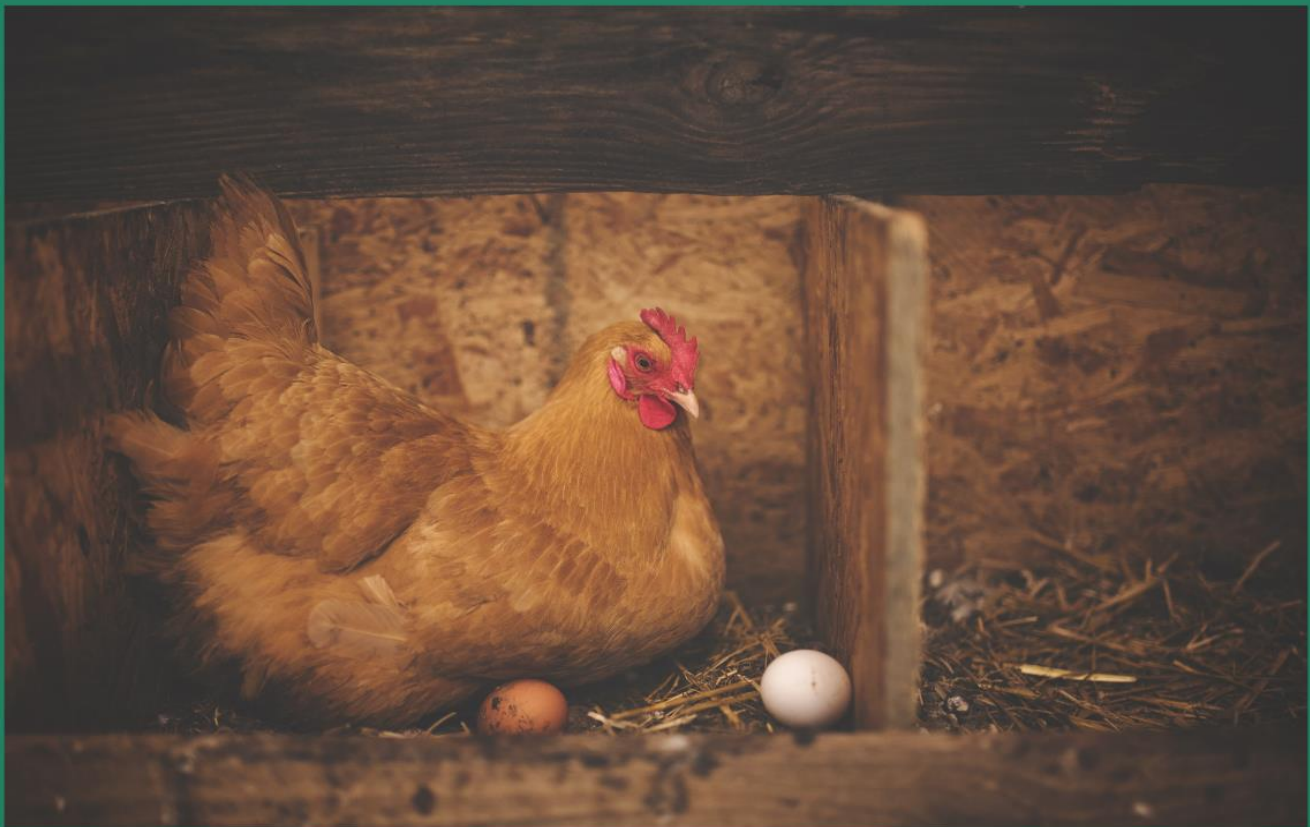


# LAYING DOWN THE FACTS **V2**

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

The co-authors of this Initial Report are:

**Amy P. Wilson** is a co-founder and director of ALRSA. She is an attorney who holds a Master of Laws Degree (LL.M) in Animal Law from Lewis and Clark Law School in Portland, Oregon and B.Com and LL.B degrees from the University of Johannesburg, South Africa. Amy is the co-founder and Director of Animal Law Reform South Africa and a Research Associate, Lecturer and LLD Candidate with the University of Johannesburg. *Primary contributions: Lead author: Sections I, II, III, and V of this Initial Report.*

**Cheslyn Ceaser** is a Legal Researcher with ALRSA. Cheslyn holds a LL.B degree and LL.M in Environmental Law from the University of the Western Cape (UWC). Cheslyn is a LL.D Candidate at UWC. *Primary contributions: Lead Author: Section IV and contributor to Animal Welfare and Environmental Pillar of Section III of this Initial Report.*

