfare/farm/layinghens/keyissues>.

<sup>146</sup> The Humane League: <https://thehumaneleague.org/article/battery-cages>.

<sup>147</sup> The Humane League: <https://thehumaneleague.org/article/battery-cages>.

<sup>148</sup> Ben-Mabrouk J, Mateos GG, de Juan AF, Aguirre L, Cámara L. Effect of beak trimming at hatch and the inclusion of oat hulls in the diet on growth performance, feed preference, exploratory pecking behavior, and gastrointestinal tract traits of brown-egg pullets from hatch to 15 weeks of age. *Poult Sci.* 2022 Sep;101(9):102044. doi: 10.1016/j.psj.2022.102044. Epub 2022 Jul 3. PMID: 35926352; PMCID: PMC9356171.

<sup>149</sup> RSPCA: <https://www.rspca.org.uk/adviceandwelfare/farm/layinghens/keyissues>.

Egg-Truth.com reports:

*“De-beaking is often done by using heated guillotines or infra-red laser operated blades utilizing temperatures up to 1500 degrees F. A chick’s beak is known to have an extensive nerve supply and are a complex, functional organ. Some physiological changes can occur in these cut nerves and damaged tissue that can lead to acute and long-term pain. This in turn can lead to behavioural issues, reduced social activity, lethargy and changes to guarding behavior. It can also result in reduced feed and water intake and thus dehydration and illness due to a weakened immune system”.*<sup>150</sup>

## DE-TOEING OR TOE CLIPPING

Toe trimming, also called toe clipping, is the amputation of the ends of a bird’s toes to eliminate the toenails. This is done to reduce carcass scratching.<sup>151</sup> While it is prevalent in the broiler industry it is also sometimes practiced in the Egg Industry. Toe clipping may cause neuromas (a benign tumour of nerve tissue that is often associated with pain or specific types of various other symptoms).<sup>152</sup>

## OVERSTOCKING

Due to the requirements to produce as many animals and products as possible with the least amount of resources, many animals are often overstocked in spaces unsuitable to house so many animals. Overstocking of animals leads to a plethora of welfare issues and can increase injury, diseases, mortality rates and cause other issues.

## MALE CHICK CULLING

Since male chickens cannot lay eggs, they are considered useless by the Egg Industry and often killed in the most horrific ways, often on the day that they are born. Up to eight billion male Chicks born in the Egg Industry are killed worldwide every year. In the US alone, 30,000 freshly hatched male Chicks are killed every hour; approximately 300 million each year.<sup>153</sup> It is unclear how many male Chicks are killed in South Africa each year.

At commercial hatcheries, professional chicken sexers are trained to distinguish between the male Chicks, called “Cockerels” and the female Chicks, the “Pullets” or hens. These male Chicks are often a different breed of chickens than those used for meat, and therefore not suitable to be used as “broilers”.

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<sup>150</sup> Egg Truth: <https://www.egg-truth.com/life-of-a-hen>.

<sup>151</sup> [https://ohio4h.org/sites/ohio4h/files/imce/animal\\_science/Poultry/Toe%20Trimming%20of%20Turkeys%20or%20ChickNens%20in%20Small%20and%20Backyard%20Poultry%20Flocks%20-%20eXtension.pdf](https://ohio4h.org/sites/ohio4h/files/imce/animal_science/Poultry/Toe%20Trimming%20of%20Turkeys%20or%20ChickNens%20in%20Small%20and%20Backyard%20Poultry%20Flocks%20-%20eXtension.pdf).

<sup>152</sup> National Library of Medicine: <https://www.ncbi.nlm.nih.gov/books/NBK549838/>.

<sup>153</sup> <https://corporatesocialresponsibility.us/in-ov-do-sexing>.

The ways in which these male Chicks are killed can include suffocation; maceration; dumping; electrocution; cervical dislocation and gassing and are elaborated on in the table below.<sup>154</sup>

- **SUFFOCATION:**
  - trapped inside plastic bags, the Chicks are left to gasp for air—a fate many would consider unimaginable for newborn kittens or puppies.
- **ELECTROCUTION:**
  - subjected to electric currents, the tiny Chicks are shocked to death.
- **CERVICAL DISLOCATION:**
  - in the hands of factory workers, the baby Chicks are decapitated one at a time, their delicate necks stretched to breaking.
- **GASSING:**
  - subjected to high quantities of carbon dioxide, a gas extremely painful to birds, the newborn Chicks feel their lungs burn until they lose consciousness and die.
- **MACERATION:**
  - Tossed onto conveyor belts, the innocent Chicks fall into a grinder, which shreds the baby birds alive with sharp metal blades.
- **DUMPING:**
  - Male Chicks have also been found dumped at refuse sites whilst still alive.

## OTHERS

There are various other Cruel Practices involved in the Egg Industry not further discussed, such as forced vaccinations.<sup>155</sup> There are several undercover investigations showing the cruelty inherent in the Egg Industry, including a recent example from Zimbabwe from a farm that allegedly supplies to Pick n Pay.<sup>156</sup>

<sup>154</sup> <https://thehumaneleague.org/article/chick-culling>.

<sup>155</sup> <https://www.egg-truth.com/life-of-a-hen>.

<sup>156</sup> [https://www.tiktok.com/@eaaw\\_organisation/video/7230729917258812678](https://www.tiktok.com/@eaaw_organisation/video/7230729917258812678).



# ANATOMY OF SUFFERING: CRUELTY IS PART OF THE EGG INDUSTRY

  
ANIMAL LAW REFORM  
SOUTH AFRICA

  
OPEN WING  
ALLIANCE®

Today, modern day “factory farms”: breed animals with the use of modern industrial methods are aimed at optimising use of space and other resources expedite animals natural growth cycle minimise spending to maximise production and output.<sup>1</sup> = harmful practices and welfare concerns including:

## DEBEAKING

Removal of parts of the hens' beaks, often done without any anaesthesia or pain killers including using hot blades.

## STOCKING DENSITY

Many hens in tiny battery cages stacked on top of one another in a massive, enclosed building. In South Africa, a single layer hen is permitted to only be afforded 450cm<sup>3</sup> space inside a cage.<sup>2</sup>

## INJURIES

Chicken's combs and wattles can be injured and damaged by other chickens or due to nutritional deficiencies, parasites, human handling and even diseases.

## HORMONES

The release of stress hormones such as corticosterone or cortisol (CORT).

## FEATHER PLUCKING AND CANNIBALISM

Harmful behaviours such as feather pecking (pulling feathers causing injury) and even cannibalism (flesh eating).

## ANTIBIOTICS

Chickens are given antibiotics to minimise the risk of sickness and to assist production and growth.

## ARTIFICIAL INSEMINATION

In order for a hen to lay a fertile egg, she either has to mate with a rooster or be artificially inseminated with the sperm of a male, usually using an “inseminating syringe”.



## FORCED VACCINATIONS

Due to the prevalence of diseases in chickens used in factory farms, they are forced to get a variety of vaccinations.



## DISEASES

Susceptibility to a broad range of illnesses and diseases including: *Mycoplasma gallisepticum*; *Mycoplasma synoviae*; *Salmonella Pullorum*; *S. Gallinarum*; *S. Enteritidis* and *S. Typhimurium*; Avian Influenza Leucosis; Avian encephalomyelitis; Egg Drop Syndrome; Newcastle disease and others including Avian Flu!



## HIGH STRESS LEVELS

Exposure to a range of potentially stressful procedures during their first day of life including hatching in noisy incubators, manual sex sorting, vaccination and transport to the rearing farms.<sup>3</sup>

**THESE ARE ONLY SOME OF THE WELFARE ISSUES  
EXPERIENCED BY CHICKENS AND HENS.  
WE NEED TO DO BETTER!**

<sup>1</sup> Department of Agriculture Forestry & Fisheries Annual Report 2017/18 [https://www.dalrrd.gov.za/Portals/0/Annual%20Report/AR\\_Final\\_28%20September.pdf](https://www.dalrrd.gov.za/Portals/0/Annual%20Report/AR_Final_28%20September.pdf) (accessed on 21 January 2022)

<sup>2</sup> The South African Poultry Association Abridged Code of Practice: Commercial Layers available at <https://www.sapoultry.co.za/pdf-6065/code-practice-commercial-layers.pdf>

<sup>3</sup> Hedlund, L., Whittle, R. & Jensen, P. Effects of commercial hatchery processing on short- and long-term stress responses in laying hens. *Sci Rep* 9, 2367 (2019). <https://doi.org/10.1038/s41598-019-38817-y> <https://www.nature.com/articles/s41598-019-38817-y>

## PART C: LAYING DOWN THE LAW

### REGULATION OF THE EGG INDUSTRY: THROUGH AN ANIMAL WELFARE LENS

#### I. INTRODUCTION

This Part C sets out the regulation of the Egg Industry in South Africa, specifically through an animal welfare and well-being lens. It sets out national policies, national laws, provincial laws, local laws, industry standards and international regulation. Regulations dealt with in other Pillars are not included here. As part of our Stakeholder Component (as contained in Section IV), information was requested from the Selected Stakeholders with regard to compliance with Relevant Legislation. This informed the development of main Criteria 3 (Non-compliance)<sup>157</sup> for purposes of the rating of Selected Stakeholders. In addition, information was requested from Selected Stakeholders with regard to any Adverse Findings. This informed the development of main Criteria 4 (Adverse Findings)<sup>158</sup> for purposes of the rating of Selected Stakeholders. In addition, recommendations have been made with regard to legal governance measures to ensure greater corporate accountability as further set out in Section V.

Although South Africa is home to some of the largest populations of unique and indigenous animals,<sup>159</sup> is ranked the third most biodiverse country in the world,<sup>160</sup> and houses hundreds of millions of farmed terrestrial animals, animal law as a separate distinct field of law remains largely underdeveloped.<sup>161</sup> This is beginning to change, propelled by the transformative constitutional regime discussed above. The country faces issues in respect of animal welfare including a lack of clear and specific legislation on animal welfare standards; governmental departments passing the buck on responsibility in respect of animal welfare; a lack of transparent and effective enforcement; insufficient education and judicial training for animal law, among other issues. Further issues in respect of animal welfare in the country include the recent developments in the Poultry and Agriculture Industry with initiatives such as the Poultry Master Plan. This initiative seeks to exponentially increase the production of animals including through the intensification of production methods, yet contains no parallel objective on ensuring or promoting animal welfare. In addition, this is to be considered against the context of a lack of existing

<sup>157</sup> Main Criteria 3 relates to Selected Stakeholders presenting evidence of (non) compliance in respect of Animal Legislation, Environmental Legislation and related matters.

<sup>158</sup> Main Criteria 4 relates to Selected Stakeholders presenting evidence of Adverse Findings.

<sup>159</sup> South Africa houses the largest population of rhino and ostriches in the world with large populations of elephants and lions. Many of which is due to continued intensive farming occurring in the country.

<sup>160</sup> According to the Biodiversity Finance Initiative Website available at <https://www.biodiversityfinance.net/south-africa>.

<sup>161</sup> A.P Wilson Animal Law in South Africa: “*Until the lions have their own lawyers, the law will continue to protect the hunter*” dA. Derecho Animal (Forum of Animal Law Studies) 10/1 (2019) - DOI <https://doi.org/10.5565/rev/da.399>.



uniform and accessible set of legally enforceable standards for animal welfare in the country and enforcement challenges, as further set out in Part D read with Appendix I.

The absence of clear recognition of animal law as a field more broadly as well as specifically relating to animal protection issues (such as those referenced above) extends across all areas of government (including the executive, legislature and the judiciary), in the animal protection sector as well as in the legal profession. This is illustrated through the general lack of animal law practitioners, animal law courses at universities, animal law organisations and work, as compared to the rest of the world. This situation presents a barrier for the proper development, implementation and enforcement of animal welfare standards, specifically in realms where animals are confined and reared for human use, such as the poultry and Egg Industry.



*Representation of regulation of the Egg Industry in South Africa*

Next, some of the most relevant governance tools are discussed in further detail. These should be understood against the backdrop of the Constitution.

## II. NATIONAL POLICIES

### 1. THE POULTRY SECTOR MASTER PLAN

South Africa does not currently produce enough poultry products to meet the demand of its consumers within the country.<sup>162</sup> As a result, South Africa has resorted to the importation of poultry from other countries, often at a cheaper price than local competitors.<sup>163</sup> On this basis, the Poultry Sector Master Plan (more commonly known as the Poultry Master Plan) was adopted by the Ministers of **DTIC** and the **DALRRD** respectively.<sup>164</sup>

The Poultry Sector Master Plan aims to “provide a framework for the determined effort to grow the output (and jobs) in the industry through a number of measures that will be implemented over a number of years.”<sup>165</sup> It contains various objectives, namely the stimulation of local demand, the increase in poultry production, the boosting of poultry exports and the protection of the domestic chicken industry.

The Plan further aspires to transform the sector by increasing the number of new and emerging commercial farmers who will be contracted by bigger players in the industry to supply chickens.<sup>166</sup> Attainable targets of the Poultry Sector Master Plan include the increasing of broiler production by 1.7 million by 2023, which is roughly 9% within the three year period from publication of the plan.<sup>167</sup>

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<sup>162</sup> According to the Land Banks May 2022 Poultry Industry Insight Report, South African poultry producers are unable to meet the demand for poultry products by the local consumer. As a result, the country has imported from various countries. Amongst these countries is Australia, which imports chicken thighs at a rate of R6.89/kg. '[Cheap poultry imports damage local industry](#)'.

<sup>163</sup> The South African International Administration Commission (ITAC) imposed Provisional Anti-Dumping Duties Against bone-in Chicken imports from Brazil, Denmark, Ireland, Poland and Spain. This anti-dumping duty is provisional from January 2022 until June 2022. South Africa has previously made announcements of this nature. In August 2021, anti-dumping duties were announced for bone-in chicken imports from the Netherlands, Germany and the United Kingdom. With these announcements, South Africa is now applying anti-dumping duties to nine countries which collectively represent all exporters of bone-in chicken portions to South Africa. South Africa's imports of poultry have declined by 63 percent in the past three years with these duties threatening to lower these imports even further. As a result of this, consumer prices may further increase resulting in economically disadvantaged South African consumers either spending more income on food or making an alternative choice. Summarised from [South Africa Imposes Provisional Anti-Dumping Duties Against Bone-in Chicken Imports from Brazil Denmark Ireland Poland and Spain](#).

<sup>164</sup> Various stakeholders contributed to the Poultry Sector Master Plan namely, the DTIC and DALRRD, local poultry producers through the South African Poultry Association (SAPA), poultry traders through the Association of Meat Importers and Exporters (AMIE) and Emerging Black Importers and Exporters of South Africa (EBIESA), organised labour through the Food and Allied Workers Union (FAWU), interested parties including the South African Association of Meat Processors as well as Government entities, namely the Department of Health; The Trade and Industry Policy Secretariat (TIPS), the Industrial Development Corporation (IDC); the Land Bank; and the International Trade Administration Commission (ITAC).

<sup>165</sup> Available at <https://www.dalrrd.gov.za/docs/media/SA%20Poultry%20Sector%20Master%20Plan%201.pdf>.

<sup>166</sup> This is however contested by the proponents of the plan itself who argue that the best way to bring these emerging players into the industry is with a subsidy of R1 billion to develop local producers. Available at <https://www.iol.co.za/business-report/economy/farmers-in-the-country-call-for-an-overhaul-of-the-poultry-master-plan-68759583-bb59-4b52-ae5-5784ea8d962a>.

<sup>167</sup> DTI, 2019. The South African Poultry Sector Master Plan.

Overall, this Plan seeks to develop and facilitate a massive increase in local poultry production along with a decrease in poultry and poultry product prices, which will result in even further increase of poultry consumption locally.<sup>168</sup> Most notably, animal welfare organisations, Non-Profit Organisations (“NPOs”) and the NSPCA were not listed as contributors in the Poultry Sector Master Plan.<sup>169</sup> This omission is evident throughout this Plan as the concept of animal welfare is not included, highlighted or emphasised. Despite this, the state is moving forward on the implementation of this Plan in an effort to meet the growing demand of poultry products and further lower its overall cost for the consumers.

Recently, the high cost and unreliability of electricity supply has been highlighted as a key challenge to the implementation of the Poultry Sector Master Plan.<sup>170</sup> The severe loadshedding challenges have caused a ripple effect on the poultry supply chain that has resulted in the unfortunate culling of millions of one-day old chickens.<sup>171</sup> These sobering numbers again demonstrate the general lack of animal welfare considerations in existing legislation and regulations which permits the culling of chickens without consideration of more humane alternative options, or accountability for such practices.

## EGG MASTER PLAN

Reference is made in several different statements and reports by SAPA to an “Egg Master Plan”. Despite conducting searches online, this policy document could not be found, and it is unclear whether it has been finalised at this stage. The most recent information found from the SAPA 2021 Annual Report appears to indicate that this is still in progress:

*“SAPA partnered with the DTIC in the development of a master plan for the egg sector value chain, which would provide strategic intervention areas for the Egg Industry. The further development of this plan now falls under DALRRD”.*

## AGRICULTURE AND AGRO-PROCESSING MASTER PLAN

The Egg Industry must further be considered against overarching national policies such as the Agriculture and Agro-Processing Master Plan (“AAMP”) signed in May 2022.<sup>172</sup> In the first multi-stakeholder process and strategy plan, commodity-specific transformation targets, jobs, exports and

<sup>168</sup> Page 21 of M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa’s Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at <http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf>.

<sup>169</sup> Available at <https://www.dalrrd.gov.za/docs/media/SA%20Poultry%20Sector%20Master%20Plan%201.pdf>.

<sup>170</sup> Page 24 of the DTIC Engagement with Stakeholders Presentation of 29 November 2022, available at <http://www.thedtic.gov.za/wp-content/uploads/Poultry-Master-Plan.pdf>.

<sup>171</sup> See <https://www.citizen.co.za/business/10-million-chickens-dumped-load-shedding/>.