### COMMENTER

**Melanie Murcott** is a director of ALRSA and an Associate Professor, Institute of Marine and Environmental Law at the University of Cape Town. She holds a LL.B cum laude degree obtained from the University of Cape Town; Master of Laws Degree (LL.M cum laude) obtained from the University of Pretoria, and Doctor of Laws (LL.D) obtained from North West University. She has more than 10 years of practice experience as an attorney of the High Court of South Africa. She is also the Vice Chairperson of the Environmental Law Association of South Africa. *Primary contribution: Commenter on the entirety of this Initial Report.*

### CONTRIBUTOR: RESEARCH ASSISTANCE

**Li-Fen Chien** is an Independent Consultant with Animal Law Reform South Africa. She holds a Master of Laws Degree (LL.M) in Environmental Law from the University of the Western Cape. Li-Fen is a non-practising legal practitioner with over 10 years of professional experience, mostly focused on environmental and corporate law. *Primary contributions: Animal Welfare Pillar and Environmental Pillar of Section III of this Initial Report.*

### \*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)

© ANIMAL LAW REFORM SOUTH AFRICA 2023. ALL RIGHTS RESERVED.



# EGGONOMICS

## THE ENVIRONMENTAL COSTS OF EGG PRODUCTION

**Increasing Human Population + Growing Demand for Animal Products  
= Increased Production of Chickens and Their Products  
= Tremendous Impacts on the Environment**

### AIR POLLUTION

Harmful greenhouse gas emissions in high levels from animal agriculture. Ammonia; carbon dioxide, methane, and nitrous oxide.<sup>1</sup>  
High volume of manure.

**68%** of anthropogenic nitrous oxide - remains in the atmosphere for up to **150 years** & has **296 times** the global warming potential of carbon dioxide.<sup>2</sup>

### SOIL POLLUTION

**+/-9.1 – 13.6 kg** manure produced by a single layer hen every year.<sup>3</sup>

Poultry manure might also contain contaminants such as pesticide residues, hormones, antibiotics, pathogens, and heavy metals.<sup>4</sup>

### WATER POLLUTION

Manure produced by hens unable to be absorbed seeps into groundwater or runs off into surface water, affecting surrounding communities and aquatic species.<sup>5</sup>

### LAND USE

**38%** of the total land area of South Africa is used for commercial agriculture.<sup>7</sup>

### KILLING OF WILDLIFE

Animals such as black-backed jackal, caracal, leopard, cheetah, brown hyena and even crows and stray dogs are predators to animals in agriculture and are often killed by farmers.<sup>9</sup>

### WATER USE

**135 litres** of water are needed to produce one egg.<sup>6</sup>

### BIODIVERSITY LOSS

Our global food system is the primary driver of biodiversity loss<sup>8</sup>  
Agriculture is the identified threat to **86%** species at risk of extinction.

### OTHER

There are many other harmful impacts of animal agriculture and the egg industry in particular.<sup>10</sup>



1. The FootPrint of Eggs - A foodprint Report available at <https://foodprint.org/reports/the-footprint-of-eggs/#:~:text=High%20levels%20of%20the%20greenhouse,off%20in%20hens%20natural%20behaviors>. (accessed on 14 April 2023)  
2. See (PDF) The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know (accessed on 12 February 2023)  
3. Grzinic G et al(2023) "Intensive Poultry farming: A review of the impact on the environment and human health" available at <https://www.sciencedirect.com/science/article/pii/S0048969722071145> (accessed on 14 April 2023)  
4. UJ (2020) Impacts of different sources of animal manures on dissemination of human pathogenic bacteria in agricultural soils Environ. Pollut., 266 (2020), Article 115399  
5. The FootPrint of Eggs - A foodprint Report available at <https://foodprint.org/reports/the-footprint-of-eggs/#:~:text=High%20levels%20of%20the%20greenhouse,off%20in%20hens%20natural%20behaviors>. (accessed on 14 April 2023)  
6. Food & Agriculture Organisation of United Nations  
7. <https://www.statssa.gov.za/?p=13144>  
8. <https://www.unep.org/news-and-stories/press-release/our-global-food-system-primary-driver-biodiversity-loss>  
9. <https://predsa.mandela.ac.za/Scientific-Assessment-Publication>  
10. <https://www.eurekalert.org/news-releases/888005>. More South African research is needed on these issues