<sup>172</sup> According to the Department of Agriculture, Land Reform and Rural Development’s official newsletter for May 2022, the AAMP builds on the work that has been done since 2001 when the department first developed the Strategic Plan for South Africa’s agricultural sector, the Sector Plan, Operation Phakisa and the National Development Plan. Retrieved from <https://www.dalrrd.gov.za/docs/agrinews/May%202022.pdf>.

investments, growth rates are included.<sup>173</sup> The AAMP has the vision of a globally competitive agricultural and agro-processing sector driving inclusive production to develop rural economies, ensure food-security and create employment.<sup>174</sup> The objectives of the AAMP provides for various ambitions;<sup>175</sup> however, fails to provide any objectives in relation to livestock animal welfare nor the recognition of sentience or intrinsic value of these animals.

## OTHER

Additional government strategies seek to increase other animal sourced foods, including from game animals, as can be seen through the Draft Game Meat Strategy released in 2022 by the DFFE.<sup>176</sup>

There are several other important and relevant national policies and plans that are not discussed further in this Initial Report, but which implicate the Egg Industry in South Africa. These must be considered in further detail in further iterations. These include, but are not limited to, the National Development Plan (NDP)<sup>177</sup> and Agricultural Policy Action Plan (APAP).

These strategies and plans illustrate an overarching intent by the government to increase animal sourced foods as a solution to several of its goals as well as the country's challenges (such as in relation to food insecurity and unemployment). This background is pertinent when considering the future of the Egg Industry in the country and what this intensification means for animal welfare.

## III. NATIONAL LEGISLATION

This section sets out the relevant legislation in respect of animal welfare in South Africa. This section elaborates on the Animal Protection Act 71 of 1962<sup>178</sup> (APA), the Agricultural Products Standards Act 119 of 1990,<sup>179</sup> the Veterinary and Para Veterinary Professions Act 19 of 1982 (“**VPPA**”),<sup>180</sup> the Animal Improvement Act 62 of 1998<sup>181</sup> (“**AIA**”) as well as relevant provincial legislation and by-laws.

<sup>173</sup> Page 33 of M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa's Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022.

Available at: <http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf>.

<sup>174</sup> Vision retrieved from <https://www.namc.co.za/aamp/>.

<sup>175</sup> The AAMP lists the objectives of the master plan to include the promotion of transformation in agriculture and agro-processing sectors; increasing food security in South Africa; accelerating the opening of markets with better access conditions; inclusive employment, improved working conditions and decent pay for those in the sector; increasing farming community safety and reduce stock theft and enhance resilience to climate change and management of natural resources. Full list available at <https://www.namc.co.za/aamp/>.

<sup>176</sup> On the 18<sup>th</sup> of July 2022, The Department of Forestry, Fisheries, and the Environment published the Draft Game Meat Strategy for public comment. As stated by the Minister of DFFE, Barbara Creecy, ‘The strategy and implementation plan are aimed at creating a formalised, thriving and transformed game meat industry in South Africa that contributes to food security and sustainable socio-economic growth’ available at [https://www.dffe.gov.za/mediarelease/creecy\\_gamemeatstrategy\\_publiccomments](https://www.dffe.gov.za/mediarelease/creecy_gamemeatstrategy_publiccomments).

<sup>177</sup> <https://www.gov.za/issues/national-development-plan-2030>.

<sup>178</sup> <https://www.gov.za/documents/animals-protection-act-22-jun-1963-0000>.

<sup>179</sup> Available at: <https://www.gov.za/documents/agricultural-product-standards-act-6-mar-2015-1127>.

<sup>180</sup> Available at: [https://www.gov.za/sites/default/files/gcis\\_document/201503/act-19-1982.pdf](https://www.gov.za/sites/default/files/gcis_document/201503/act-19-1982.pdf).

<sup>181</sup> Available at: <https://www.gov.za/documents/animal-improvement-act>.

The Societies for the Prevention of Cruelty to Animals Act 169 of 1993<sup>182</sup> (“**SPCA Act**”) is mentioned in Part D on enforcement below. The Animal Diseases Act 35 of 1984,<sup>183</sup> the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 (“**FCD Act**”),<sup>184</sup> and the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act No. 36 of 1947<sup>185</sup> are discussed under the Food Health and Safety Pillar.

For purposes of this Section, due to scope, several acts have not been discussed which are applicable to farmed animal regulation including but not limited to, the Animal Identification Act 6 of 2002,<sup>186</sup> and the Conservation of Agricultural Resources Act 43 of 1983.<sup>187</sup>

The University of Witwatersrand maintains a complete list of agricultural legislation including past legislation.<sup>188</sup>

## ANIMALS PROTECTION ACT

The main legislation relating to animal welfare in South Africa is the 60-year-old APA. The APA has the purpose of consolidating and amending the laws relating to the prevention of cruelty to animals. It is applicable to animals **including chickens** and it defines “animals” as “any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person”.<sup>189</sup>

The APA is a criminal statute in that it provides for a list of offences in respect of animals including, among others,<sup>190</sup> cruelly overloading, beating, kicking, ill-treating, neglecting, infuriating, torturing or maiming of any animal;<sup>191</sup> confining any animal unnecessarily or under conditions that causes the animal unnecessary suffering, or results in the placement of animals with inadequate space, ventilation, light, protection or shelter from heat, cold or weather;<sup>192</sup> and in instances of owners of any animal, deliberately or negligently keeping the animal in dirty, parasitic conditions or allowing the animal to become infested with external parasites.<sup>193</sup> These provisions extend to Layer Hens as well as male Chicks.

<sup>182</sup> Available at: <https://www.gov.za/documents/societies-prevention-cruelty-animals-act>.

<sup>183</sup> Available at: [https://www.gov.za/sites/default/files/gcis\\_document/201503/act-35-1984.pdf](https://www.gov.za/sites/default/files/gcis_document/201503/act-35-1984.pdf).

<sup>184</sup> Available at: <https://www.gov.za/documents/foodstuffs-cosmetics-and-disinfectants-act-2-jun-1972-0000>.

<sup>185</sup> Available at: <https://www.gov.za/documents/fertilizers-farm-feeds-seeds-and-remedies-act-28-may-2015-1101>.

<sup>186</sup> Available at: <https://www.gov.za/documents/animal-identification-act>.

<sup>187</sup> Available at: <https://www.gov.za/documents/conservation-agricultural-resources-act-1-apr-2015-0926>.

<sup>188</sup> Available at: <https://libguides.wits.ac.za/c.php?g=145268&p=952475>.

<sup>189</sup> Section 1(i) of the APA.

<sup>190</sup> The other offences listed in the APA include unnecessary starvation, underfeeding, exposing any animal to poison or poisoned fluid or edible matter except for the destruction of vermin; conveying or carrying any animal that would cause unnecessary suffering, animal fighting and abandoning of the animal.

<sup>191</sup> Section 2(1)(a) of the APA.

<sup>192</sup> Section 2(1)(b) of the APA.

<sup>193</sup> Section 2(1)(e) of the APA.



The APA was enacted during the apartheid regime when racial and segregation laws were in force. With the advent of constitutional democracy, many apartheid era laws were repealed, amended or completely replaced in order to be brought in alignment with the Constitution.<sup>194</sup> However, this is not the case with the APA. There are many criticisms with the APA<sup>195</sup> which are not expanded on, but discussed elsewhere.<sup>196</sup>

Section 24 of the Constitution, which provides for the environmental right<sup>197</sup> and, as discussed above, has since been interpreted to link animal conservation to the intrinsic value of animals. Unfortunately, this extraordinary constitutional recognition of intrinsic value has not yet influenced how the APA is interpreted and applied by Relevant Authorities. Furthermore, the recognition of the Five Freedoms and the subsequent Five Domains has not influenced the interpretation and application of the APA. In addition, the terms “well-being”, “welfare”, “intrinsic value” and “sentience” are absent from the APA. The APA continues to be largely predicated on viewing animals as property and a commodity: a problematic stance in relation to our relationship with animals and the level of protection afforded to them. Despite being outdated, the APA remains the benchmark of animal protection law, with enforcement measures focused largely on upholding its provision.<sup>198</sup>

Although the APA offences are relatively comprehensive and have been generally supported by various animal organisations and activists, the outdated understanding of the APA and its vagueness in relation to several key terms enable harmful treatment of animals to continue. Crucially, one of the main questions which would arise in a discussion around the potential commission of an offence is

<sup>194</sup> Section 2 of the Constitution of the Republic of South Africa, 1996 (“Constitution”) provides for the supremacy clause which states “This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled”.

<sup>195</sup> A.P Wilson Animal Law in South Africa: “Until the lions have their own lawyers, the law will continue to protect the hunter” dA. *Derecho Animal* (Forum of Animal Law Studies) 10/1 (2019) - DOI <https://doi.org/10.5565/rev/da.399>; and Centre for Environmental Rights & Endangered Wildlife Trust: Fair Game. Available at <https://cer.org.za/wp-content/uploads/2018/06/CER-EWT-Regulation-of-Wildlife-Welfare-Report-25-June-2018.pdf>. and Bilchitz D and Wilson A ‘Key Animal Law in South Africa’ in Routledge Handbook of Animal Welfare 1 ed (2022) 433. <https://nspca.co.za/meadow-feeds-assists-nspca/>.

<sup>196</sup> For more information on animal law A.P Wilson Animal Law in South Africa: “Until the lions have their own lawyers, the law will continue to protect the hunter” dA. *Derecho Animal* (Forum of Animal Law Studies) 10/1 (2019) - DOI <https://doi.org/10.5565/rev/da.399> ; and Centre for Environmental Rights & Endangered Wildlife Trust: Fair Game. Available at <https://cer.org.za/wp-content/uploads/2018/06/CER-EWT-Regulation-of-Wildlife-Welfare-Report-25-June-2018.pdf>. and Bilchitz D and Wilson A ‘Key Animal Law in South Africa’ in Routledge Handbook of Animal Welfare 1 ed (2022) 433.

<sup>197</sup> Section 24 of the constitution provides:  
Everyone has the right -  
a. to an environment that is not harmful to their health or well-being; and  
b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -  
i. prevent pollution and ecological degradation;  
ii. promote conservation; and  
iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

<sup>198</sup> This will be further elaborated here: The Role of Non-Profit Organisations (NPOs) and the NSPCA.

(problematically) not necessarily whether there is suffering, but rather whether such suffering is “unnecessary” or in some cases whether the activities are “reasonable” or have “reasonable cause”. While there is not sufficient legal certainty around what “necessary” suffering is, given the availability of alternatives, Cruel Practices utilised in the Egg Industry are arguably not necessary and are not justifiable.<sup>199</sup> This is further exacerbated by the lack of enforcement measures, education and training in the judiciary regarding animal welfare.

In respect of offences, notably, section 2(2) of the APA states that for the purposes of subsection 2(1), namely the list of offences, the owner of any animal shall be deemed to have permitted or procured the commission or omission of any act in relation to that animal if by the exercise of reasonable care and supervision in respect of that animal he could have prevented the commission or omission of such act.

In addition to the offences mentioned, the APA, in section 10, also empowers the Minister to make regulations with respect to *inter alia* the method and form of confinement and accommodation of any animal or class, species, or variety of animals, whether travelling or stationary; and any other reasonable requirements which may be necessary to prevent cruelty to or suffering of any animal. To date, the Minister has not made any regulations in this regard, although this empowering provision is potentially useful for some of the proposed Recommendations in Section V of this Initial Report.

## Testing the APA Against Cruel Practices Involved in the Egg Industry

It is arguable that many of the common practices or rather, Cruel Practices (as defined in our Glossary which includes Battery Cages, beak trimming, de-toeing, and/or overstocking within cages and in relation to male Chicks – culling) which occur within the Egg Industry are in contravention of the APA. This argument has however, not been specifically tested and leading the industry to believe that such practices are acceptable.

The below table contains various offences listed in the APA, and which could theoretically be viewed as offences having been committed in the Egg Industry as a result of Cruel Practices.

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<sup>199</sup> David Bilchitz, *When is Animal Suffering Necessary?* (2012) (27) Southern African Public Law 3-27, Available at SSRN: <https://ssrn.com/abstract=2319419>.

**Notes to accompany the below table:**

This theoretical position would, however, need to be tested in the court system as currently, Cruel Practices are widely utilised and not generally reported as “unnecessary cruelty”, “unreasonable” or “without reasonable cause” by the NSPCA, SPCAs or other Relevant Authorities.

Additional Cruel Practices, outside of those defined which occur in the Egg Industry also arguably could also be considered as offences in terms of the APA. However, these common agricultural practices would need to be tested in the court system to determine with certainty whether they are in contravention of the APA.

\*To be read in conjunction with other legislation, as required by the wording of the APA: “shall, subject to the provisions of this Act and any other law.” For example, the VPPA and the rules in respect thereof.

RELEVANT SECTION OF THE APA	LISTED OFFENCE IN APA (Section 2) Extracted from Act and Emphasis added in each instance  Relevant surrounding wording: “Any person who....[X] shall, subject to the provisions of this Act and any other law, be guilty of an offence...”	CRUEL PRACTICES (AS DEFINED) ARGUABLY A POSSIBLE CONTRAVENTION OF THE APA
2(a)	overloads, overdrives, overrides, <u>illtreats, neglects, infuriates, tortures or maims</u> or cruelly beats, kicks, goads or <u>terrifies any animal</u>	Battery Cages  Male Chick Culling  De-beaking  De-toeing
2(b)	<u>confines</u> , chains, <u>tethers</u> or secures any animal unnecessarily or under such conditions or in such a manner or position as to <u>cause that animal unnecessary suffering</u> or in any place which <u>affords inadequate space, ventilation, light, protection or shelter from heat, cold or weather</u>	Battery Cages
2(c)	unnecessarily starves or underfeeds or denies water or food to any animal	Battery Cages
2(e)	being the owner of any animal, deliberately or negligently keeps such animal in a <b>dirty or parasitic condition</b> or allows it to become infested with external parasites or <b>fails to render or procure veterinary or other medical treatment or attention</b> which he is able to render or procure for any such animal in need of such treatment or attention, whether through disease, injury, <b>delivery of young</b> or any other cause, or fails to destroy or cause to be destroyed any such	Battery Cages

<b>RELEVANT SECTION OF THE APA</b>	<b>LISTED OFFENCE IN APA (Section 2)</b> <b>Extracted from Act and Emphasis added in each instance</b>  <b>Relevant surrounding wording: “Any person who....[X] shall, subject to the provisions of this Act and any other law, be guilty of an offence...”</b>	<b>CRUEL PRACTICES (AS DEFINED) ARGUABLY A POSSIBLE CONTRAVENTION OF THE APA</b>
	animal which is so seriously injured or diseased or in such a physical condition that to prolong its life would be cruel and would cause such animal unnecessary suffering	
<b>2(f)</b>	uses on or attaches to any animal any equipment, appliance or vehicle which causes or will cause injury to such animal or which is loaded, used or attached in such a manner as will cause such animal to be injured or to become diseased or to suffer unnecessarily	Battery Cages  Male Chick Culling  De-beaking  De-toeing
<b>S2(i)</b>	drives or uses any animal which is so diseased or so injured or in such a physical condition that it is unfit to be driven or to do any work	Battery Cages
<b>S2(m)</b>	conveys, carries, confines, secures, restrains or tethers any animal(i) under such conditions or in such a manner or position or for such a period of time or over such a distance as to cause that animal unnecessary suffering; or (ii) in conditions affording inadequate shelter, light or ventilation or in which such animal is excessively exposed to heat, cold, weather, sun, rain, dust, exhaust gases or noxious fumes; or (iii) without making adequate provision for suitable food, potable water and rest for such animal in circumstances where it is necessary	Battery Cages  Male Chick Culling



<b>RELEVANT SECTION OF THE APA</b>	<b>LISTED OFFENCE IN APA (Section 2)</b> <b>Extracted from Act and Emphasis added in each instance</b>  <b>Relevant surrounding wording: “Any person who....[X] shall, subject to the provisions of this Act and any other law, be guilty of an offence...”</b>	<b>CRUEL PRACTICES (AS DEFINED) ARGUABLY A POSSIBLE CONTRAVENTION OF THE APA</b>
<b>S2(n)</b>	without reasonable cause administers to any animal any poisonous or injurious drug or substance	Battery Cages  Male Chick Culling
<b>S2(q)</b>	causes, procures or assists in the commission or omission of any of the aforesaid acts or, being the owner of any animal, permits the commission or omission of any such act	Battery Cages  Male Chick Culling  De-beaking  De-toeing
<b>S2(r)</b>	by wantonly or unreasonably or negligently doing or omitting to do any act or causing or procuring the commission or omission of any act, causes any unnecessary suffering to any animal	Battery Cages  Male Chick Culling  De-beaking  De-toeing

One example of a particular practice undertaken in respect of chickens (though not in the Egg Industry) did arise in a case from 2016, namely that of “dubbing”. In *Eastern Cape Poultry Club v National Council of Societies for the Prevention of Cruelty to Animals*,<sup>200</sup> the legality of dubbing in show birds was in dispute. The practice of dubbing entails the removal of a chicken’s combs, wattle and earlobes for show purposes, and is a harmful and mutilating, but common practice in the industry. A dispute arose regarding the legality of the practice, with the NSPCA opposing the practice, while the Eastern Cape Poultry Club (the “**Poultry Club**”) sought to have the practice declared lawful.<sup>201</sup> The Poultry Club argued that if dubbing equated to maiming (the latter act being an APA offence), then many practices approved by the NSPCA, including dehorning, would also be considered maiming (and therefore unlawful). In response, the NSPCA relied on the South African Veterinary Council (“**SAVC**”) rules<sup>202</sup> which expressly permitted the dubbing of day-old Chicks only and submitted that the act of dubbing which the Poultry Club sought to declare lawful, would constitute maiming (and was therefore contrary to what was permitted by the SAVC rules). The Poultry Club further argued that the practice was necessary for the health and welfare of the animals, to avoid injuries during fights and prevent frostbite.<sup>203</sup>

**Ultimately, the court refused to declare dubbing either lawful or unlawful** on three grounds.<sup>204</sup> The first was that the National Prosecuting Authority (“**NPA**”) should have been a party to this case, and the second was that the relief sought by the Poultry Club was too wide and would require the court to comb through every potentially criminalising provision of the APA in determining whether dubbing was lawful. Lastly, the court reasoned that expert evidence would be required to analyse whether dubbing was in fact necessary for the health and well-being of these chickens.<sup>205</sup> On this basis, the application failed.<sup>206</sup> This resulted in an amendment to the Southern African Show Poultry Organisation rules regarding dubbing in show birds.<sup>207</sup> Although successful in respect of dubbing, other practices, such as many mentioned above, ought to also be regarded as “maiming”. Similarly, cage confinement would arguably, when properly interpreted, be regarded as unnecessary confinement resulting in unnecessary suffering.<sup>208</sup>

This case is useful as it illustrates an example in terms of which an interested party may apply to the court for a declaratory order to get certainty on the law. Specifically, to approach the court to ask it to adjudicate in terms of a declaratory order, whether a common practice constitutes an offence in terms

<sup>200</sup> *Eastern Cape Poultry Club v National Council of Societies for the Prevention of Cruelty to Animals* (44057/2016) [2017] ZAGPJHC 283 (11 August 2017) (“*Eastern Cape Poultry Club*”). Available at <https://www.saflii.org/za/cases/ZAGPJHC/2017/283.html>.

<sup>201</sup> At para 5.

<sup>202</sup> Rule 4.B.1(4).

<sup>203</sup> At para 11.

<sup>204</sup> At para 12.

<sup>205</sup> At para 13-15.

<sup>206</sup> At para 16.

<sup>207</sup> <https://www.timeslive.co.za/news/south-africa/2017-08-23-lots-to-crow-about-for-sas-show-chickens/>.

<sup>208</sup> Section 2(1)(b) of the APA.

of the APA. In the above case, the interested party or applicant was the Eastern Cape Poultry Club who approached the court for a declaration that the practice of dubbing of poultry show birds does not contravene any provision of the APA.

Until legal certainty, for instance, through legislative reform, is provided as to exactly which practices are offences in terms of the APA in law, there is a need for more jurisprudence. Legal certainty would, hopefully, improve corporate accountability in respect of animal welfare issues - and ultimately serve to deter Corporations from acting with impunity for harms routinely committed as well as blatant disregard for the lives and suffering of sentient beings. This would strengthen accountability for related issues, such as environmental crimes in terms of NEMA. Enforcement in terms of the APA is discussed further in Part D below and the intersection between the APA and NEMA is discussed further in the Environmental Pillar.

## **UPDATES TO THE APA: A NEW ANIMAL WELFARE BILL**

DALRRD has announced that a complete overhaul of the South African animal protection regime is underway in terms of a new proposed Animal Welfare Bill. The impetus for the development of the Bill was a 2018 Socio-economic Impact Assessment (SEIAS)<sup>209</sup> which mentions the following national strategic benefits expected to be derived from the modernised animal welfare legislation in the country:

- better animal productivity and health;
- better food safety and security;
- better ability to access international markets for animals and animal products, which are desired outcomes of the National Development Plan (NDP) and Agricultural Policy Action Plan (APAP).

A working group has been appointed to draft a new “Animal Welfare Bill” aimed at updating and consolidating all existing animal regulation into a single statute. Further, the appointed working group is constituted almost entirely of veterinarian representatives including from DALRRD and the provinces.<sup>210</sup>

However, despite these concerns, the drafting of the new Animal Welfare Bill presents the opportunity to include greater protection for animals and to rectify some of the current issues and challenges with the regulatory regime. Depending on the content and the ultimate form of the new legislation, some of the Recommendations included in Section V of this Initial Report could potentially be implemented.

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<sup>209</sup> [https://static.pmg.org.za/RNW798-2021-03-24-Annexure\\_A.pdf](https://static.pmg.org.za/RNW798-2021-03-24-Annexure_A.pdf).

<sup>210</sup> <https://pmg.org.za/committee-question/17570/>.



# SOUTH AFRICAN

# LAW FAILS CHICKENS

There are insufficient laws to protect chickens used for eggs and food in South Africa.

There are very few enforceable positive legal standards relating to chickens, other than before they are killed.



There is no specific ban on keeping chickens in tiny cages. Some industry standards exist, but these are voluntary and unenforceable.

## Chickens are covered by the Animals Protection Act, 1962 (APA)

### IN TERMS OF THE APA, IT IS AN OFFENCE TO:



*...confine any animal unnecessarily or under such conditions or in such a manner or position as to cause that animal unnecessary suffering or in any place which affords inadequate space, ventilation, light, protection or shelter from heat, cold or weather.*

Yet egg laying hens are confined to tiny cages that cause them tremendous suffering – can we say this is 'necessary'? They do not have adequate space, light, ventilation or protection or shelter from heat, cold or weather.

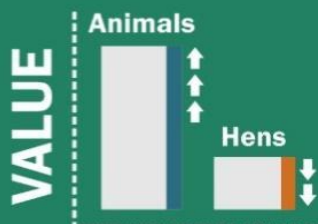
*...deliberately or negligently keep an animal in a dirty or parasitic condition / allow an animal to become infested with external parasites / fail to render or procure veterinary or other medical treatment or attention which an owner is able to render or procure for any such animal in need of such treatment or attention, whether through disease, injury, delivery of young or any other cause.*

YET egg laying hens are often kept in dirty conditions, and do not receive the necessary veterinary and medical treatment.



*...cruelly ill-treat, neglect, infuriate, terrify, torture or maim any animal.*

YET chickens in the egg industry are often ill-treated and even maimed through practices such as de-beaking and suffer from terrifying experiences in order to produce eggs.



The South African Constitutional Court has recognised the intrinsic value and sentience of animals YET hens are treated as commodities and live and suffer in cages.

A number of countries have banned the use of cruel cages including Mexico, the United Kingdom; most of Europe, Israel and Canada with other countries such as Australia phasing out the use of battery cages in egg production.

## IT IS TIME FOR SOUTH AFRICA TO DO THE SAME!

## AGRICULTURAL PRODUCTS STANDARDS ACT

The purpose of the Agricultural Product Standards Act<sup>211</sup> is to provide for control over the sale and export of certain agricultural products and other related products; and for matters connected therewith.

In terms of section 3 of the Act, the Minister may prohibit the sale of a prescribed product:

- (i) unless that product is sold according to the prescribed class or grade;
- (ii) unless that product complies with the prescribed standards regarding the quality thereof, or a class or grade thereof;
- (iii) unless the prescribed requirements in connection with the packing, marking and labelling of that product are complied with;
- (iv) if that product contains a prescribed prohibited substance or does not contain a prescribed substance; and
- (v) unless that product is packed, marked and labelled in the prescribed manner or with the prescribed particulars.

Class or grade, in relation to a product, means a class of that product determined according to the size, mass, measure, number, measurements, colour, appearance, purity, or chemical, physical or micro-biological composition, or another feature or characteristic, of the product concerned, or a unit or quantity thereof. This could include the method of manufacturing. This becomes relevant when one considers the methods of animal agriculture (such as the use of Battery Cages) to produce certain products (such as eggs). Accordingly, based on this reading, the Minister could prohibit the sale of eggs produced via Battery Cages.

While many aspects of this legislation could be discussed, one regulation in terms of this Act is of particular importance and relevance to the Egg Industry. This is because it sets out labelling requirements for eggs which include the method of production.

### 1. REGULATION R345 GRADING, PACKAGING AND MARKING OF EGGS

The Regulations Regarding the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of South Africa (the “**Egg Labelling Regulations**”)<sup>212</sup> were published in 2020. In many ways, the Egg Labelling Regulations are progressive and impose various restrictions on the sale of eggs, including noteworthy restrictions on the manner in which egg containers must be marked. These

<sup>211</sup> Act 119 of 1990, <https://www.gov.za/documents/agricultural-product-standards-act-6-mar-2015-1127>.

<sup>212</sup> 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](https://www.gov.za/sites/default/files/gcis_document/202003/43108rg11055gon.345.pdf).



Regulations represent an important link between issues of the protection of consumers and the protection of animals (including animal welfare of Layer Hens).

Specifically, egg containers are required to clearly indicate the production methods employed i.e. whether the eggs were produced by Layer Hens which were housed in a “cage”, “barn”, or were “free range”. These inclusions go some way at increasing consumer awareness and empowering them to make decisions about the types of eggs they choose to purchase.<sup>213</sup> However, for those consumers who may not be aware of the specific requirements / definitions of the terms, they can still potentially be misleading.

According to the regulations the following kinds of eggs are differentiated: Barn Eggs; Cage Eggs; Free-range Eggs. No person shall sell eggs for human consumption in the Republic of South Africa unless the container and outer container in which the eggs are packed, are marked with the particulars and in the manner set out in regulations 8 to 11.

## BARN EGGS

According to the Regulations, “barn eggs” means eggs which are produced by poultry as set out in regulation 8(3).

Regulation 8(3) states that eggs shall only be marked with the expression “barn eggs” if such eggs are produced by poultry that are not caged but are confined to a shed/ barn indoors, with a stocking density not exceeding 10 adult hens per square meter of available floor space.

**BARN EGGS: Barn hens, although not living in Battery Cages, they receive only 0.1 m<sup>2</sup> of space per adult chicken.**

## CAGE EGGS

According to the Regulations, “cage eggs” means eggs which are produced by poultry as set out in regulation 8(4).

Regulation 8(4) states that eggs shall only be marked with the expression “cage eggs” if such eggs are produced by poultry that are **kept in cages** throughout their laying period: Provided that –

- (a) cages shall be within a shed and may include a nest box, perch and a dust bath; and

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<sup>213</sup> Globally, countries like Taiwan have also started to mandate the disclosure of production methods on egg packaging. <https://www.poultryworld.net/poultry/taiwan-mandates-conventional-cage-systems-label-on-eggs/>.

(b) birds shall have adequate space to feed and lay.

**CAGE EGGS: There is no requirement that cages must have a nest box, perch and a dust bath. There are no minimum space requirement set out for caged hens (as is set out for hens producing free range eggs or barn eggs). The term “adequate” is vague and problematic.**

## FREE RANGE EGGS

According to the Regulations, “free range eggs” means eggs which are produced by poultry as set out in regulation 8(2).

Regulation 8(2) sets out the requirements for Free Range eggs which includes that

(a) Eggs shall only be marked with the expression “free range” if such eggs are produced by poultry which:

(i) are not caged and are housed in a shed/ barn with a stocking density not exceeding **10 adult hens per square meter** of available floor space; and

**Each adult hen receives only 0.1 m<sup>2</sup> of space on average!**

(ii) have daily access to an outdoor range area not exceeding 5 adult hens per square meter.

**Each adult hen receives only 0.2 m<sup>2</sup> of space outdoors on average!**

Provided that:

(aa) such outdoor range shall:

(aaa) be accessible through openings in the side of the shed/ barn;

(bbb) be maintained in a manner that allows for a minimum of 50% living vegetation present at all times; and

(ccc) have adequate shade by way of trees or artificial structures at the rate of 4 square meters per 1000 adult hens; and

(bb) egg producers may during the high risk period for Highly Pathogenic Avian Influenza (HPAI) or during an outbreak of Virulent Newcastle disease (vND), house free range flocks indoors for a maximum continuous period of 24 weeks during a year: Provided further that–

(aaa) the commencement of the 24 week period shall start on the date on which the flock concerned is confined to the shed/barn;

(bbb) the producers shall on or before the first day of commencement inform the designated assignee that the flock is/will be confined indoors; and (ccc) each producer shall keep accurate records about the dates on which the flock is confined to the shed/barn and allowed to roam outdoors again. (b) If the 24 week confinement period referred to paragraph (a)(ii)(bb) above is exceeded, all eggs produced thereafter shall be marked and presented for sale as “barn eggs”.

(c) Egg producers shall, on or before the first day of commencement of confinement, inform the channels of distribution used and their customers, that the flock concerned is being confined to the shed/barn under veterinary instruction, and shall advise their distribution channels and their customers to display notices advising the consumers of the confinement of the flock.

#### FREE RANGE EGGS:

**Each adult hen receives only 0.1 m<sup>2</sup> of space on average in a shed or barn.**

**Each adult hen receives only 0.2 m<sup>2</sup> of space outdoors on average.**

**During outbreaks of diseases, free range flocks may be housed indoors for a maximum continuous period of 24 weeks during a year – close to half of the year!**

Note that the Regulation also deals with several other aspects relating to eggs not further discussed herein.

Another important aspect of this Act is other prohibitions contained in Section 13: “Restricted particulars on containers and outer containers” which sets out a number of restrictions regarding what can be included on the outer container of the eggs. These are very progressive in terms of preventing Humane-washing and Greenwashing and are dealt with further in the Consumer Protection Pillar below.

Transparent labelling helps consumers become more aware of the welfare considerations of Layer Hens on the part of producers and retailers. This, in turn, may encourage consumers to change their purchases from cage systems to better welfare systems and similarly, encourage Corporations to

change their sourcing from cage systems to better welfare systems, that not only improve Layer Hen welfare, but will concomitantly protect Corporation’s commercial and reputational interests, and demonstrate their commitment to corporate accountability.

However, the existing regulation should provide a more appropriate reflection of what is regarded as “free range” so as to avoid potentially deceiving consumers into believing that they are making purchasing choices that are different to what they are in reality. For example, the regulation currently considers the placement of 10 adult hens per square metre as “free range”. This description could be misleading to consumers who might believe that this term allows appropriate space. However, 1 square metre is incredibly small for this number of birds, and should not be regarded as “free range”.<sup>214</sup> Furthermore, the period required for daily outdoor access is not specified, and even when these hens are outdoors, the outdoor range area cannot exceed 5 adult hens per square meter.

While these definitions of critical terms and other requirements such as in relation to what can be labelled as free-range, are problematic, the inclusion of requirements for labelling are progressive, particularly having requirements to label eggs as “caged eggs”. It remains to be seen whether its implementation and enforcement by the DALRRD will be consistent.<sup>215</sup>

Several animal protection organisations were involved in the process to pass these regulations and commented on several iterations of the Regulations. Submissions made by the ALRSA<sup>216</sup> and Humane Society International Africa (“**HSI**”),<sup>217</sup> called for better conditions for Layer Hens, including more humane and hygienic housing conditions, improved labelling transparency and a policy decision to phase out the use of cages. Some of our recommendations were included in the final regulations.

## MEAT SAFETY ACT AND POULTRY REGULATIONS

The Meat Safety Act (“**MSA**”) does not apply to chickens utilised in the Egg Industry as it applies only to animals utilised for meat or animal products (from a carcass). Some provisions from this Act are discussed further under the Food Health and Safety Pillar. In the Poultry Regulations promulgated under the MSA, there are welfare provisions for birds utilised in the meat industry governing how they are to be treated before they die (such as during transportation and pre-slaughter). Given our focus on the Egg Supply Chain (i.e. egg production as opposed to meat production), these provisions are not discussed further.

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<sup>214</sup> Comments at <https://www.animallawreform.org/wp-content/uploads/2019/08/13.-ALRSA-Comments-on-Egg-Labeling-Standards.pdf>.

<sup>215</sup> Despite the Egg Labelling Regulations being in force since 2020, we were unable to find any reporting from the DALRRD’s website regarding the level of compliance thereof, or any indication of the enforcement actions that have been taken by the Department to date.

<sup>216</sup> <https://www.animallawreform.org/wp-content/uploads/2019/08/13.-ALRSA-Comments-on-Egg-Labeling-Standards.pdf>.

<sup>217</sup> <https://www.hsi.org/our-work/>.

## VETERINARY AND PARA VETERINARY PROFESSIONS ACT (VPPA) AND RULES

The VPPA provides for the establishment, powers and functions of the SAVC; the registration of persons practising as veterinary and para veterinary; the control over the professions within the practice and related matters.<sup>218</sup> The SAVC and the professionals governed by the VPPA have been stated to play a critical role in various animal regulations and laws in ensuring animal health and welfare.<sup>219</sup>

The VPPA extends the APA definition of “animal” to mean any vertebrate other than man,<sup>220</sup> and the Rules published in terms of the VPPA further expands upon the definition to mean “any living organisation, except humans, having sensation and the power of voluntary movement and requiring oxygen and organic nutrients for its existence”.<sup>221</sup> These definitions are more inclusive than those contained in the APA, and offer a precedent to expand the application of animal welfare legislation to a wider category of being subjected to human use and abuse. For example, in contrast with the APA, the VPPA definition of “animal” specifically includes all aquatic species and all wild animals regardless of whether they are in captivity or in the control of another person.

The Animal Health Technician Rules in terms of the VPPA lists various services applicable to an animal health technician, including inspecting and reporting animal diseases,<sup>222</sup> formulating and implementing measures to prevent or control animal diseases,<sup>223</sup> formulating and implementing parasite control programmes in animals,<sup>224</sup> carrying out inspections on abattoirs and meat (and reporting accordingly),<sup>225</sup> and performing extension services (including training and education) to protect and promote the health and well-being of animals and humans.<sup>226</sup> These services are necessary for maintaining animal welfare and ensuring compliance with the APA and other applicable legislation. A Layer Hen farm, for example, would need to engage the services of a VPPA professional to prevent hens from living in parasitic conditions, failure of which would result in an offence under the APA. A VPPA professional would, in turn, be obligated to report on unfavourable conditions witnessed during inspections on site. A greater emphasis could be placed on the significant role that could be played by VPPA professionals in maintaining animal welfare on commercial egg farms, through the active and mandatory reporting

<sup>218</sup> <https://savc.org.za/wp-content/uploads/2021/07/Integrated-Act-19-of-1982-Updated-22-Feb-2019.pdf>.

<sup>219</sup> M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa’s Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: <http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf>.

<sup>220</sup> Section 1(i) of the VPPA.

<sup>221</sup> Notice 1493 of 2022, published on 9 December 2022, available at <https://savc.org.za/wp-content/uploads/2022/12/AHT-rules-9-Dec-2022.pdf> (the “Animal Health Technician Rules”); and GNR. 1082 of 9 November 2015: Rules Relating to the Practising of Veterinary Professions, available at <https://savc.org.za/wp-content/uploads/2021/07/Rules-9-Nov-2015.pdf> (the “Practising Rules”).

<sup>222</sup> Section 2(1)(a).

<sup>223</sup> Section 2(1)(b).

<sup>224</sup> Section 2(1)(c).

<sup>225</sup> Sections 2(1)(d) and (g).

<sup>226</sup> Section 2(1)(i).



of unfavourable conditions witnessed during inspections (including for example to the NSPCA or SPCAs, or potentially other bodies be it animal protection organisations and/or government and public bodies). This could arguably contribute to increased enforcement actions being taken by such entities, and result in better accountability from farmers, abattoirs and other role-players in the Egg Supply Chain dealing directly with animals.