## PILLAR 2: FLYING THE COOP: ENVIRONMENT: ESCAPING RESPONSIBILITY

### PART A: LAYING THE FOUNDATIONS

This “Environmental Pillar” contains a high-level summary of some of the environmental issues applicable to the Egg Industry in South Africa, as well as the regulation thereof, more specifically how these issues intersect with animal welfare and well-being. It is intended to provide an overview of selected matters only and is non-exhaustive of all of the relevant environmental considerations and law and policy relevant to the industry.<sup>430</sup> This Part A sets out the rationale for the selection of this Pillar; and connects it with information from our Stakeholder Report in Section IV (including information requested from Selected Stakeholders in terms of PAIA); Part B sets out background information as to how the Pillar connects with the Egg Supply Chain (including environmental harms associated with the Egg Industry including greenhouse gas emissions and climate change; competition for limited resources; water and soil pollution); and Part C provides an overview of selected governance matters associated with this Pillar in the context of the Egg Supply Chain in South Africa (including highlighting specific environmental legislation at national and international level).

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

This Environmental Pillar has been selected for purposes of the Project because in addition to the animal welfare issues arising during the industrial egg production process (as further set out in the Animal Welfare Pillar), the Egg Industry has negative environmental impacts, including contributing significantly towards global greenhouse gas (“**GHG**”) emissions and climate change, use of non-renewable resources such as land, habitat and biodiversity loss, a significant water footprint, water pollution, and polluting atmospheric emissions other than GHGs.<sup>431</sup>

To get a sense of whether Selected Stakeholders in the Egg Supply Chain are aware of and compliant with Environmental Legislation,<sup>432</sup> our PAIA Requests to Selected Stakeholders requested reports,

---

<sup>430</sup> For a more detailed analysis of Environmental 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.

<sup>431</sup> <https://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf>.

<sup>432</sup> Legislation (including any amendments, rules, lists, notices, regulations, etc.) concerning the environment, including, but not limited to: the National Environmental Management Act 107 of 1998 (“NEMA”); the National Environmental Management: Waste Act 59 of 2008 (“NEMWA”); The National Environmental Management: Air Quality Act 39 of 2004 (“NEMAQA”) and the National Water Act 36 of 1998 (“NWA”).

licenses, permits, warnings, citations, notices directives and similar enforcement and compliance records, both internal and external, specifically in relation to compliance and/or non-compliance with Environmental Legislation as well as records related to Adverse Findings<sup>433</sup> in respect of Environmental Legislation.

We further requested records related to Environmental Commitments.<sup>434</sup> These records we believed would provide insight into Selected Stakeholders efforts in respect of the environment. Furthermore, we would be able to analyse Selected Stakeholders' understanding of the environmental right and whether Selected Stakeholders have adopted an approach which is inclusive of addressing animal welfare as a measure for environmental protection and sustainability.

---

## PART B: LAYING DOWN THE FACTS

---

### A HIGH-LEVEL OVERVIEW OF SELECTED NEGATIVE ENVIRONMENTAL IMPACTS ASSOCIATED WITH LAYER HEN FARMING

The negative environmental impacts associated with intensive poultry farming include the production of waste materials that lead to air, soil and water pollution, pollution caused by pharmaceutical residues, livestock-related air pollution such as the emission of contaminated dust and its impact on lung disease, contribution to climate change and greenhouse gas (“GHG”) emissions, competing for the use of limited land and water resources, and loss of biodiversity and wild habitat.<sup>435</sup> While research exists on some of the sources of pollution from poultry farming, long-term research is still required to determine the extent and full impact of these pollutants, such as pharmaceutical residues and the repeated application of contaminated chicken manure and poultry waste, on human health, the soil environment, water resources, and aquatic organisms.<sup>436</sup>

Examples of these negative environmental impacts of poultry farming are discussed briefly below.

---

<sup>433</sup> Any judgments, decrees, rulings, or other official statements containing findings against a Selected Stakeholder or their supplier or any other relevant third party in relation to non-compliance with or enforcement of Relevant Legislation or action against them by any Relevant Authority.

<sup>434</sup> A commitment by a Selected Stakeholder related to environmental matters including sustainability, best practices relating to the use of the environment and its components (such as land, air, water, food, etc.) and environmental protection, including those that directly or indirectly provide for measures addressing animal welfare, specifically regarding Layer Hens and Chicks.

<sup>435</sup> Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. J Agric Environ Ethics(2015) 28:1159. DOI10.1007/s10806-015-9583-6. and Intensive poultry farming: A review of the impact on the environment and human health - ScienceDirect and Poultry Farms as a Potential Source of Environmental Pollution by Pharmaceuticals.

<sup>436</sup> Intensive poultry farming: A review of the impact on the environment and human health - ScienceDirect.

## GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

Climate change is a global phenomenon affecting all countries, including South Africa - in fact, it is already affecting its ecosystems, economies, and livelihoods.<sup>437</sup> Since 1990, the national average temperature has increased twice as fast as global temperatures, resulting in various severe consequences such as frequent drought.<sup>438</sup>

While livestock farming systems are likely to suffer from climate change impacts, they are also contributors towards climate change.<sup>439</sup> Generally, industrialised farming systems are said to have a greater carbon footprint and to release more methane gas than the free-range or pasture led systems.<sup>440</sup> The high volume of manure produced in intensive livestock farming is also responsible for the insidious emission of 68% of anthropogenic nitrous oxide, which remains in the atmosphere for up to 150 years and has 296 times the global warming potential of carbon dioxide.<sup>441</sup> Egg production releases high levels of GHG emissions, including carbon dioxide, methane, and nitrous oxide, throughout the production process. With around 27-million-Layer Hens recorded in South Africa in January 2022,<sup>442</sup> egg production undoubtedly represents a major contributor towards the release of harmful GHG emissions. This ultimately not only affects air quality in the country, but contributes towards the global threat of climate change.

## COMPETITION FOR LIMITED RESOURCES

Climate change is not the only environmental impact arising from factory farming. Animals in factory farms consume huge quantities of feed grown on land that could be used to grow food crops instead, and this results in the inevitable conflict with other potential uses for limited arable land.<sup>443</sup> According to StatsSA, 38% of the total land area of South Africa is used for commercial agriculture.<sup>444</sup> The conversion of land to fields used to feed animals grown for human consumption, including feed used in Layer Hen farming, results in deforestation, biodiversity and habitat losses, worsened soil erosion, and increased carbon emissions.<sup>445</sup> The agriculture industry worldwide contributes significantly to biodiversity loss, with The United Nations Environmental Programme (“**UNEP**”) stating: “our global

<sup>437</sup> South Africa Climate Change Fact Sheet.

<sup>438</sup> South Africa Climate Change Fact Sheet.

<sup>439</sup> Sustainability of Livestock Farming in South Africa. Outlook on Production Constraints, Climate-Related Events, and Upshot on Adaptive Capacity.

<sup>440</sup> Sustainability of Livestock Farming in South Africa. Outlook on Production Constraints, Climate-Related Events, and Upshot on Adaptive Capacity.

<sup>441</sup> Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. J Agric Environ Ethics(2015) 28:1159. DOI10.1007/s10806-015-9583-6.

<sup>442</sup> This figure is expected to increase to around 28 million by the 2023 summer season. <https://www.farmersweekly.co.za/agri-news/south-africa/hopes-for-poultry-sector-growth-despite-challenges/>.

<sup>443</sup> Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. J Agric Environ Ethics(2015) 28:1159. DOI10.1007/s10806-015-9583-6.

<sup>444</sup> <https://www.statssa.gov.za/?=13144>.

<sup>445</sup> Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. J Agric Environ Ethics(2015) 28:1159. DOI10.1007/s10806-015-9583-6.

food system is the primary driver of biodiversity loss with agriculture alone being the identified threat to 24,000 of the 28,000 (86%) of species at risk of extinction”.<sup>446</sup> The use of large areas of land for livestock-related activities therefore directly contributes significantly to the ecological footprint through such land use and biodiversity loss.<sup>447</sup>

Farming also uses significant quantities of water and the modern industrialised livestock–reduction methods - primarily dependent on crop-based feed - require immense amounts of water, and directly compete with other end users.<sup>448</sup> While eggs require less water than beef and broiler production, it still requires more water than pork and milk production.<sup>449</sup> As a water scarce country, with poor and unpredictable rainfalls as well as rising temperatures, livestock farming (including layer egg farming) exacerbates the water insecurity problems in South Africa.<sup>450</sup>

## WATER AND SOIL POLLUTION

Intensive livestock farming practices that are used to breed thousands of chickens in confined spaces, face problems with the safe and proper disposal of tons of animal excreta produced daily.<sup>451</sup> Although chicken manure releases ammonia, it may return beneficial nutrients to the soil when applied in moderate amounts. Unfortunately, large commercial egg producers, with massive, enclosed buildings filled with Battery Cage confined hens, currently produce more manure than the surrounding land can absorb - oversaturating the land with minerals and nutrients, as well as pathogens. It is estimated that +/-9.1 – 13.6 kg manure produced by a single Layer Hen every year<sup>452</sup>

In South Africa, the heavy metals accumulated in chicken manure have been found to be way above acceptable limits.<sup>453</sup> Due to this, waste produced in these facilities causes harm to human and animal health, and also causes various environmentally harmful results.<sup>454</sup> Manure consists of a cocktail of substances, including bacteria, fungi, viruses, antibiotics, heavy metals, growth and sex hormones, and pesticides and might contain pathogens and heavy metals.<sup>455</sup> The presence of these contaminants

<sup>446</sup> <https://www.unep.org/news-and-stories/press-release/our-global-food-system-primary-driver-biodiversity-loss>.