Relatedly, the Animal Health Technician Rules<sup>227</sup> specifically require the professional to “protect and promote the health and well-being of animals and humans”,<sup>228</sup> and to “adhere to animal welfare principles”.<sup>229</sup> These provisions emphasise the significant role of a VPPA professional in the promotion for better animal welfare. Similarly, the Practising Rules<sup>230</sup> describes professional care as giving “due importance to the welfare of the patient”<sup>231</sup> and the failure to “attend to patient welfare while under the veterinarian’s care without valid reason” is regarded as unprofessional conduct.<sup>232</sup> These references to the VPPA professional duty to act in a manner that respects animal welfare further reinforces the important role of the VPPA professional in the protection of animal welfare.

Notably, several practices are mentioned in the animal technician rules which can be carried out by an animal technician without a veterinarian, including practices in relation to cattle, sheep, and pigs, however chickens are not specifically mentioned in the Rules. However, several general practices mentioned could apply to chickens such as vaccination, artificial insemination, parasite control, etc.

Despite the inclusion of a few promising provisions, the VPPA faces the same criticism levied against the APA in that it is outdated legislation and was enacted prior to the current constitutional dispensation, with a lack of development in relation to global shifts in respect of animals and the recognition of their intrinsic worth. Furthermore, although the Animal Health Technician Rules expressly reference the WOA (formerly OIE) guidelines in respect of diseases, it fails to record the WOA standards on welfare of animals. In addition, as “animal welfare principles” are not specifically described in the Animal Health Technician Rules, it would be difficult to implement and enforce such obligations.

The Rules contain requirements for animal welfare specifically, for example: they require that an animal health technician shall at all times adhere to animal welfare principles; that “unprofessional conduct” includes *inter alia* neglecting to give proper attention to his/her clients and/or patients or in any way failing to attend or refer to patient welfare while under the animal health technician’s care without valid reason; they require that personnel must be trained in the basics of aseptic technique, animal handling

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<sup>227</sup> <https://savc.org.za/wp-content/uploads/2022/12/AHT-rules-9-Dec-2022.pdf>.

<sup>228</sup> Section 2(1)(i).

<sup>229</sup> Section 4(5)(d)(viii).

<sup>230</sup> [https://savc.org.za/wp-content/uploads/2021/05/034\\_Rules-Final.pdf](https://savc.org.za/wp-content/uploads/2021/05/034_Rules-Final.pdf).

<sup>231</sup> Section 4(3)(c).

<sup>232</sup> Section 1.

and welfare and such training must be relevant to the scope of practice; and have reporting requirements in respect of welfare.

## ANIMAL IMPROVEMENT ACT (“AIA”)

The AIA<sup>233</sup> governs the breeding, identification and utilisation of genetically superior animals in an effort to improve the production and performance of animals. It applies to any kind of animal, or an animal of a specified breed as declared by the Minister.<sup>234</sup> The AIA restricts certain actions in respect of animals and their genetic material. These include the prohibition on the collection, evaluation, processing, packing, storing or importing of embryos, ova or genetic material unless registered in terms of the AIA.<sup>235</sup> It further prohibits various administrative acts for the importation of animals and genetic material,<sup>236</sup> and false or misleading advertisements (including in respect of the performance or an animal and the sale or an animal or genetic material).<sup>237</sup> Lastly, the AIA empowers the Minister to prescribe requirements for the registration of a semen collector, inseminator, embryo collector, embryo transferor or import agent,<sup>238</sup> the administration of certificates and authorizations,<sup>239</sup> and the manner in which technical operations relating to the care and state of health of an animal kept in animal breeder society’s centres during the harvesting of their genetic material may take place.<sup>240</sup> Contravention of the AIA regulations may result in a fine or imprisonment not exceeding six months.<sup>241</sup>

While the AIA includes some references to animal health, it is principally aimed at improving the production or performance ability of various animal populations. It is therefore not well-suited for promoting animal protection and welfare, as many of the animal improvement approaches contained in the AIA are contrary to acceptable international animal welfare principles, such as artificial insemination.

It is worth further considering and researching this Act against the context of the Poultry Industry in South Africa, specifically due to the fact that the Egg Industry is highly reliant on genetics for its existence. A few genetic breeds of chickens essentially maintain and control the supply of all other chickens used in the Egg Industry being: 1. Lohmann (from Europe imported by Lohmann SA) and 2. Hy-Line (from America imported by Hy-Line SA).<sup>242</sup>

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<sup>233</sup> Act 62 of 1998.

<sup>234</sup> Section 2(1) of the AIA.

<sup>235</sup> Section 13(1) of the AIA.

<sup>236</sup> Section 16 of the AIA.

<sup>237</sup> Section 18 of the AIA.

<sup>238</sup> Section 28(1)(d) of the AIA.

<sup>239</sup> Section 28(1)(a),(b) and (c) of the AIA.

<sup>240</sup> Section 28(1)(e) of the AIA.

<sup>241</sup> Section 28(3) of the AIA.

<sup>242</sup> <http://webapps1.daff.gov.za/AmisAdmin/upload/Egg%20Market%20Value%20Chain%20Profile%202021.pdf>.

The Egg Industry begins with the supply of chickens – either as Chicks generally one day old (Pullets) or at Point of Lay. In the latter case, these Hens are sourced from layer replacement rearing farms. In the case of Chicks, this begins with breeders and hatcheries who work exclusively with patented, imported breeds. Government reports indicate that there are **37 breeders** in South Africa.<sup>243</sup> In the Egg Industry, the preferred breeds are: Lohmann, Dekalb Amberlink and Hy-Line. South African regulations prohibit importing day old Chicks and fertilised eggs and therefore “grandparent” and “parent” purebred lines are imported and then subsequently provided to the hatcheries from which these Chicks are produced (see more in the DALRRD Breakdown below).

According to the WOW Report, “[t]he Centre for Competition, Regulation and Economic Development says that only three poultry producers (Astral, Quantum Foods and Country Bird Holdings) are licensed by the international breed technology owners to import new breeding stock while all other producers have to source their genetics from these three companies”.<sup>244</sup> According to DALRRD however, in South Africa, there are two genetic breeds of chickens that lay eggs for the commercial market, Lohmann and Hy-Line. Both breeds are imported (by Lohmann SA and Hy-Line SA respectively).<sup>245</sup>

In many cases, broiler breeding operations are integrated with egg production, meaning in-house breeding operations supply eggs to an in-house hatchery where eggs are hatched.<sup>246</sup>

According to the WOW Report:

*“In addition to being vertically integrated, dominant companies are also exclusive distributors and suppliers of the preferred genetic stock for both broiler and egg industries in South Africa. Astral Foods is the sole supplier of Ross 308 parent breeding stock while RCL is the source for Cobb 500 breed and Country Bird distributes Abor Acres genetic stock. High quality grandparent and parent layer genetic stock is also exclusively supplied and distributed by a few companies. Quantum Foods exclusively imports the Lohmann breed from Europe while Serfontein Poultry imports Dekalb Amberlink and Hy-Line SA distributes Hy-Line” breeds*”.<sup>247</sup>

#### IV. BY-LAWS

Several issues relating to the Egg Industry are regulated at a local government level. Many of these are addressed in various municipal by-laws, depending on where an egg production facility is located. One representative example of issues regulated at a local level stems from Johannesburg By-laws, which we discuss below.<sup>248</sup>

<sup>243</sup> WOW Report.

<sup>244</sup> WOW Report.

<sup>245</sup> DALRRD, A Profile of the Egg Industry Value Chain 2021: <http://webapps1.daff.gov.za/AmisAdmin/upload/Egg%20Market%20Value%20Chain%20Profile%202021.pdf>.

<sup>246</sup> WOW Report.

<sup>247</sup> WOW Report.

<sup>248</sup> A full list of the Johannesburg Bylaws can be accessed here: <https://www.joburg.org.za/documents/By-Laws/Pages/By-Laws.aspx>.

Part 4 of the City of Johannesburg Metropolitan Municipality Public Health By-Laws,<sup>249</sup> with the “Keeping of Poultry” which includes permit requirements,<sup>250</sup> requirements for the premises;<sup>251</sup> and duties of the poultry keeper.<sup>252</sup>

The term “battery system” is referenced throughout the By-laws and is defined as “*the method of keeping poultry or rabbits in cages in either single rows or tier formation within a building or structure*”. Thus, the By-laws normalise rather than restrict the Cruel Practice of Battery Cages, and associated harms discussed above.

Section 118 provides for the general provisions relating to the keeping of animals and states that:

*“If at any time it appears to an authorized official that the keeping of poultry or rabbits on an erf or agricultural holding, in respect of which a permit has been granted, is likely to constitute a nuisance or danger to the public health, that official may - (a) cancel the permit; or (b) prohibit the keeping of such poultry or rabbits”.*

In respect of the requirements for the sizing and keeping of poultry, this By-law prohibits any person from keeping poultry in premises not compliant with section 126 which sets out the requirements for a premises, certain provisions of which are included below for reference. In relation to a poultry house, section 126 prescribes the material to be used in the construction of the house walls, floors, upper floor, roofed platform, minimum size of floor area per grown fowl (of 0.20 m<sup>2</sup>), and minimum aggregate floor area (of 4 m<sup>2</sup>). In relation to a building or structure housing a battery system, it provides the specifications related to the walls, specifically that it be at least 2.4 m high and constructed with concrete, stone, brick, or other impervious material and must have a smooth internal surface. Furthermore, the building must be ventilated and lighted by means of mechanical ventilation and artificial lighting or natural ventilation and light through opening windows of an area not less than 15% of the floor area of the building or structure.

Specifically in respect of cages, the By-law provides “the cages of battery systems must be made of an impervious material; and if required by an environmental health officer, a tray of an impervious material must be fitted under every cage for the collection of manure”. The By-law further addresses aspects including but not limited to water and feed.

Other By-laws in Johannesburg which may be applicable to the Egg Industry include, but are not limited to, Air Pollution Control By-laws; Waste Management By-laws; Water Services By-laws.

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<sup>249</sup> (Published Under Notice No 830 In Gauteng Provincial Gazette Extraordinary No 179 Dated 21 May 2004) [https://www.joburg.org.za/documents\\_/Documents/By-Laws/prom%20health%20by-laws%20as%20amended%202007%202008%202011.pdf](https://www.joburg.org.za/documents_/Documents/By-Laws/prom%20health%20by-laws%20as%20amended%202007%202008%202011.pdf).

<sup>250</sup> Section 125 of the City of Johannesburg Metropolitan Municipality Public Health By-Laws.

<sup>251</sup> Section 126 of the City of Johannesburg Metropolitan Municipality Public Health By-Laws.

<sup>252</sup> Section 127 of the City of Johannesburg Metropolitan Municipality Public Health By-Laws.

There are several other By-laws for different areas which should be reviewed for specific provisions relating to animal agriculture including in the production of eggs. For example, the Cape Town Animal Keeping By-law, 2021<sup>253</sup> sets out general hygiene requirements for keeping of animals and poultry, but does not specify space requirements.

## V. SOFT LAWS

Having highlighted some of the most significant “hard law” in relation to the welfare of chickens involved in the Egg Supply Chain, in this part we discuss non-binding standards, guidelines and regulations (“**soft laws**”). We consider the role of the SABS and Industry Association standards that operate as voluntary governance measures in the Egg Supply Chain. In relation to Industry Association Standards, we focus on the South African Poultry Association, Code of Practice of 2022 (“**SAPA COP**”).<sup>254</sup> We then consider the significance of non-binding international laws, foreign laws, and third party certifications and standards.

### I. SOUTH AFRICAN BUREAU OF STANDARDS

SABS is an agency of the DTIC established by the Standards Act 24 of 1945<sup>255</sup> to develop, promote and maintain South African National Standards (referred to as “**SANS**”); promote quality in connection with commodities, products and services; and render conformity assessment services and matters connected therewith. It develops in various industries. Industry compliance with SANS is regarded as a measure of quality. While non-compliance could be indicative of a lack of quality, there is not generally any form of penalty for non-compliance (unless a standard is incorporated into a law or permit condition, rendering it “hard law”).

A series of animal welfare standards (known as the SABS standards) were developed for various types of animals ranging from wildlife to land farmed animals. Apart from SABS Standards that have been incorporated into law or in permit conditions,<sup>256</sup> the standards are voluntary in nature.

Although some SABS standards are freely available on their website,<sup>257</sup> the vast majority are only accessible to the public through the payment of a fee. The lack of public accessibility of these standards presents a serious barrier in terms of accessibility and wider public awareness. It further provides a barrier for advancing, maintaining and improvement of animal welfare in the country by promoting compliance with the standards.

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<sup>253</sup> <https://openbylaws.org.za/za-cpt/act/by-law/2021/animal-keeping/eng/>.

<sup>254</sup> <https://www.sapoultry.co.za/wp-content/uploads/2022/06/2022-SAPA-COP.pdf>.

<sup>255</sup> It continues to exist as a public entity, notwithstanding the repeal of the previous Act, and is currently governed by the Standards Act 8 of 2008.

<sup>256</sup> Section 28(1) of the Standards Act.

<sup>257</sup> SABS Website: <https://store.sabs.co.za/>.



In addition to accessibility, there are several issues with the SABS Standards. These include that they are voluntary and non-binding unless they are subsequently incorporated into legislation or into permit requirements. To date, none of the “welfare” SABS SANS for animals’ welfare have been incorporated into legislation and according to the USA International Trade Association, only 53 of SABS’s approximately 5,000 standards are mandatory.<sup>258</sup> The SABS SANS are drafted by technical committees, of which there is one for animal welfare, however, the majority of the committee is composed of industry representatives and only a few animal protection organisations are members.

While there are numerous codes for farmed animals including livestock, it was only recently that the SABS released Draft Standards of the Welfare of Chicken<sup>259</sup> (SANS 1758 Welfare of chicken (*Gallus Gallus domesticus*) in 2020 (the “**Draft Standards**”). Following the public comment period, the draft was withdrawn and is therefore not in force.

The Draft Standards clearly set out the industry’s limited intention to advance the welfare of chickens in the Poultry Industry. Several NGOs (including ALRSA and HSI-Africa) made submissions<sup>260</sup> in respect of the Draft Standards including that they would further normalise cruelty to animals including through the use of Battery Cages;<sup>261</sup> that they are not aligned with scientific literature relating to chicken welfare; that they go against the global trend of moving away from certain Cruel Practices such as the culling of male Chicks through maceration, beak trimming, dubbing, toe trimming, and de-spurring.; and are generally regressive.

Several other non-welfare related standards are mentioned in the SAPA COP applicable to the Poultry Industry that are not further discussed.<sup>262</sup>

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<sup>258</sup> International Trade Association: <https://www.trade.gov/country-commercial-guides/south-africa-standards-trade>.

<sup>259</sup> SANS 1758ED21.

<sup>260</sup> These submissions are not publicly available due to SABS copyright restrictions.

<sup>261</sup> The Draft Standards allowed for the use of Battery Cages until 2039, and potentially thereafter. As of 1 January 2039, a minimum cage floor area of 550cm<sup>2</sup> per bird will apply to all cage systems irrespective of the year of installation. The proposed floor allowance per hen of 450cm<sup>2</sup> or 550cm<sup>2</sup> does not allow for the “movement and expression of natural behavior” as set out in SANS 1758:201X. Even a floor allowance of 750cm<sup>2</sup> per hen in enriched cage systems (SAPA Code of Practice 12.6 Appendix 6), does not properly allow for the “movement and expression of natural behavior”. In addition to the space requirements hens also have other welfare needs, including for example access to litter, perches and nest boxes if they are to be able to express their core natural behaviours as identified by scientific research. Among other things, the stocking density requirements were wholly inadequate.

<sup>262</sup> These include: Water Treatment Chemicals for Use in the Food Industry (SANS 1827); Cleaning Chemicals for Use in the Food Industry (SANS 1828); Disinfections and Detergent – Disinfections for use in the Food Industry (SANS 1853); Application of Pesticides in Food-Handling, Food-Processing and Catering Establishments (SANS 10133); Food Hygiene Management (SANS 1049); Food Safety Management Systems – Requirements for Organizations throughout the Food Chain (ISO 22000); Requirement for HACCP Systems (SANS 10330) mentioned in SAPA COP 22. <https://www.sapoultry.co.za/wp-content/uploads/2022/06/2022-SAPA-COP.pdf>.

## II. INDUSTRY ASSOCIATION STANDARDS

As per our Glossary, an “Industry Association” is:

*“[a]ny relevant association regulating any aspect of the Egg Supply Chain that supports and protects the rights of companies and employers and requires adherence to relevant welfare standards of the South African Bureau of Standards (“SABS”) and/or other voluntary compliance measures, including, but not limited to, the South African Poultry Association (“SAPA”) (both the SAPA Egg Association and SAPA Broiler Association), the Livestock Welfare Coordinating Committee (“LWCC”), the Sustainable Retailer Forum, the Animal Feed Manufacturer Association or any other poultry, egg or chicken organisation or association that may be relevant to animal welfare”.*

As part of our Stakeholder Component (as contained in Section IV), information was requested from the Selected Stakeholders regarding Industry Associations. This informed the development of main Criteria 7 (Industry Associations)<sup>263</sup> for purposes of the rating of Selected Stakeholders.

The most significant Industry Association for purposes of this Initial Report is SAPA, a representative association which serves the interest of the Poultry Industry and acts as a medium and catalyst for any matter the Poultry Industry wishes to collectively address. SAPA further acts as the face of the Poultry Industry, addressing and maintaining a presence in society in relation to the Poultry Industry.<sup>264</sup>

SAPA has developed the 2022 SAPA COP, which sets out minimum standards for the well-being of poultry in commercial operations, research and educational facilities; and takes cognisance of the Five Freedoms<sup>265</sup> It is intended to “serve as a guide for people responsible for the welfare and husbandry of domestic poultry and recognizes that the basic requirement for welfare of poultry is a husbandry system appropriate for their physiological needs”.<sup>266</sup> The SAPA COP is only applicable to members of SAPA and even then, only contains recommendations that are not binding or enforceable. As aforementioned, as industry standards, these are non-binding and voluntary. Previously, SAPA had several separate codes including: Code Broiler Production; Code Poultry Breeders and Day Old Chick Production; and Code Pullet Rearing and Table Egg Production. These appear to have been consolidated and replaced by the SAPA COP.