<sup>447</sup> Astrid Jankielsohn. *Erratum to: The Hidden Cost of Eating Meat in South Africa: What Every Responsible Consumer Should Know*. *J Agric Environ Ethics*(2015) 28:1159. DOI10.1007/s10806-015-9583-6.

<sup>448</sup> Ibid.

<sup>449</sup> Mekonnen, MM and Hoekstra, AY. “The Green, Blue and Grey Water Footprint of Farm Animals and Animal Products”. UNESCO-IHE Institute for Water Education, Volume 1: pp. 29, December 2010. Retrieved July 9, 2019, from July 9, 2019, from The green, blue and grey water footprint of farm animals and animal products.

<sup>450</sup> Sustainability of Livestock Farming in South Africa. Outlook on Production Constraints, Climate-Related Events, and Upshot on Adaptive Capacity.

<sup>451</sup> Poultry Farms as a Potential Source of Environmental Pollution by Pharmaceuticals.

<sup>452</sup> Grzinic G et al(2023) “Intensive Poultry farming: A review of the impact on the environment and human health” available at <https://www.sciencedirect.com/science/article/pii/S0048969722071145>.

<sup>453</sup> How Safe is Chicken Litter for Land Application as an Organic Fertilizer?: A Review - PMC.

<sup>454</sup> [The FoodPrint of Eggs](#); also <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6801513/>.

<sup>455</sup> Li J (2020) Impacts of different sources of animal manures on dissemination of human pathogenic bacteria in agricultural soils *Environ. Pollut.*, 266 (2020), Article 115399.



reduces the possibility of using manure for fertilization purposes.<sup>456</sup> The long-term, repeated application of such contaminated chicken manure may result in contaminant accumulation in agricultural soils, increasing their potential bioavailability and toxicity in the environment.<sup>457</sup> These contaminants are also easily leached through the soil into groundwater and adjacent water sources, and have the potential to contaminate drinking water, or cause antibiotic-resistant infections and diseases in animals, plants and humans,<sup>458</sup> resulting in devastating health effects and economic problems, too.<sup>459</sup> Manure produced by hens unable to be absorbed seeps into groundwater or runs off into surface water, affecting surrounding communities and aquatic species.<sup>460</sup>

In addition, as the turnover rate of Layer Hens are longer than broilers, logic dictates that the chicken manure lasts longer and therefore becomes more contaminated in layer houses than in broiler houses,<sup>461</sup> further highlighting the significant negative impacts of the Layer Hen industry on scarce water resources.<sup>462</sup> Improving the sanitary conditions of Layer Hen farms in intensive confinement, and thus improving animal welfare, has been cited as an alternative method to antibiotic drug use for controlling and preventing diseases on farms - which could ultimately prevent the entry of contaminated manure into water sources.<sup>463</sup>

<sup>456</sup> Intensive poultry farming: A review of the impact on the environment and human health - ScienceDirect.

<sup>457</sup> Intensive poultry farming: A review of the impact on the environment and human health - ScienceDirect.

<sup>458</sup> Poor practices play a major role in contributing to antimicrobial residues in food of animal origin, and these have been reported in many African countries where the use of antimicrobials remains largely unregulated, including in South Africa. This has resulted in the emergence of antimicrobial resistance, and these drug-resistant genes have been found in poultry, livestock and hospitalised patients in South Africa (including multidrug-resistant bacteria found in humans and animal sources in North West Province of South Africa). This is not only a cause for public health concern, but one that could be prevented with more cautious use of antimicrobials and, for purposes of this chapter, to implement the necessary environmental practices to prevent contamination of water resources and the further spread of such antibiotic-resistant genes. <https://reader.elsevier.com/reader/sd/pii/S2213716519301985?token=4B83040E0678105F611B094D7CB428D8CF84B125BE284F2EC9BF326B203C5E7CD53070FA05F653C6EC5799A5D293BB6C&originRegion=eu-west-1&originCreation=20230214234650>.

<sup>459</sup> How Safe is Chicken Litter for Land Application as an Organic Fertilizer?: A Review - PMC.

<sup>460</sup> The FoodPrint of Eggs – A Foodprint Report available at <https://foodprint.org/reports/the-foodprint-of-eggs/>.

<sup>461</sup> How Safe is Chicken Litter for Land Application as an Organic Fertilizer?: A Review - PMC.

<sup>462</sup> South Africa is a water scarce country, and many areas have experienced water shortages, such as Cape Town, Johannesburg, and parts of the Eastern Cape and Northern Cape. <https://www.businessinsider.co.za/water-tips-2022-10,Fears-Taps-Could-Run-Dry-in-South-Africa's-Eastern-Cape-and-Eastern-Cape-ravaged-by-double-disaster-of-drought-and-poor-municipal-administration-and-Northern-Cape-farmers-drought-misery-continues>.

<sup>463</sup> See <https://reader.elsevier.com/reader/sd/pii/S2213716519301985?token=4B83040E0678105F611B094D7CB428D8CF84B125BE284F2EC9BF326B203C5E7CD53070FA05F653C6EC5799A5D293BB6C&originRegion=eu-west-1&originCreation=20230214234650> (accessed on 15 February 2023).

---

## PART C: LAYING DOWN THE LAW

---

### REGULATION OF THE EGG INDUSTRY THROUGH AN ENVIRONMENTAL LENS

#### I. Introduction

The **Constitution** entrenches the right to an environment that is not harmful to our health and well-being, and seeks to protect the environment for the benefit of present and future generations (the “**environmental right**”).<sup>464</sup> Importantly, the nature of the environmental right makes it suitable for vertical and horizontal application, and therefore the duty to protect the environment is not limited to the State but extends to companies and private individuals, too.<sup>465</sup> Corporations and individuals engaged in the Egg Industry, are therefore required to respect and protect the environment.

As discussed in further detail in the Animal Welfare Pillar, several cases<sup>466</sup> serve as a clarion call for the recognition of the intrinsic value of individual animals and to bring animal welfare under the rubric of the constitutional environmental right.<sup>467</sup> As discussed above, these cases identified the intrinsic value of animals,<sup>468</sup> and found that animal welfare and animal conservation together reflected two intertwining values.<sup>469</sup> The courts regarded animal welfare issues as environmental issues which implicated the constitutional environmental right.<sup>470</sup> This generous purposive interpretation of the environmental right by the courts is promising, as it affirms the intrinsic value of animals and is a positive step towards ensuring that animal welfare issues are (rightfully) considered under the environmental right.

In order to translate the constitutional environmental right into a more concrete reality, the National Environmental Management Act 107 of 1998 (“**NEMA**”) was enacted, creating a framework to put much-needed environmental norms and standards in place, as well as to promote cooperative

---

<sup>464</sup> Section 24 of the Constitution.

<sup>465</sup> Glazewski J Environmental Law in South Africa (2019) 5-14.

<sup>466</sup> *The National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development* [2016] ZACC 46 (the “**NSPCA Case**” or “**2016 NSPCA Case**”) and the *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* [2019] ZAGPPHC 337 (the “**Lion Bones Case**”).

<sup>467</sup> For a detailed discussion on these 2 cases and the salient aspects thereof, Scholtz W. ‘Ethical and humane use’, Intrinsic value and the Convention on Biological Diversity: Towards the reconfiguration of sustainable development and use. *RECIEL*. 2021;30:73–80. <https://doi.org/10.1111/reel.12360>.

<sup>468</sup> *NSPCA Case* at paras 54-57.

<sup>469</sup> *NSPCA Case* at para 58.

<sup>470</sup> *Lion Bones Case* at para 31.

governance and to emphasise the public interest in the environment, among other things.<sup>471</sup> As a framework Act, it is complemented by a number of subsequent “specific management Acts” (“**SEMAs**”), including the National Environment Management: Air Quality Act 39 of 2004 (“**NEM:AQA**”), the National Environment Management: Waste Act 59 of 2008 (“**NEM:WA**”), and the National Water Act 36 of 1998 (“**NWA**”). NEMA prescribes national environmental principles (“**NEMA principles**”) to guide organs of state<sup>472</sup> when making decisions regarding the protection of the environment. NEMA and the SEMAs further follow a similar structure in that they impose duties of care and restrict the use of environmental resources by providing for standards, licensing requirements and conditions.

Most of the environmental legislation at a national level falls under the mandate of the Department of Forestry, Fisheries and Environment (“**DFFE**”) with provincial governments also having authority over environmental and conservation matters. In addition, other governmental departments have mandates overlapping with environmental issues.

The aspects of these Acts that are of relevance to the regulation of the Egg Industry will be discussed in more detail below.