While welfare considerations are mentioned throughout the document (albeit superficially), various farming practices that are contrary to acceptable international animal welfare principles (such as the use of cruel culling methods including maceration, cervical dislocation of chicks, beak treatment, and artificial insemination), continue to be viewed as acceptable practices.

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<sup>263</sup> Main Criteria 7 relates to Selected Stakeholders presenting evidence of membership and compliance with an Industry Association.

<sup>264</sup> South African Poultry Association ‘Our mission’ available at <https://www.sapoultry.co.za/>.

<sup>265</sup> Page 5 of the 2022 SAPA COP.

<sup>266</sup> Page 5 of the 2022 SAPA COP.

For example, the SAPA COP state that: *“The practice of professionally performed beak-treatment is internationally recognized as being a humane alternative to the appalling effects of cannibalism and feather pecking which is associated with intensive poultry production systems be they cage or any of the alternate systems being used”*.<sup>267</sup> Additionally that: *“Gassing of chicks with CO2 or a mixture of CO2 and Argon gas is accepted in the process of disposal of nonsaleable chicks”*.<sup>268</sup> And that *“High speed maceration of chicks using properly designed macerators is a practical and accepted method of euthanasia and the disposal of non-saleable chicks as well as live embryos and unhatched chicks that are still within the egg at the time of removing the rest of the chicks from the chick trays”*.<sup>269</sup>

In relation to Battery Cages, SAPA notes that:

*“A resolution was passed at Congress in June 2018 to keep cage floor space at 450 cm2 per hen and feed trough space at 8.5 cm per hen until 1 January 2039. For new cage installations after 1 January 2019, the feed trough space should be increased to 10 cm per hen and the floor space to 550 cm2. The decision to extend the deadline was based primarily on the prohibitive cost implications of adapting existing layer facilities. These recommendations have been incorporated in the Code of Practice document dated June 2018”*.<sup>270</sup>

The SAPA COP does acknowledge the growing international pressure to move to more humane housing systems, and that countries like France have banned the gassing and crushing of male Chicks.<sup>271</sup> However, as indicated above, the culling of male Chicks continues to be promoted by SAPA and these Cruel Practices result in South Africa failing to enact and implement more progressive, humane practices that have already been implemented in countries such as Germany,<sup>272</sup> France,<sup>273</sup> Italy<sup>274</sup> and Switzerland,<sup>275</sup> and expected to be implemented in other countries like Brazil.<sup>276</sup>

<sup>267</sup> Section 8.1 of the SAPA COP.

<sup>268</sup> Section 6.2.1 of the SAPA COP.

<sup>269</sup> Section 6.2.2 of the SAPA COP.

<sup>270</sup> SAPA 2021 Industry Profile.

<sup>271</sup> Page 34 of SAPA’s Egg Organisation Chairman’s Report 2021, available at <https://www.sapoultry.co.za/wp-content/uploads/2022/06/2022-SAPA-COP.pdf>.

<sup>272</sup> <https://poultry.network/5318-germany-approves-law-to-ban-male-chick-culling-in-2022/>.

<sup>273</sup> <https://www.agri-at.com/en/press/19-press-releases-in-ovo/204-france-passes-decree-banning-the-killing-of-chicks-from-2023-onwards>.

<sup>274</sup> <https://www.eurogroupforanimals.org/news/italy-moves-forward-ban-selective-culling-male-chicks#:~:text=On%20the%2016th%20of%20December,campaign%20and%20outreach%20to%20policymakers>.

<sup>275</sup> <https://corporatesocialresponsibility.us/in-ovo-sexing>.

<sup>276</sup> There is currently a draft law that hasn’t been voted on yet in the state of Sao Paulo in Brazil to ban male chick culling. <https://corporatesocialresponsibility.us/in-ovo-sexing>. See also <https://www.pashudhanpraharee.com/in-ovo-sexing-technologies-in-hatching-eggs-new-technology-could-prevent-the-mass-cull-of-male-chicks/>.

The SAPA COP provides for specific density and space guidelines regarding the various housing systems for commercial Layer Hens, including cage systems,<sup>277</sup> enriched systems,<sup>278</sup> barn systems<sup>279</sup> and free range systems.<sup>280</sup> The cage density requirements for commercial Layer Hens in caged systems specifically distinguish between those installed before 1 January 2019, and those installed after this date. Pre-2019 cages may provide less space per bird and producers are given until 2039 to consider introducing larger space suggestions for cages installed post-2019.<sup>281</sup> The 30-year grace period is significantly long and it is submitted that it will contribute to delays in aligning with internationally accepted practices.

An important recent development in the cage free movement in South Africa is a recent communication sent out by the Consumer Goods Council of South Africa (“CGSA”),<sup>282</sup> whereby they indicate that: “South Africa is not yet ready for 100% cage-free systems”. This statement is based on a study the SAPA Egg Board commissioned the National Agricultural Marketing Council (NAMC)

<sup>277</sup> Appendix 5.

<sup>278</sup> Appendix 6 reads that:

- Each laying hen must have:
  - At least 750 cm<sup>2</sup> of cage space
  - Access to a nest
  - Access to litter
  - Appropriate perches of at least 15 cm
- A feed trough that may be used by the birds without restriction must be provided. Its length must provide for feeder space of at least 12 cm per bird.
- The cages must have an appropriate drinker system
- There must be a minimum aisle width of 90 cm between tiers of cages and a space of at least 35 cm must be provided between the floor and the bottom tier of cages.
- Cages should be fitted with appropriate claw shortening devices”.

<sup>279</sup> Appendix 7 provides for 10 birds per square metre, 5 birds per feed trough, 40 birds per tube feeder, 1.25 birds per water trough, 100 birds per bell drinker, and 10 birds per water nipple.

<sup>280</sup> Appendix 8 provides for similar internal space requirements as barn systems.

<sup>281</sup> Appendix 5 reads:

“The cage density shall be as follows in accordance with the year of installation:

- For Cage Systems installed after 1 January 2019 the minimum cage floor area will be 550 cm<sup>2</sup> per bird in addition the minimum feed space allowed shall be 8.5cm per bird.
- For Cages Systems installed prior to 1 January 2019 the minimum cage floor area will be 450 cm<sup>2</sup> per bird and this will apply until January 2039.
- As of 1 January 2039, a minimum cage floor area of 550 cm<sup>2</sup> per bird will apply to all cage system irrespective of the year of installation.
- For cages installed prior to 1 January 2019 the minimum feed trough space shall be 8.5 cm per bird and this will apply until 1 January 2039.
- As of 1 January 2039 the minimum feed space allowed shall be 10 cm per bird irrespective of year of installation.
- As of 1 January 2039, Birds shall have access to at least two drinker points and manufacturer recommendations should be referred to and not be exceeded in this respect. The slope of the cage floor in cages installed after 1 January 2019 shall not exceed 8°”.

<sup>282</sup> The Consumer Goods Council of South Africa (CGCSA) is an industry association that represents Retail and Manufacturing member companies in a sector that is one of the largest sources of employment in South Africa. <https://www.cgcsa.co.za/>.

for, in order to assess the viability of the South African egg industry if a policy is introduced to introduce a cage-free system (the “NAMC Study”).<sup>283</sup>

While a summary of a few pages was issued with the above statement, the entire study has not been made accessible to the animal protection sector. ALRSA requested the output of the NAMC Study as well as all reference materials and consultation records utilised in compiling the NAMC Study and on which reliance was placed, in terms of a PAIA request dated 25 January 2023. SAPA refused access to this document on 20 February 2023. SAPA relied on various grounds of refusal provided for in PAIA, stating that it refused to grant access for the protection of research information,<sup>284</sup> commercial information of a private body,<sup>285</sup> confidential information of third parties,<sup>286</sup> and commercial information of third parties. SAPA further stated “there is also no environmental risk or risk to public safety in any way relevant to the requested information”. These refusals however were unsubstantiated as required in terms of PAIA and confirmed by the judiciary.<sup>287</sup>

On 7 March 2023, ALRSA requested such justification, noting that the disclosure of information in respect of a PAIA Request ought to be the default position, while exemption from disclosure is to be fully justified, with the onus falling on the body refusing access to prove that the relevant grounds of refusal apply. On 20 March 2023, SAPA’s lawyers stated that:

*“the information contained in the Reference Materials and Consultation Records was supplied on a confidential basis. Resultantly, the disclosure thereof would put the third parties whose information is contained therein at a disadvantage in contractual or other negotiations and would prejudice such third parties in commercial competition as contemplated in section 64 of PAIA”.*

SAPA went on to state:

*“the NAMC Study contains sensitive commercial information which, if disclosed, would place our client at a disadvantage in contractual and other negotiations and would prejudice the commercial competition of our Client as contemplated in section 68 of PAIA, this is particularly so as our client is currently engaging and working with, amongst others, the Minister of Agriculture, Land Reform and Rural Development in relation to the NAMC Study”.*

Given that there are many organisations working towards better welfare standards for Egg Laying Hens, and that the CGSA in this communication has now stated that: “[i]n the case of member companies not ready to economically ban cage eggs as part of their business, we urge them to share the attached letter and report (authorised by SAPA) with lobby groups coercing them to make/adopt this change”, the entirety of the NAMC Study should be made available for review. Furthermore, as millions of rands of money spent by the

<sup>283</sup> See “New regulations could sot the egg industry dearly” in Farmers Weekly, 19th August 2022 in <https://www.farmersweekly.co.za/subscribe-to-our-magazine/attachment/fw22-08-19/>.

<sup>284</sup> Section 69 of PAIA.

<sup>285</sup> Section 68 of PAIA.

<sup>286</sup> Section 65 of PAIA.

<sup>287</sup> *Company Secretary of Arcelormittal South Africa and Another v Vaal Environmental Justice Alliance* (69/2014) [2014] ZASCA 184; 2015 (1) SA 515 (SCA); [2015] 1 All SA 261 (SCA) (26 November 2014).



public on eggs are utilised by SAPA for research purposes by SAPA in terms of a statutory levy imposed by the Marketing of Agricultural Products Act, such a study impacts on matters in the public interest.

## VI. INTERNAL POLICIES AND CORPORATE COMMITMENTS

A useful tool in the pursuit of mitigating many of the harmful impacts of industrialised animal agriculture, including the Cruel Practice of Battery Cages, is for Corporations to commit / sign on to “Cage Free Commitments”. This is an important step by a Corporation confirming its intention, including to consumers, that it will do better for chickens within their supply chains. Few Selected Stakeholders provided evidence that they have done so.

According to ALRSA’s definition, a Cage-free Commitment is a formal statement in which a private body pledges to eliminate the specific Cruel Practice of cage-confinement, primarily of Layer Hens, either immediately or through Progressive Measures.

Two commitments have been growing in recognition and popularity amongst animal welfare organisations and various stakeholders are the “Better Chicken Commitment” and “Cage-Free Commitment”. These commitments arose from consumers becoming increasingly concerned about animal protection and where their food came from, with reports finding that consumers in the US were willing to pay at least one US dollar more for a “more ethical poultry product”.<sup>288</sup>

Globally, thousands of Corporations have already made animal welfare commitments to end the use of Battery Cages.<sup>289</sup> This is largely due to the continued efforts of the OWA.<sup>290</sup> Founded in 2016, the OWA is a global coalition of organisations around the world working together to end the abuse of chickens worldwide. The first step of the OWA is to eliminate the use of Battery Cages by the industry. It aims to achieve this by engaging with various stakeholders and working with these stakeholders to develop, release and enforce their respective cage-free policy.<sup>291</sup> Currently, the OWA consists of over 90 member organisations in 67 countries worldwide<sup>292</sup> and thanks to their continued work, more than 2000 companies have announced corporate welfare policies to go cage-free.<sup>293</sup>

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<sup>288</sup> <https://betterchickencommitment.com/why/>.

<sup>289</sup> <https://safcei.org/2022-cage-free-egg-fulfilment-report/>.

<sup>290</sup> <https://openwingalliance.org/organizations>.

<sup>291</sup> <https://openwingalliance.org/organizations>.

<sup>292</sup> <https://openwingalliance.org/impact>.

<sup>293</sup> [https://drive.google.com/file/d/1wF\\_5T9u-rBA79ehMtrt3PUF6P920wy/view](https://drive.google.com/file/d/1wF_5T9u-rBA79ehMtrt3PUF6P920wy/view).

An up to date list of Cage-free Commitments is maintained by Chicken Watch.<sup>294</sup> Examples of this include global Cage-free Commitments from Toridoll,<sup>295</sup> Chatrium Hotels & Residence,<sup>296</sup> Planalto Ovos,<sup>297</sup> Pague Menos Group,<sup>298</sup> RIU Hotels & Resorts,<sup>299</sup> and Green Me.<sup>300</sup> Other major companies such as Subway, Burger King, Sodexo, Compass Group, Accor Hotels, Metro AG and Marriott International have also made global cage-free pledges.<sup>301</sup> Metro, Canada's 5th largest retailer, became the first major retailer in the country to publicly recognise the Better Chicken Commitment and report progress toward its attainment.<sup>302</sup> The Better Chicken Commitment<sup>303</sup> was originally a set of welfare standards developed by animal organisations in the USA. This commitment is regarded as the leading set of welfare standards driving the food industry towards higher welfare practices. In time, this commitment has become an increasingly global commitment with the development of a European version and the "Australian-New Zealand Better Chicken Commitment".<sup>304</sup>

Although these commitments vary slightly from region to region, they share the same basic requirements: namely a shift to healthier and more natural breeds of chickens; more space afforded to chicken inside sheds; the improvement to chicken environment, with the inclusion of natural light, perches to rest on and objects to play with; less handling and stress at slaughter; and public accountability and transparency through reporting. The envisioned outcome of the Better Chicken Commitment is to ensure that chickens have more space to move around, are not placed in dirty litter, are able to rest on perches, and also able to be exposed to natural light (instead of spending 20 hours

<sup>294</sup> Chicken Watch Website <https://chickenwatch.org/progress-tracker/>.

<sup>295</sup> Toridoll is a Japanese Holdings Company that operates restaurants including Wok to Walk, Marugame Udon, and Boat Noodle. Toridoll has committed to sourcing 100% cage-free eggs in all its locations around the world by 2030, except for in Japan, where it will begin with transitioning 10 stores to cage-free by the end of 2022, 3% of stores by 2023, with subsequent annual increases thereafter. <https://www.toridoll.com/en/csr/environment/animal-welfare/index.html>.

<sup>296</sup> Chatrium Hotels & Residences is a hospitality company with 7 locations across 3 countries, has announced a cage free commitment for all owned and franchised operations. This commitment is in alignment with Chatrium's 'Think First Think Earth' initiative to contribute to communities where they are located. Commitment available at <https://www.chatrium.com/media/chatrium-hotels-residences-transitions-to-a-cage-free-egg-supply-chain>.

<sup>297</sup> Planalto Ovos has adopted a commitment to keep their egg farms cage-free and to never make investments in conventional facilities. <https://www.planaltoovos.com.br/diferenciais>.

<sup>298</sup> Pague Menos Group operates with 34 stores and are a high-end market in São Paulo, Brazil. Commitment available at [https://www.linkedin.com/posts/paguemenos\\_supermercadospaguemenos-fazsuavidamelhor-activity6973714874308677634-BrqR/?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/paguemenos_supermercadospaguemenos-fazsuavidamelhor-activity6973714874308677634-BrqR/?utm_source=share&utm_medium=member_desktop).

<sup>299</sup> RIU Hotels & Resorts is a Spanish hotel chain with recognized national and international success. We estimate that this commitment will impact 375,000 hens and help the cage-free movement build momentum in countries where there are less resources for cage-free work like Bulgaria, Turkey, Tunisia, Morocco, Jamaica, the Bahamas, Aruba, Costa Rica, the Dominican Republic, Panama, Cape Verde, Mauritius, St. Martin and Sri Lanka. Commitment available at <https://www.riu.com/riusponsible/en/sustainable-measures/>.

<sup>300</sup> Green Me, a Mexican company that owns two restaurants, located in Mexico City and Puebla, decided to announce a cage-free egg commitment. Green Me also committed to always have plant-based options available in their menu. <https://www.instagram.com/p/CjDeSvpuZyW/?hl=en>.

<sup>301</sup> <https://www.poultryworld.net/poultry/layers/companies-continue-to-meet-cage-freecommitments/>.

<sup>302</sup> <https://corpo.metro.ca/en/corporate-social-responsibility/products-services.html#procurement>.

<sup>303</sup> <https://betterchickencommitment.com>.

<sup>304</sup> <https://betterchickencommitment.com/en-AU/>.

daily under artificial lighting). Ultimately, it envisions the breeding of chickens with the health of the birds in mind instead of the stocking of these chickens and their by-products such as eggs as units for profits.<sup>305</sup>

According to SAPA, in November 2016, McDonald’s South Africa pledged to transition to sourcing eggs from only cage-free producers by 2025. After pressure from local activists, it is reported that, in December 2021, the Spur Corporation committed to using only cage-free hens eggs in its restaurants by the year 2025.<sup>306</sup>

In 2018, the Famous Brands group agree to transition to sourcing 50 million eggs a year from cage-free egg suppliers by 2025. The Famous Brands’ stable includes Wimpy, Mugg & Bean, House of Coffee and Steers. Indications are that this target will be reached several years ahead of target.

ALRSA encourages the Selected Stakeholders who have not yet done so, as well as other stakeholders operating within the Egg Industry in South Africa to make Cage Free Commitments.

For those Corporations who have already made such Animal Welfare Commitments, these must be fulfilled through transparent reporting on their progress and any deviations therefrom. Stakeholder engagement and compliance with PAIA is one way to monitor fulfilment.

### III. INTERNATIONAL LAWS AND STANDARDS

International laws and standards, even if not binding, can be significant since the Constitution dictates that when interpreting the Bill of Rights, a court must consider international law.<sup>307</sup> Further, international laws and standards can influence policy and law developments.

South Africa is a member of the World Trade Organization (“WTO”); Food and Agriculture Organization of the United Nations (“FAO”); and WOAHP among many other international body memberships. The export and import of eggs are discussed further in the Industry Component (Section II of this Initial Report).

On 2 March 2022, Member States at UNEA-5 adopted a pioneering resolution recognising the link between animal welfare, environment, and sustainable development.<sup>308</sup> Several important acknowledgements were made in this resolution including that animal welfare can contribute to addressing environmental challenges, promoting the “One Health” approach and achieving the Sustainable Development Goals (“SDGs”); that the health and welfare of animals, sustainable development and the environment are connected to human health and well-being; the increasing need

<sup>305</sup> <https://animalsaotearoa.org/2022/07/07/new-chicken-standards-nz/>.

<sup>306</sup> 2021 SAPA Industry Profile.

<sup>307</sup> Section 39(1) of the Constitution.

<sup>308</sup> <https://wedocs.unep.org/bitstream/handle/20.500.11822/38632/L.10.REV.1%20-%20Draft%20resolution%20on%20the%20animal%20welfare%e2%80%93environment%e2%80%93sustainable%20development%20nexus%20-%20English.pdf?sequence=1&isAllowed=y>.

to address these connections through the One Health approach, among other holistic approaches, and also that there is a strong body of science supporting animal welfare.

This resolution once again emphasizes that the protection of the environment (and accordingly human rights to have the environment protected) is linked with animal welfare.

## A. WOAHS (FORMERLY OIE) Standards

### DRAFT LAYER CODE

The WOAHS has proposed one notable standard relating to the Egg Industry for the keeping of Laying Hens. Below are extracts of comments by SAPA and the NSPCA, respectively, about these draft WOAHS Standards.

According to SAPA,

*“The World Organisation for Animal Health (OIE) has, over the past few years, been drafting welfare standards for the keeping of laying hens. A revised draft of the OIE chapter on Layer Hen housing and welfare was distributed to members of the Egg Organisation Board for their input in early 2021 and, in July, a letter containing eleven proposed amendments was sent to the OIE through the state’s Chief Veterinary Officer and the IEC. Although the standards are not legally binding, member countries have agreed in principle to write the standards into domestic law. With increasing global pressure from animal welfare groups for the discontinuation of caged housing systems, it is of vital importance that a compromise is reached. The OIE standard will eventually impact on local producers. Businesses may face negative consequences if they do not recognise, evaluate and respond to global trends effectively and in good time. Some local producers are already restructuring their businesses to take advantage of changes in the global industry and NAMC is involved in investigating the economic impact of transitioning to cage-free production in the South African context”.*<sup>309</sup>

*“Parallel to this, the Egg Organisation is also collaborating with the IEC and the OIE to develop a chapter entitled ‘Animal welfare and laying hen production systems’. The first draft was withdrawn by the OIE following fierce criticism by the IEC and its member countries, based on the fact that conventional cages would be virtually outlawed. The recommendation was made that the chapter takes into account the social, economic and cultural diversity of OIE member countries, and issues of food security. A revised version was published in 2019 and egg producing nations were again invited to comment. The OIE had planned to discuss the chapter at the General Session in Paris in May 2020, but this was cancelled owing to the COVID-19 pandemic. Subsequently, the OIE opened a further window for comments. In July 2021, a letter containing eleven proposed amendments was sent by the Egg Organisation to the OIE through the state’s Chief Veterinary Officer and the IEC. With increasing global pressure from animal welfare groups for the discontinuation of caged housing systems, it is of vital importance that a compromise is reached”.*<sup>310</sup>

These comments arguably demonstrate SAPA’s resistance to improved animal welfare standards.

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<sup>309</sup> SAPA 2021 Industry Profile.

<sup>310</sup> SAPA 2021 Industry Profile.

According to the NSPCA’s 2020 – 2023 Annual Report:

*“The development of the guideline for laying hens is discontinued. ICFAW successfully managed with the use of scientific-technical detail to have the OIE technical committee insert language that recognises that chickens need to express natural behaviours. These include dustbathing, locomotion, nesting, perching and foraging. The international Egg Industry objected to this language, and with the help of many governments tried over years to have it removed, despite the draft never even saying that caging hens must be banned. After failing to counter the scientific evidence put forward by ICFAW, the chapter in its entirety was eventually scrapped. This is the first time in its 97-year history, that a standard has not been adopted in some form. It speaks to the low bar set by the OIE (in terms of what eventually passes in these chapters), and the state of the worldwide industry. Anything seen as slightly progressive or revolutionary is fought to the bitter end”.*

The NSPCA’s stance suggests that it would be in favour of enhanced animal welfare standards. However, its enforcement efforts discussed below do little to invoke existing laws (such as the APA) to apply pressure on industry.

## TERRESTRIAL HEALTH CODE

The WOAHA (founded as OIE) has developed Terrestrial and Aquatic Animal Health Codes which provide standards for the improvement of animal health and welfare as well as veterinary public health globally.<sup>311</sup> For purposes of this Project, reference will be made to the Terrestrial Animal Health Code (hereafter the “**Terrestrial Code**”).<sup>312</sup>

Section 7 of this Terrestrial Code deals specifically with animal welfare.<sup>313</sup> In its general considerations, the Terrestrial Code sets the standard for what an animal experiencing good welfare is, as “healthy, comfortable, well nourished, safe, not suffering from unpleasant states such as pain, fear and distress, and is able to express behaviours important for its physical and mental state”.<sup>314</sup> As a guiding principle, the Terrestrial Code recognises the above mentioned Five Freedoms, stating that these freedoms “provide valuable guidance in animal welfare”.<sup>315</sup> Additional guiding principles are “that the use of animals carries with it an ethical responsibility to ensure the welfare of such animals to the greatest extent practicable” and “[t]hat improvements in farm animal welfare can often improve productivity and food safety, and hence lead to economic benefits”.<sup>316</sup>

In respect of the guiding principles for the welfare of animal livestock production systems, the Terrestrial Code provides numerous noteworthy principles. These include consideration for the physical environment, including walking, standing and resting surfaces, and that these should be suited to the species so as to minimise risk of injury and transmission of diseases or parasites to animals. It further states that the physical environment should allow comfortable resting, safe and comfortable

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<sup>311</sup> [Codes and Manuals - WOAHA - World Organisation for Animal Health.](#)

<sup>312</sup> [Terrestrial Code Online Access - WOAHA - World Organisation for Animal Health.](#)

<sup>313</sup> Ibid.

<sup>314</sup> Article 7.1.1 of the Terrestrial Code.

<sup>315</sup> Article 7.1.2 of the Terrestrial Code.

<sup>316</sup> Ibid.



movement including normal postural changes, and the opportunity for the performance of naturally-motivated behaviours.

In respect of social groupings and housed animals, the Terrestrial Code provides that “social grouping of animals should be managed to allow positive social behaviour and minimise injury, distress and chronic fear”. The Terrestrial Code states that:

*“for housed animals, air quality, temperature and humidity should support good animal health and not be aversive. Where extreme conditions occur, animals should not be prevented from using their natural hermosods of thermo-regulation...animals should have access to sufficient feed and water, suited to the animals’ age and needs, to maintain normal health and productivity and to prevent prolonged hunger, thirst, malnutrition or dehydration”.*<sup>317</sup>

Notably, the Terrestrial Code, as a guiding principle, provides that “the handling of animals should foster a positive relationship between humans and animals and should not cause injury, panic, lasting fear or avoidable stress”.<sup>318</sup>

Furthermore, the Terrestrial Code contains an article specifically dedicated to animal welfare and broiler chicken production systems.<sup>319</sup> While these relate to broiler chickens specifically, the welfare issues addressed by these standards may similarly be applicable to Layer Hens as they generally experience the same housing. The scope of this section covers the production period from arrival of day-old Chicks to the harvesting of broilers in commercial production systems with reference to completely housed systems,<sup>320</sup> partially housed systems,<sup>321</sup> and completely outdoor systems.<sup>322</sup>

The Terrestrial Code recommends that the welfare of broilers should be assessed using outcome-based measurables with consideration given to the resources provided and the design of the factory farm. It also recommends eleven indicators including mortality, culling and morbidity,<sup>323</sup> gait,<sup>324</sup> contact

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<sup>317</sup> Article 7.1.5 of the Terrestrial Code.

<sup>318</sup> Ibid.

<sup>319</sup> Chapter 7.10 of the Terrestrial Code.

<sup>320</sup> The Terrestrial Code defines completely housed systems as broilers being completely confined in a poultry house, with or without environmental control.

<sup>321</sup> The Terrestrial Code defines partially housed systems as broilers being kept in a poultry house with access to a restricted outdoor area.

<sup>322</sup> The Terrestrial Code defines completely outdoors systems as broilers not being confined inside a poultry house at any time during the production period but are confined in a designated outdoor area.

<sup>323</sup> The Terrestrial Code recommends that daily, weekly and cumulative mortality, culling and morbidity rates be assessed and should stay within expected ranges. It further provides that any unforeseen increase could reflect an animal welfare issue.

<sup>324</sup> The Terrestrial Code notes that broilers are susceptible to developing a variety of infectious and non-infectious musculoskeletal disorders, including gait abnormalities and lameness. These types of disorders the Code attributes to include nutrition, sanitation, lighting and litter quality.

dermatitis;<sup>325</sup> feather condition;<sup>326</sup> incidence of diseases, metabolic disorders and parasitic conditions;<sup>327</sup> behaviour;<sup>328</sup> water and feed consumption;<sup>329</sup> performance; injury rate; eye conditions;<sup>330</sup> and vocalisation.<sup>331,332</sup>

The Terrestrial Code further provides recommendations for aspects of welfare in relation to broilers in these factory farms. These include recommendations in respect of thermal environment; lighting; air quality; noise; nutrition; flooring, bedding, resting surfaces and litter quality.<sup>333</sup>

It is noteworthy that the Terrestrial Code provides a non-binding approach to animal welfare in relation to broiler production dependent on the appropriate national sectoral, or perhaps regional norms for commercial broilers in that area.<sup>334</sup> Members of the WOA standards are, however, bound to the standards prescribed. Despite being a member, South Africa has not incorporated these WOA standards into any legislation.<sup>335</sup> This creates a barrier for entry into South African law and policy as this Terrestrial Code remains subject to incorporation into rules and regulations of a region or country.<sup>336</sup>

The absence of local incorporation also results in the lack of legal certainty for corporations operating in the Poultry Industry, and absence of accountability from industry players.

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<sup>325</sup> The Terrestrial Code attributes contact dermatitis as affecting skin surfaces that have prolonged contact with wet litter or other wet floor surfaces. If severe, the Code notes that foot and hock lesions may contribute to lameness and possible secondary infections in broilers.

<sup>326</sup> The Terrestrial Code recommends the evaluation of feather condition of broilers provide useful indicators of the animals welfare.

<sup>327</sup> The Terrestrial Code provides that ill-health, regardless of the cause, is a welfare concern of broilers and will be exacerbated by poor farm practices.

<sup>328</sup> The Terrestrial Code lists fear behaviour, spatial distribution, panting and wing spreading, dust bathing, feeding, drinking and foraging and feather pecking and cannibalism as indicators of broiler behaviour relating to their welfare.

<sup>329</sup> The Terrestrial Code recommends daily monitoring of water consumption in broilers and notes that problems in consistent, good quality water supply can result in wet litter, diarrhoea, dermatitis and dehydration. It further notes that changes in feed consumption can indicate unsuitability of feed, the presence of diseases or any other welfare problem with the broiler.

<sup>330</sup> The Terrestrial Code notes that conjunctivitis in broilers can indicate the presence of dust and ammonia and further notes that high levels of ammonia can result in corneal burns and eventual blindness. It further notes that low light intensity can result in abnormal eye development.

<sup>331</sup> The Terrestrial Code noted that vocalisation of groups of broilers can indicate emotional states, either positive or negative and the interpretation of these vocalisations is possible by experienced animal handlers.

<sup>332</sup> Article 7.10.3 of the Terrestrial Code.

<sup>333</sup> Article 7.10.4 of the Terrestrial Code.

<sup>334</sup> Article 7.10.3 of the Terrestrial Code.

<sup>335</sup> As noted by the court in *National Council of Societies for the Prevention of Cruelty to Animals v Al Mawashi (Pty) Ltd and Others* (9952020) [2020] ZAECHC 118 para 15 (15 October 2020).

<sup>336</sup> Despite this however, the OIE standards have been incorporated into regional strategies and country policies, including the African Union to which South Africa is a member state.

## Animal Welfare Strategy for Africa (AWSA)

Regionally, the African Union (“AU”) has explicitly recognised the sentience of animals.<sup>337</sup> The AU expressly identifies that most African countries are at different levels with regards to animal welfare laws, legislation, policies and regulatory frameworks, and further observed that these legislative measures are either lacking, inadequate, outdated or inadequately enforced.<sup>338</sup> The AU has developed the Animal Welfare Strategy for Africa (“AWSA”)<sup>339</sup> recognising and seeking to address animal welfare issues in Africa.<sup>340</sup> This is illustrated by a vision of:

*“An Africa where animals are treated as sentient beings, as a leading continent in implementation of good animal welfare practices for a competitive and sustainable animal resource sector”.*<sup>341</sup>

The AWSA is aligned with UDAW<sup>342</sup> mentioned below, and the WOA (formerly OIE) standards.<sup>343</sup> The AWSA seeks to enhance collaboration, coordination and partnerships with specialised organisations, and engage in the formulation of a common African position on animal welfare.<sup>344</sup> Although merely a guiding strategy, the AWSA provides an indication of the regional sentiment in relation to animal welfare and the recognition of sentience to animals under human control in Africa.<sup>345</sup>

## Proposed International Initiative: Universal Declaration on Animal Welfare

The Universal Declaration on Animal Welfare (“UDAW”)<sup>346</sup> is a proposed inter-governmental agreement to recognise that animals are sentient, to prevent cruelty and reduce suffering, and to promote standards on the welfare of animals including livestock.<sup>347</sup> The UDAW, if implemented by member states, is intended to benefit animals, people, and the environment, including human health, social development, poverty and hunger reduction, disaster management and environmental

<sup>337</sup> African Union *Animal Welfare Strategy for Africa (AWSA)* retrieved from <https://rr-africa.oie.int/wp-content/uploads/2019/05/awsa-executive-summary-layout-eng-2017.pdf>.

<sup>338</sup> Ibid.

<sup>339</sup> Ibid.

<sup>340</sup> Wilson A.P. Chronicle on 2018 Africa Animal Welfare Conference and Africa Animal Law Convention, dA. *Derecho Animal (Forum of Animal Law Studies)* 10/1 (2019) – DOI <https://doi.org/10.5565/rev/da.400>.

<sup>341</sup> African Union AWSA retrieved from <https://worldanimal.net/images/stories/documents/Africa/AWSA.pdf>.

<sup>342</sup> International Fund for Animal Welfare <https://www.ifaw.org/united-states/our-work/political-advocacy/udaw-universal-declaration-animal-welfare>.

<sup>343</sup> World Organisation for Animal Health. <https://www.oie.int/en/what-we-do/animal-health-and-welfare/animal-welfare/>.

<sup>344</sup> African Union AWSA <https://worldanimal.net/images/stories/documents/Africa/AWSA.pdf>.

<sup>345</sup> It should be noted that, while the AWSA was intended to be implemented over a period of 4 years (from 2018 - 2021), it does not appear to have been updated. AS of July 2022, the African Union Inter-African Bureau for Animal Resources was still in the process of appointing an animal welfare expert to provide support for the implementation of the AWSA. <https://www.au-ibar.org/au-ibar-jobsconsultanciesprocurements/consultancy-animal-welfare-expert-support-implementation>. It appears that various “governments and civil societies in Africa are currently at various stages of domesticating the implementation of Animal Welfare Strategy for Africa.” <https://www.aawconference.org/index.php/about>.

<sup>346</sup> [Universal Declaration on Animal Welfare](#).

<sup>347</sup> The UDAW at p3.

sustainability.<sup>348</sup> Essentially, the UDAW recognises the many important roles that animals provide and, by advocating for their care and reducing their exposure to suffering, this benefits not only animals but people and the environment, too.<sup>349</sup> This holistic approach of animal welfare as interlinked with humans and the environment can be summed up as humanity living in harmony with nature.<sup>350</sup>

As South Africa has not yet signed onto the UDAW, it is not guided by the agreement and therefore fails to progress animal welfare issues in the same manner and pace as those who have already signed on as members. This lack of commitment to and lack of implementation of the UDAW hinders the proper inclusion and understanding of animal sentience, as well as an appreciation for the benefits that animal welfare commitments provide for humans and the environment, too. It also hinders the development of universal welfare standards regarding animals.

#### IV. FOREIGN LAW

Foreign law, even though not binding in South Africa, can be significant since the Constitution dictates that when interpreting the Bill of Rights, a court may consider foreign law.<sup>351</sup> Further, foreign law can influence local policy and law developments. Examples of certain progressive foreign laws in relation to animals and chickens have been included in this Section and have informed recommendations made in Section V below.

#### FARM ANIMAL STANDARDS AND REQUIREMENTS

Globally, various jurisdictions have moved towards more strictly regulating factory farming industries in an effort to improve the welfare standards of livestock.<sup>352</sup> For example, the EU has adopted several directives, setting out the minimum standards for the protection of farmed animals in general, as well as specific animal species, such as the minimum standards for the protection of Layer Hens, the inclusion of welfare indicators for chickens kept for meat production, the creation of minimum standards for the protection of calves and banning the use of confined individual pens for animals other than an age threshold, and setting minimum standards for the protection of pigs.<sup>353</sup> In Australia, nationally consistent standards and guidelines for farm animal welfare have been progressively developed and implemented.<sup>354</sup> In the United States, the Humane Methods of Slaughter Act<sup>355</sup> requires

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<sup>348</sup> The UDAW at p2.

<sup>349</sup> The UDAW at p5.

<sup>350</sup> This respect for animals is reminiscent of the UN's "Harmony with Nature" approach. <http://www.harmonywithnatureun.org/>.

<sup>351</sup> Section 39(1) of the Constitution.

<sup>352</sup> Meat & Livestock Australia *Supply Chain Feedlot sector* available at <https://www.mla.eu/supply-chain/feedlot-sector/#>.