## II. National Legislation and Regulations

### 1. NEMA

NEMA, under the mandate of the DFFE, regulates many activities, which have the potential to negatively impact on the environment,<sup>473</sup> and the provisions of the Act are applicable to the significant pollution<sup>474</sup> caused by intensive land farm systems, including the Layer Hen industry.

#### NEMA PRINCIPLES

Section 2 lists 18 NEMA principles,<sup>475</sup> which apply alongside the state’s responsibility to respect, protect, promote and fulfil the social and economic rights and serve as a general framework and

<sup>471</sup> Glazewski J Environmental Law in South Africa (2019) 7-6.

<sup>472</sup> Although, it is suggested that the principles are applicable to private juristic persons, too, in the same way that the environmental right has horizontal application. Glazewski J Environmental Law in South Africa (2019) 7-11.

<sup>473</sup> NEMA provides the legal definition of “environment” to mean the surroundings within which humans exist and that are made up of (i) the land, water and atmosphere of the earth; (ii) micro-organisms, plant and animal life; (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and; (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.

<sup>474</sup> NEMA provides the legal definition of pollution to mean any change in the environment caused by (i) substances; (ii) radioactive or other waves; or (iii) noise, odours, dust or heat, emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person or an organ of state, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future.

<sup>475</sup> Section 2(1) of NEMA provides that these principles apply throughout the country to the actions of all organs of state which may significantly affect the environment.



guidelines for organs of states' actions regarding environmental management and the formulation of implementation plans.<sup>476</sup> Underlying the NEMA principles is the notion of ecologically sustainable development,<sup>477</sup> which is evident from several of these principles.<sup>478</sup>

The NEMA principles are detailed and complex, and reflect many internationally established environmental norms, such as the precautionary principle,<sup>479</sup> the preventative principle<sup>480</sup> and the “polluter pays” principle.<sup>481</sup> These principles, when properly interpreted by a decision-maker should, at best, prevent the approval of Layer Hen farms in intensive confinement or, at the very least, require the implementation of proper measures to minimise the negative environmental impacts caused by such farms. For example, the precautionary principle requires a decision-maker to take a risk-averse and cautious approach, whilst taking into account the limits of current knowledge about the consequences of decisions and actions.<sup>482</sup> As long-term research is still required to determine the extent and full impact of poultry farm pollutants, such as pharmaceutical residues and the repeated application of contaminated chicken manure and poultry waste, on human health, the soil environment, water resources, and aquatic organisms - the state has a duty to take a more cautious approach when considering applications for the development of such farms, and ensuring that appropriate conditions are imposed to manage these risks. Doing so would align with the precautionary principle.

Where activities result in pollution, environmental degradation and consequent adverse health effects, the “polluter pays” principle underpins provisions that seek to hold polluters liable for paying the costs of remedying, preventing, controlling and minimising such effects.<sup>483</sup> Pursuant to the general duty of care discussed next, a wide range of persons may be regarded as the “polluter” and be held accountable for environmental damage arising from the Egg Supply Chain, including the land owner, the farm company, its employees, managers, directors, as well as any party that then benefits from

---

<sup>476</sup> Section 1(b) of NEMA.

<sup>477</sup> Sustainable development is defined in NEMA as “the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations”.

<sup>478</sup> Section 2(3) of NEMA provides that ‘[d]evelopment must be socially, environmentally and economically sustainable’, and section 2(4) provides that “[s]ustainable development requires the consideration of all relevant factors”, which is further qualified by eight sub-principles (sections 4(a)(i) - (viii)).

<sup>479</sup> Such as section 2(4)(vii) of NEMA, which provides that a “risk-averse and cautious approach” ought to be applied, taking into account the limits of current knowledge.

<sup>480</sup> Such as section 2(4)(ii) which provides that “pollution and degradation of the environment are [to be] avoided, or, where they cannot be altogether avoided, are minimised and remedied”, and section 2(4)(iv) provides that waste ought to be avoided, alternatively, minimised and re-used or recycled, where possible and other disposed of in a responsible manner.

<sup>481</sup> Section 2(4)(p) of NEMA provides that the “costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment”.

<sup>482</sup> Section 2(4)(a)(vii) of NEMA.