<sup>353</sup> European Parliamentary Research Service Ex-Post Evaluation Unit (2021) *Animal Welfare on the farm-ex-post evaluation of the EU legislation: Prospects for animal welfare labelling at EU level* at page 38 available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662643/EPRS\\_STU\(2021\)662643\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662643/EPRS_STU(2021)662643_EN.pdf).

<sup>354</sup> Australian Animal Welfare Standards and Guidelines available at <https://www.awe.gov.au/agriculture-land/animal/welfare/standards-guidelines>.

<sup>355</sup> Humane Methods of Slaughter Act 1958 <https://www.nal.usda.gov/animal-health-and-welfare/humane-methods-slaughter-act>.

the humane treatment and handling of livestock at factory farms or slaughter plants, and in Italy, the killing of male Chicks in the Egg Industry has been banned.<sup>356</sup>

## RECOGNITION OF AND LAWS SURROUNDING SENTIENCE

Internationally, some legislators have formally recognised animals as sentient beings instead of property. An example is the Animal Welfare Amendment Act 2 of 2015<sup>357</sup> of New Zealand, one of the first countries to formally recognise animals as sentient beings. This recognition could help to ensure that Corporations properly respond to an animal’s needs in terms of welfare and well-being. South African law recognises elephants as sentient<sup>358</sup> and several court cases have affirmed that animals are sentient beings.<sup>359</sup> There is no rational basis for viewing some and not other animals as sentient, when they share the same core characteristics. See further the above section relating to the capacities and capabilities of chickens in particular.

Some jurisdictions go as far as sanctioning fines and imprisonment to those who do not uphold this standard.<sup>360</sup> Quebec, for instance, enacted Bill 54: An Act to Improve the Legal Situation of Animals,<sup>361</sup> where it was expressly stated that animals in the province are to be considered as sentient beings instead of property, with fines and imprisonment being sanctioned on individuals not upholding this standard.<sup>362</sup>

The European Union (“EU”) has also recognised animals as sentient beings and obligates signatories and the EU to pay full regard to animal welfare.<sup>363</sup> Various other countries have expressly provided for the recognition of animals as more than merely property, with some jurisdictions recognising the legal rights of animals.<sup>364</sup>

Within Africa, Tanzania became the first country in Africa to expressly recognise the above mentioned Five Freedoms as well as expressly recognising the sentience of animals.<sup>365</sup> Many of these countries

<sup>356</sup> An initiative that is said to positively impact approximately 35 million Chicks in the country’s egg industry. <https://animalequality.org/news/italy-bans-the-killing-of-male-chicks/>.

<sup>357</sup> <https://www.legislation.govt.nz/act/public/2015/0049/latest/DLM5174807.html>.

<sup>358</sup> Norms and Standards relating to the Management of Elephants, 2008.

<sup>359</sup> See the 2016 NSPCA Case; 2008 *Openshaw*; *Smuts v Botha* 2002 in Part B above.

<sup>360</sup> Boniface A.E. Animals: ‘Objects’ or ‘Sentient Beings’? A comparative perspective of the South African Law *Journal of Advances in Humanities and Social Sciences* 2016 2(3): 143-155 at 151.

<sup>361</sup> Bill 54: An Act to Improve the Legal Situation of Animals. <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2015C35A.PDF>.

<sup>362</sup> Ibid.

<sup>363</sup> The European Union Consolidated Version of the Treaty on the Functioning of the European Union [2008] OJ C115/47, art 13 in which animals were recognised as sentient beings.

<sup>364</sup> These countries include France, Belgium, Austria, Czech Republic, Germany, Netherlands, Spain and Germany <https://www.alaw.org.uk/2019/06/animal-sentience-within-the-law-an-international-perspective-by-grace-hudson/>. Ecuador’s Constitutional Court has also confirmed that Rights of Nature – which are Constitutionally recognised in Ecuador – extend to *wild* animals. <https://law.lclark.edu/live/news/48641-ecuador-gives-rights-to-wild-animals-with-help>.

<sup>365</sup> The Animal Welfare Act 2008 of Tanzania retrieved from <http://extwprlegs1.fao.org/docs/pdf/tan85327.pdf>.



are member states to international animal welfare standards, and have developed their national animal welfare standards in conformity with the global shift towards better animal welfare conditions for animals under their control, including those in the Egg Industry.

## BEAK TRIMMING BANS AND PROHIBITIONS

Beak trimming has been outlawed in Scandinavian countries for many years (Norway 1974, Finland 1986, Sweden 1988) and Denmark and Austria in 2013. More recently, the practice has been banned in the Netherlands and in some sectors of the German Poultry Industry. Other countries are likely to follow suit.<sup>366</sup> There is detailed literature as to why beak trimming should be banned.<sup>367</sup>

## MALE CHICK CULLING BANS AND PROHIBITIONS

Several countries have banned or are banning the culling of male Chicks including Germany, France, Austria, Luxembourg and Italy have enacted nationwide bans against chick killing.<sup>368</sup> Switzerland has banned the shredding of live Chicks.<sup>369</sup>

## BATTERY CAGE BANS AND PROHIBITIONS

Due to the cruel nature of this form of confinement, Battery Cages have been banned or progressively phased out in several countries and jurisdictions. This includes India;<sup>370</sup> New Zealand,<sup>371</sup> Czech

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<sup>366</sup> <https://www.poultryworld.net/health-nutrition/poultry-industry-adapts-to-changes-around-beak-trimming/>.

<sup>367</sup> EFSA Panel on Animal Health and Animal Welfare (AHAW) Welfare of laying hens on farm EFSA Journal 2022 doi: 10.2903/j.efsa.2023.7789 available at <https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2023.7789>.

<sup>368</sup> <https://www.foodwatch.org/en/chick-killing-ban-where-have-all-the-cockerels-gone>.

<sup>369</sup> <https://plantbasednews.org/opinion/-switzerland-bans-shredding-of-male-chicks/>.

<sup>370</sup> <https://thehumaneleague.org/article/battery-cages>.

<sup>371</sup> New Zealand has made it illegal to house Layer Hens in Battery Cages from 2023. However, while Battery Cages will be phased out, enriched cages have been promoted as an alternative. <https://www.theguardian.com/world/2022/dec/29/new-zealand-bans-battery-cages-hens-replacement-just-as-bad>.

Republic,<sup>372</sup> Australia,<sup>373</sup> Switzerland,<sup>374</sup> UK,<sup>375</sup> Luxembourg,<sup>376</sup> Austria,<sup>377</sup> Belgium,<sup>378</sup> Switzerland,<sup>379</sup> Canada,<sup>380</sup> Mexico,<sup>381</sup> Israel,<sup>382</sup> Germany,<sup>383</sup> Norway,<sup>384</sup> the European Union,<sup>385</sup> and Bhutan.<sup>386</sup>

In the USA, the following states have passed legislation that either bans or requires the phasing-out of Battery Cages:<sup>387</sup> California; Colorado; Massachusetts; Michigan; Ohio; Oregon; Rhode Island; Utah; Washington.

As a result of the “End the Cage Age” campaign, the EU agreed to work towards proposing new laws by 2023, with the aim of gradually phasing out caged animal farming by 2027.<sup>388</sup> EU countries have already shown encouraging support for the changes, with Germany unilaterally banning caged hens by 2025<sup>389</sup> and Spain, despite being a predominantly cage housing country, showing support for the transition to cage-free production.<sup>390</sup>

<sup>372</sup> The Czech Republic declared a ban on the use of cages to confine hens in 2020, with the law becoming effective in 2027 after a 7-year phase-in period. Available at <https://aldf.org/article/czech-republic-bans-cages-for-hens/>.

<sup>373</sup> In 2022, the Australian Animal Welfare Standards and Guidelines were released which will require all conventional Layer Hen cages to be phased out by 2036. Available at <https://www.skynews.com.au/australia-news/animal-welfare-groups-major-win-battery-caged-hens-banned-by-2036-after-lengthy-battle-between-egg-industry-and-animal-welfare-groups/news-story/10da3d885001ecf00be5d8e412fb1548>.

<sup>374</sup> Battery cages have been banned since 1992. Available at <https://thehumaneleague.org/article/battery-cages>.

<sup>375</sup> <https://www.theguardian.com/world/2022/dec/29/new-zealand-bans-battery-cages-hens-replacement-just-as-bad>.

<sup>376</sup> <https://www.bbc.com/news/world-europe-57668658>.

<sup>377</sup> Banned in 2009. Available at <https://safe.org.nz/our-work/animals-in-aotearoa/hens-2/whats-happening-overseas/>.

<sup>378</sup> While Battery Cages are already banned in Belgium, there are proposals to ban colony cages by 2024. Available at <https://safe.org.nz/our-work/animals-in-aotearoa/hens-2/whats-happening-overseas/>.

<sup>379</sup> Available at <https://safe.org.nz/our-work/animals-in-aotearoa/hens-2/whats-happening-overseas/>.

<sup>380</sup> <https://www.theguardian.com/world/2022/dec/29/new-zealand-bans-battery-cages-hens-replacement-just-as-bad>.

<sup>381</sup> <https://www.theguardian.com/world/2022/dec/29/new-zealand-bans-battery-cages-hens-replacement-just-as-bad>.

<sup>382</sup> <https://www.theguardian.com/world/2022/dec/29/new-zealand-bans-battery-cages-hens-replacement-just-as-bad>.

<sup>383</sup> Battery cages have been completely phased out since 2006. Available at <https://thehumaneleague.org/article/battery-cages>.

<sup>384</sup> Battery cages have been banned since 2012. Available at <https://thehumaneleague.org/article/battery-cages>.

<sup>385</sup> <https://thehumaneleague.org/article/battery-cages>.

<sup>386</sup> <https://thehumaneleague.org/article/battery-cages>.

<sup>387</sup> <https://thehumaneleague.org/article/battery-cages>.

<sup>388</sup> BBC ‘Caged animal farming: EU aims to end practice by 2027’ available at <https://www.bbc.com/news/world-europe-57668658>.

<sup>389</sup> Ibid.

<sup>390</sup> Spanish government’s response to a parliamentary question, confirming it’s support to cage-free transition, available at [https://www.congreso.es/entradap/114p/e24/e\\_0246770\\_n\\_000.pdf](https://www.congreso.es/entradap/114p/e24/e_0246770_n_000.pdf).

The recognition and commitment shown by these countries have unfortunately not been followed in South Africa. However, it is recommended that the South African government urgently implement legislation to phase out and ultimately ban the use of Battery Cages in South Africa.

## V. THIRD-PARTY CERTIFICATION AND STANDARDS

Third party certifications are independent organisations that verify the manufacturing process of a product and independently determine whether the final product complies with specific standards for safety, quality or performance.<sup>391</sup> These certifications raise complex issues and debates in the animal welfare and protection community. For example, some reports have argued that they can lead to Humane-washing,<sup>392</sup> while others argue that they can improve animal welfare standards and offer incentives for Corporations to do better, and simultaneously, consumers. As the below will indicate, there are several positive inclusions against Cruel Practices in the respective standards of third party certifiers. As part of our Stakeholder Component (as contained in Section IV), information was requested from the Selected Stakeholders with regard to Certifications. This informed the development of main Criteria 8 (Third Party Certifications)<sup>393</sup> for purposes of the rating of Selected Stakeholders. In addition, recommendations have been made with regard to certifications to ensure greater corporate accountability as further set out in Section V.

A Greener World (“**AGW**”) is one of the most recognised animal welfare certifications, which at its core stresses that animals must be able to behave naturally and be in a state of physical and psychological well-being.<sup>394</sup> Certified Animal Welfare Approved by AGW requires animals to be raised on pasture or range; awards approval only to independent farmers and incorporates the most comprehensive standards for high welfare farming. To accomplish the goals of the Certified Animal Welfare Approved by AGW program, all standards address every aspect of each species’ lifecycle needs from birth to death.<sup>395</sup>

Through the Animal Welfare Approved (“**AWA**”) certification of AGW, a Corporations’ standards for animal welfare may be aligned with that of the Five Domains. For instance, the Layer Hen must be allowed to behave naturally, giving the bird the opportunity to perform natural and instinctive behaviours such as perching, which are essential to their health and well-being.<sup>396</sup> Provisions are made to ensure social interaction, comfort, and physical and psychological well-being.<sup>397</sup> AGW has set up

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<sup>391</sup> <https://www.nsf.org/knowledge-library/what-is-third-party-certification>.

<sup>392</sup> <https://www.farmforward.com/publications/the-dirt-on-humanewashing/>.

<sup>393</sup> Main Criteria 8 relates to Selected Stakeholders presented evidence of SABS/AGW Certification or Other Certification.

<sup>394</sup> <https://agreenerworld.org.za/certifications/animal-welfare-approved/standards/>.

<sup>395</sup> <https://agreenerworld.org/certifications/animal-welfare-approved/standards/>.

<sup>396</sup> <https://agreenerworld.org.za/certifications/animal-welfare-approved/standards/>.

<sup>397</sup> <https://agreenerworld.org.za/certifications/animal-welfare-approved/standards/laying-hen-standards/>.

their standards according to a “humane and conscientious attitude”.<sup>398</sup> In South Africa, AGW has certified at least three egg producers: Eddie’s Eggs,<sup>399</sup> Boschrivier Farm<sup>400</sup> and Boschendal.<sup>401</sup>

The AGW Laying Hen Standards (“**AGW Standards**”),<sup>402</sup> cover several different areas, including: 1 Ownership and Operation; 2 Breeds and Origin of Birds; 3 Health Management; 5 Management of Poultry; 6 Food and Water; 7 Ranging And Foraging Area Access; 8 Housing and Shelter; 9 Removal of Birds From the Approved Farm; 10 Predators and Rodents; 11 Records and Record-Keeping; 12 Handling; 13 Transport; 14 Sale or Transfer of Birds; 15 Program Management; 16 Slaughter; 17 Traceability.

According to the AGW Standards, in respect of the Physical Alteration of Poultry (5.4): all mutilations or physical alterations of poultry are prohibited. These include: de-beaking (beak clipping, tipping and trimming); de-clawing; de-spurring; de-toeing and toe trimming; Hole punching; pinioning; notching; wattle trimming; comb trimming. castration (caponizing) of poultry is prohibited. It notes that trimming feathers is permitted but that skin or flesh must not be cut.

These AGW Standards note in respect of cages, the following: that the use of birds from confinement and/or caged systems is prohibited (2.2.2) and confinement systems, in-house or field-based pens or cages that restrict the birds’ natural behaviours, are prohibited (7.2.8); Close confinement in cages, crates or by tethering is prohibited (8.0.24); the use of thin wire transport cages is prohibited. (13.5.5).

The AGW Standards recommend the use of dual purpose breeds so that male Chicks can be raised as meat type birds and female Chicks can be raised as laying hens.

The above are examples of the AGW Standards relating to chickens in the Egg Industry, focusing specifically on the restriction of Cruel Practices. Other third party certifications exist in South Africa and internationally. As a third-party certifier, these standards are voluntary and non-binding. The standards do not supersede national government or state legislation. The consequences of not complying with these are potentially losing the certification.

For purposes of the Project and the Stakeholder Component, ALRSA requested from the Selected Stakeholders, information relating to any Third Party Certifications. None of the Selected Stakeholders indicated that they are certified by AGW.

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<sup>398</sup> [https://agreenerworld.org.za/certifications/animal-welfare-approved/standards/laying-hen-standards/.](https://agreenerworld.org.za/certifications/animal-welfare-approved/standards/laying-hen-standards/)

<sup>399</sup> [https://www.foodfocus.co.za/home/News-and-Events/Industry-News/First-Egg-Farm-In-Africa.](https://www.foodfocus.co.za/home/News-and-Events/Industry-News/First-Egg-Farm-In-Africa)

<sup>400</sup> [https://www.foodfocus.co.za/home/News-and-Events/Industry-News/Wittedrift-Farm-Awarded-World-Renowned-Environmental-And-Animal-Welfare-Certifications-.](https://www.foodfocus.co.za/home/News-and-Events/Industry-News/Wittedrift-Farm-Awarded-World-Renowned-Environmental-And-Animal-Welfare-Certifications-)

<sup>401</sup> [http://boschendal.com/2022/11/24/creating-a-greener-world-with-farmer-jason/.](http://boschendal.com/2022/11/24/creating-a-greener-world-with-farmer-jason/)

<sup>402</sup> [https://agreenerworld.org/certifications/animal-welfare-approved/standards/laying-hen-standards/.](https://agreenerworld.org/certifications/animal-welfare-approved/standards/laying-hen-standards/) Area ‘4’ is not allocated.

## VI. NON-GOVERNANCE RELATED WELFARE AND WELL-BEING EFFORTS

### OVO-SEXING

In-ovo-sexing is a technology which offers a humane alternative, and allows producers to determine the sex of the embryo before it develops into a chick avoiding the need to kill male chicks. Several countries have initiated efforts with regard to such technology.

**Netherlands:** According to the European Parliament, “[i]n 2016, a Dutch start-up developed a screening machine for in ovo-sexing through a biomarker, as early as the ninth day of incubation”.<sup>403</sup>

**Germany:** According to the European Parliament, “[i]n 2018, Compassion in World Farming gave a German company an innovation award for developing a method for sexing hatching eggs. The invention allows male hatching eggs to be recognised endocrinologically, and then rejected and turned into feed before the embryo develops the capacity to feel pain”.<sup>404</sup>

**Israel:** According to the European Parliament, “[i]n 2020, an Israeli start-up developed software able to control the incubation process for chicken embryos, inducing the expression of the feminine gene over the masculine one and therefore controlling the sex development of the chick in favour of female development. Hatcheries in France have been granted €10 million in public funding to install and start using in ovo-sexing apparatus, in order to achieve the goal of ending day-old chick culling by 2022”.<sup>405</sup>

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## PART D: EGG-SAMPLES OF ANIMAL WELFARE ENFORCEMENT

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### I. INTRODUCTION

Our research has revealed that there are several enforcement issues with animal welfare and protection laws in South Africa, a few of which are expanded upon next.

Although supported by the South African Police Services (“SAPS”) and prosecutors in the National Prosecuting Authority (“NPA”), the enforcement of animal welfare legislation in South Africa is largely left up to non-profit organisations, particularly the NSPCA and individual SPCAs.<sup>406</sup> It is widely reported in South African media, and claimed by the NSPCA that these entities receive no

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<sup>403</sup> [https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/739246/EPRS\\_ATA\(2022\)739246\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/739246/EPRS_ATA(2022)739246_EN.pdf).

<sup>404</sup> Ibid.

<sup>405</sup> Ibid.

<sup>406</sup> Notably, there are other non-profit organisations which undertake inspections and other enforcement, such as the Animal Anti-cruelty League and others are empowered in terms of the APA provided certain conditions are met.



governmental funding<sup>407</sup> and are severely overburdened and under-resourced.<sup>408</sup> While a full analysis of enforcement of animal protection laws as well as the suitability of the NSPCA and SPCAs to do so is an important consideration in the Egg Industry, it is outside the scope of this Initial Report. Given the focus of the Project is on corporate accountability, only selected issues relating to enforcement are highlighted in this context.

## II. CRACKING UNDER PRESSURE: THE NSPCA

### THE ROLE OF NON-PROFIT ORGANISATIONS (NPOS) AND THE NSPCA

The NSPCA has been in operation in the country since 1955 with the objective of uplifting all animal welfare standards in the country and preventing cruelty towards all animals.<sup>409</sup> The NSPCA is a statutory body governed by the Societies for the Protection of Cruelty to Animals Act 169 of 1993 (the “**SPCA Act**”)<sup>410</sup> and numerous SPCAs across the country, administered by the NSPCA.

The NSPCA has extremely broad powers in terms of the Animals Protection Act, the SPCA Act and the 1986 Regulations relating to the seizure of animals by an officer of a society for the prevention of cruelty to animals (“**Seizure Regulation**”).<sup>411</sup> Furthermore, the Constitutional Court in *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another*<sup>412</sup> affirmed that the NSPCA has the right to bring private prosecutions. This enables the NSPCA to bring cases regarding animal cruelty. Accordingly, the NSPCA and SPCAs are critical role-players in animal protection in South Africa.

Given this critical role of the NSPCA and individual SPCAs, it is essential that they remain impartial and not subject to any financial or other undue pressure in relation to their enforcement role. Yet, worryingly, the NSPCA receives a substantial amount of funding (over ZAR2million in a three year period alone) from Meadow Feeds, a subsidiary of the largest integrated poultry producer in South Africa, Astral. Astral’s key activities comprise manufacturing of animal feeds, broiler genetics, production and sale of day-old Chicks and hatching eggs, breeder and broiler production, abattoir and further processing operations and sales and distribution of various key poultry brands.<sup>413</sup>

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<sup>407</sup> NSPCA Annual Reports and Facebook page <https://www.facebook.com/NSPCA/posts/funding-dont-animals-matterconcern-is-expressed-by-the-national-council-of-spcas/10151099964984843/>.

<sup>408</sup> M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa’s Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: <http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf>.

<sup>409</sup> <https://nspca.co.za/about-us/>.

<sup>410</sup> Act 169 of 1993.

<sup>411</sup> <https://faolex.fao.org/docs/texts/saf122858.doc>.

<sup>412</sup> (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016).

<sup>413</sup> <https://www.astralfoods.com/>.

In Astral’s 2020 Integrated Report, they reported donating more than R500 000 to the NSPCA.<sup>414</sup> In their 2021 Integrated Report, they reported that Astral donated R500 000 to the NSPCA during the financial period.<sup>415</sup> In their 2022 Report they reported that they had donated R1 000 000 to the NSPCA.<sup>416</sup>

Certain members of the Farmed Animal Alliance<sup>417</sup> including ALRSA, wrote to the NSPCA in April 2023, asking about these donations. In their response, the NSPCA noted that:

*“We confirm that the National Council of SPCAs (NSPCA) has received funding from Astral Foods which has been used to improve the welfare of farm animals in this country. This funding has in no way compromised the NSPCA but has instead assisted our Farm Animal Protection Unit to step up inspections of facilities where farm animals are raised, including those of Astral Foods. The funding has also made it possible to provide vital assistance to farm animals caught in disaster situations”.*

ALRSA and the other Farmed Animal Alliance member organisations who sent the letter view it as inherently problematic that the entity enforcing animal welfare in respect of a particular stakeholder, is being funded by said stakeholder. The situation gives rise to actual or a reasonable apprehension of bias. Yet, the Constitution demands that holders of public power such as the NSPCA act without bias. It is appreciated how difficult a task the NSPCA has in terms of resources and carrying out its mandate, however this conflict of interest should be avoided.

The NSPCA and SPCA through their “Inspectorate” conduct inspections on various facilities, and also respond to complaints. While the NSPCA has powers of prosecution, and very wide powers in terms of the APA and Seizure Regulation, the NSPCA utilises several enforcement tools, including: warnings; notices; letters and veterinary reports. Veterinary attention is also provided to animals including farmed animals. The primary source of information around the enforcement of the APA is contained in the NSPCA’s Annual Reports.<sup>418</sup> There is no public database of inspections conducted or actions taken.

<sup>414</sup> Astral Foods Integrated Report 2020: <https://www.astralfoods.com/assets/Documents/Investor%20Centre/2020/Integrated-report-for-the-year-ended-2020.pdf>.

<sup>415</sup> Astral Foods Integrated Report 2021: <https://www.astralfoods.com/assets/Documents/Index/Integrated-Report-for-the-year-ended-30-September-2021.pdf>.

<sup>416</sup> Astral Foods Integrated Report 2022: <https://www.astralfoods.com/assets/Documents/Investor%20Centre/2022/Integrated%20Report%20for%20the%20year%20ended%2030%20September%202022.pdf>.

<sup>417</sup> Animal Advocacy Africa; Animal Law Reform South Africa; Anonymous for the Voiceless; Asher’s Farm Animal Sanctuary; Beauty Without Cruelty – South Africa; Compassion In World Farming South Africa; Greyton Farm Animal Sanctuary; Humane Education Trust; Humane Society International Africa; Karoo Donkey Sanctuary; Pigs ‘n Paws; Planty Bru; Save Movement Johannesburg (Climate Save Johannesburg; Animal Save Johannesburg; Health Save Johannesburg); #UniteBehind; Wild Vegan Farm Sanctuary and World Animal Protection Africa.

<sup>418</sup> NSPCA Annual Reports accessible here: <https://nspca.co.za/annual-reports/>.

In its 2018 – 2019 Annual Report, the NSPCA notes that: “In pursuit of the prevention of cruelty, the National Council of SPCAs operates on the principle of education before prosecution, unless the situation is such that immediate prosecution is warranted or a person rejects education”.

In relation to farmed animals such as poultry, NSPCA has a dedicated farm animal protection unit. This Farm Animal Protection Unit (“**FAPU**”) undertakes to monitor and protect the following animals - sheep, pigs, goats, cattle including dairy cows, **poultry**, ostriches, emus, crocodiles, rabbits, equine, alpacas as well as farmed fish and other aquatic species raised for food production.<sup>419</sup> The Unit’s areas of focus include **Broilers**, Crocodile Farms, Dairy Farms, **Hatcheries**, Export of Live Animal by Sea, Labelling of Animal Products, Prison Farms, Transport of Live Animals by Land, Animal Slaughter and Animal Saleyards.<sup>420</sup>

FAPU’s activities include physical inspections of farming premise, interacting with DALRRD and the farming industry, and developing National Standards to benefit farm animals through the SABS.

In several of its reports, the NSPCA notes that it has raised free range labelling and advertising with the Department of Agriculture in an effort to ensure that products are correctly labelled without misleading the consumer.<sup>421</sup>

## EXAMPLES OF ENFORCEMENT FOR FARMED ANIMALS

This section contains a summary from the NSPCA’s publicly accessible Annual Reports between 2018 – 2022 of actions it has reported on in respect of prosecuting cruelty as well as for farmed animals. Unfortunately, these reports are one of the few sources available with information relating to enforcement of animal crimes. While the annual reports contain a summary of actions taken in the enforcement of animal welfare, they generally do not contain specific details relevant to the cases mentioned and accordingly, it is difficult to determine what these actions were for. This is one of the reasons why ALRSA sought to engage with the NSPCA using the PAIA process for purposes of the Project, as more fully set out in Appendix I.

### Warnings, Notices, Letters and Prosecutions for Animal Cruelty

#### NSPCA 2018-2019 ANNUAL REPORT<sup>422</sup>

##### General:

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<sup>419</sup> <https://nspca.co.za/farm-animal-protection/>.

<sup>420</sup> M. Makonese, F. Muchadeyi, and A.P. Wilson, Working Paper: Barriers to the Transformation of South Africa’s Food System: Can the Law be a Lever for Change?, Animal Law Reform South Africa, 2022. Available at: <http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf>.

<sup>421</sup> <http://nspca.co.za/wp-content/uploads/2021/07/NSPCA-Annual-Report-2017-2018.pdf>.

<sup>422</sup> <https://nspca.co.za/wp-content/uploads/2023/01/2018-2019-NSPCA-Annual-Report.pdf>.

- **18 successful prosecutions** were recorded, most of which appear to be related to dog fighting and one in respect of mulesing (a painful procedure that involves cutting crescent-shaped flaps of skin from around a lamb's breech and tail using sharp shears designed specifically for this purpose).<sup>423</sup>
- **97 cases pending** for animal welfare offences.
- **346 warnings, notices and letters of requirements were issued** for improvements to living conditions and standards of animal care.

#### Farmed Animals:

- **559 inspections** were conducted by FAPU and investigations during the period under review and all complaints were fully investigated. Various contraventions of the Animals Protection Act were found, at abattoirs, feedlots, **poultry farms**, hawkers, sale yards, dairy farms, pounds, pig farms, correctional facilities, rabbit farms, crocodile farms and agricultural farms to name a few. Warrants were obtained by the Unit for various facilities.
- **32 cases pending** finalisation through the legal system.
- **6 new cases were registered with SAPS** and 2 pending cases were successfully prosecuted.

#### NSPCA 2019-2020 Annual Report<sup>424</sup>

##### General:

- **8 successful prosecutions** were recorded. These cases related to equine, farm animals, wildlife and domestic animals.
- **102 cases awaiting finalisation** through the judicial system. These cases related to equine, farm animals, wildlife and domestic animals.
- **410 warnings, notices and letters of requirements were issued** for improvements to living conditions and standards of animal care.

##### Farmed Animals:

- **782 inspections and investigations** were conducted by FAPU during the period under review and all complaints were fully investigated. Facilities inspected included abattoirs, feedlots, poultry farms, hawkers, sale yards, dairy farms, pounds, pig farms, correctional facilities, rabbit farms, crocodile farms, **cull outlets**, aquaculture farms, petting farms, alpaca, mohair and agricultural farms. Warrants were obtained by the Unit for various facilities.
- **6 new cases were registered with SAPS** and two pending cases were successfully prosecuted.
- **32 cases pending finalisation through the legal system.**

<sup>423</sup> <https://kb.rspca.org.au/knowledge-base/what-is-the-rspcas-view-on-mulesing-and-flystrike-prevention-in-sheep/>.

<sup>424</sup> <https://nspca.co.za/wp-content/uploads/2021/09/2019-2020-Annual-Report.pdf>.

Appropriate action was taken to address any welfare concerns encountered during inspections. This action included recommendations for improvements as well as warnings to correct shortcomings.

Where contraventions of the APA were encountered, charges were laid. Seven new cases were registered with SAPS and convictions were secured in respect of two people who were found guilty of animal cruelty. FAPU has a further 31 cases pending finalisation including through the legal system.

## **NSPCA 2020-2021 Annual Report<sup>425</sup>**

### **General:**

- **8 successful prosecutions**
- **101 additional court cases are pending for animal welfare offences in respect of farm, wild and domestic animals**
- **The total number of warnings, letters, etc. were not included for purposes of this Initial Report** although separate units reported on these (with the exception of FAPU).

### **Farmed animals:**

- **702 inspections were undertaken** by FAPU around South Africa to ensure that the welfare of farm animals was not compromised. Facilities inspected included: abattoirs, feedlots, poultry farms, hawkers, sale yards, dairy farms, pounds, pig farms, correctional facilities, rabbit farms, crocodile farms, cull outlets, aquaculture farms, petting farms, alpaca farms, mohair farms and agricultural colleges and schools. Appropriate action was taken in addressing any welfare concerns encountered during inspections. These actions included recommendations for improvements as well as warnings to correct shortcomings. Where contraventions of the Animals Protection Act No. 71 of 1962 were encountered, charges were laid. Farm Animal Protection Unit Inspectors operate nationally and undertake random, proactive inspections. All complaints received are also fully investigated.
- **New cases** (unclear how many) **were registered with SAPS and 1 conviction was secured** after the person was found guilty of animal cruelty.
- **28 cases pending** finalisation through the legal system.

## **ALRSA'S INITIAL OBSERVATIONS**

While it is difficult to ascertain from the above information contained in the NSPCA's Annual Reports the exact scope of what has been found from the inspections, it is apparent that out of hundreds of inspections by the FAPU, less than 10% of these result in new cases. It would appear therefore that either these facilities are in compliance with the APA for the (sometimes thousands of) animals under their control, or that standard agricultural practices are not recorded as infringements of the APA, even though they may arguably be (see Part C above). The latter seems more likely, based on the

<sup>425</sup> <https://nspca.co.za/wp-content/uploads/2022/01/NSPCA-Annual-Report-2020-2021.pdf>.



information obtained through ALRSA’s PAIA request to the NSPCA, which indicated that Cruel Practices such as Battery Cages were not reported on in the inspection records as “Welfare Issues”. Rather, the inspection records indicate that “out of the ordinary” welfare concerns were recorded, and only then, in some cases. For more detail, please refer to Appendix I.

Given the known suffering associated with Cruel Practices such as Battery Cages, and the potential for infringement of the APA within such a context, such Cruel Practices should, at a minimum, be recorded as welfare concerns as part of the NSPCA and SPCA’s inspection records. Failure to do so indicates complicity towards Cruel Practices and reduces opportunities to challenge these systems and move towards higher welfare standards.

## OTHER ACTIONS

In addition to the Annual Reports indicating actions by FAPU for farmed animals, one Annual Report dealt with another important welfare concern for chickens utilised in the Egg Industry – the transportation thereof.

In April 2021, a truck transporting **41,500 day-old Chicks** from a hatchery en route to a broiler farm overturned.<sup>426</sup> An unreported number of Chicks were killed and others were injured. Thousands of Chicks were found drenched in diesel which had spilled onto the Chicks as the truck was lying on its roof. The body of the truck was ripped apart which resulted in Chicks running across the highway. Chicks with life threatening injuries were euthanised. 21,000 Chicks who were found to have no injuries after examination, were loaded onto another truck and returned to the closest hatchery. These Chicks were then sent to a broiler farm (where they would, in any event, be killed for meat).

Below is the photo from the NSPCA’s Annual Report. The methods of transportation for the Chicks in crates should be noted.

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<sup>426</sup> <https://www.iol.co.za/capetimes/news/day-old-chicks-put-down-after-horrific-north-west-crash-9e4924e4-99ab-4221-a962-d7a19373bace>.



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## NSPCA 2021 - 2022 Annual Report<sup>428</sup>

### General:

- **9 successful prosecutions during the reporting period** (one of which was for cattle).
- **110 cases are awaiting finalisation** through the judicial system.
- **507 warnings** were issued to improve animal care.

### Farmed animals

- **937 inspections were undertaken.** Facilities inspected included: abattoirs (red meat, poultry, crocodile, rabbit, ostrich), feedlots, poultry farms, hawkers, sale yards, dairy farms, ports of entry and exit, private and municipal livestock pounds, commercial and emerging piggeries, ostrich farms, prison farms, rabbit farms, crocodile farms, cull outlets, aquaculture farms, petting farms, alpaca farms, mohair farms, research farms, and agricultural colleges and schools. The Unit also monitored the live export of animals as well as Qurbani, and rodeos.
- **28 cases pending finalisation through the legal system.**

<sup>427</sup> Sourced from NSPCA 2021 Annual Report available at <https://nspca.co.za/wp-content/uploads/2022/01/NSPCA-Annual-Report-2020-2021.pdf>.

<sup>428</sup> <https://nspca.co.za/wp-content/uploads/2023/05/2022-NSPCA-Annual-Report.pdf>.

According to reports by NGOs, although the NSPCA has laid charges against workers at Battery Cages and abattoir operations for farmed animal cruelty, these have not made it to prosecution nor conviction.<sup>429</sup>

In addition to relying on publicly available information about the NSPCA, as part of the Project, ALRSA approached the NSPCA in order to request various information in terms of PAIA relating to its enforcement efforts in the Egg Supply Chain. In light of known Cruel Practices being commonplace for chickens used in egg production, we hoped to gain a deeper understanding of the legal consequences and whether and to what extent there is accountability.

PAIA correspondence and engagements with the NSPCA have been set out in further detail in Appendix I.

Overall, the records provided pursuant to our PAIA request revealed that there is room for greater transparency around the NSPCA's reports. This includes a full accounting of the specific aspects related to animal welfare, the role-players, such as farms and Corporations inspected by the NSPCA, and the criteria used in these inspections by FAPU being readily and explicitly available within these reports. As the primary entity responsible for the enforcement of animal welfare in South Africa and a statutory body, the NSPCA should further provide a full accounting of major donations received from role-players involved in animal related industries inspected by the NSPCA during the reported period as well as findings made in respect of such inspections conducted on these role-players. This would expose actual or potential conflicts of interest.

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<sup>429</sup> Centre for Environmental Rights & Endangered Wildlife Trust: Fair Game. Available at <https://cer.org.za/wp-content/uploads/2018/06/CER-EWT-Regulation-of-Wildlife-Welfare-Report-25-June-2018.pdf>.

## 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 <b>Red</b> to <b>Orange</b> .	12	12
Amended the overall rating for Bidcorp: changed from <b>Red</b> to <b>Orange</b> .	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 <b>Red</b> to <b>Green</b> , <b>Orange</b> , <b>Green</b> , <b>Orange</b> , and <b>Orange</b> 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 <b>Red</b> to all <b>Green</b> 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 <b>Green</b> to <b>Red</b> . <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 <b>Red</b> to <b>Orange</b> .	244	244
Amended the ratings for Indicators 9.4 and 10.1 of Rating Criteria 9 and 10: Transparency and Cooperation Compliance changed from <b>Red</b> to <b>Orange</b> .	249	250



# ANIMAL LAW REFORM

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