<sup>483</sup> Section 2(4)(p) of NEMA.

measures that are required to be taken by the state (in the event that the responsible party fails to take the necessary measures as directed) to rehabilitate the environment.<sup>484</sup>

## GENERAL DUTY OF CARE

Section 28 of NEMA provides a general duty of care to take “reasonable measures” to prevent significant pollution or environmental degradation, or to minimise and rectify such pollution or environmental degradation where such harm cannot be reasonably avoided or is authorised by law.<sup>485</sup>

Section 28 is significant because the category of persons on whom this duty is imposed is non-exhaustive as it explicitly refers to “every person”. The duty is therefore applicable to a wide range of persons including not only the owner of the land, but also any person who has the right to use the land on which any activity is performed.<sup>486</sup>

In terms of what ought to be regarded as “significant pollution or degradation” (our emphasis), the courts have held that this involves a considerable measure of subjective import and the threshold level of significance need not be particularly high,<sup>487</sup> and therefore significant pollution must be considered in light of the constitutional right to an environment conducive to health and well-being.<sup>488</sup> Based on the extent of pollution caused by the Egg Supply Chain, such pollution would likely be regarded as significant and a duty imposed on role-players who are involved to prevent, minimise or remediate such pollution and environmental harm.

The failure to uphold this duty is an offence under NEMA and, upon conviction, may result in a fine up to R10 million or imprisonment for up to 10 years.<sup>489</sup>

## DIRECTOR LIABILITY

Section 34(7) of NEMA was enacted to prevent directors from hiding behind the corporate veil to avoid prosecution for environmental offences. Where a director fails to take all reasonable steps necessary to prevent the commission of an offence under Schedule 3 of NEMA,<sup>490</sup> such director(s)

---

<sup>484</sup> Section 28(2) and section 28(9) of NEMA.

<sup>485</sup> Section 28(1) provides that “[e]very person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment”.

<sup>486</sup> Section 28(2) of NEMA provides that the persons on whom the section 28 duty of care imposes an obligation to take reasonable measures include “an owner of land or premises, a person in control of land or premises or a person who has a right to use the land or premises on which or in which any activity or process is or was performed or undertaken; or any other situation exists”.

<sup>487</sup> *Hichange Investments (Pty) Ltd v Cape Produce Company (Pty) Ltd t/a Pelts Products, and Others* [2004] 1 All SA 636 (E).

<sup>488</sup> Glazewski J Environmental Law in South Africa (2019) 7-23.

<sup>489</sup> Section 49A(1) read with section 49B(1) of NEMA.

<sup>490</sup> Schedule 3 of NEMA provides a list of provisions in terms of national legislation and provincial legislation that are applicable for purposes of s34 of NEMA. These legislation includes, but is not limited to Relevant Legislation such as the Animal Protection Act, National Water Act and Fertilizer, Farm Feeds, Agricultural Remedies and Stock

may be found personally liable for such offences. This provision is important because the ability to hold a director (a natural person) personally liable for environmental transgressions is a stronger deterrent than holding a Company (a juristic person) liable. This is especially the case when punishment includes imprisonment because it helps to recognise the devastating impact associated with environmental crimes and ensures that a director's actions are not insulated from liability.<sup>491</sup>

The APA is mentioned in Schedule 3 of NEMA, specifically sections 2(1) and 2A, which in turn relate to section 34 of NEMA which deals with 34 criminal proceedings. Section 34 provides that whenever any person is convicted of an offence under any provision listed in schedule 3 (i.e. offences in terms of the APA) and it appears that such person has by that offence caused loss or damage to any organ of state or other person, including the cost incurred or likely to be incurred by an organ of state in rehabilitating the environment or preventing damage to the environment, the court may in the same proceedings at the written request of the Minister or other organ of state or other person concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage caused.

## ENVIRONMENTAL AUTHORISATIONS

NEMA lists various activities (known as “**listed activities**”)<sup>492</sup> that may not commence unless the competent authority has granted an environmental authorisation for such listed activity or, where applicable, the activity is carried out in terms of applicable norms and standards as published by the DFFE.<sup>493</sup> Failure to do so is an offence.<sup>494</sup>

The listed activities are separated into various listings, depending on the significance of impact/s. For example, Listing Notice 1<sup>495</sup> relates to small scale activities that are less complex, with familiar or predictable consequences and only require basic assessments (a shorter and simpler application process); whereas Listing Notice 2<sup>496</sup> relates to large scale activities that are complex, with significant impacts that require full scoping and environmental impact assessments (longer and more involved application process assessing a more comprehensive range of factors).

**Animal agricultural operations including Layer Hen farms, hatcheries and others are required to obtain environmental authorisation/s for activities triggered by such farming operations.** What is evident though, is that poultry farming is not regarded / assessed as an activity with significant

---

Remedies Act. Other legislation listed includes the Atmospheric Pollution Prevention Act (no 45 of 1965), Conservation of Agricultural Resources Act (no. 43 of 1983) and National Parks Act (no. 57 of 1976).

<sup>491</sup> For a discussion on personal director liability for environmental transgressions, Chien L (2020) Do existing laws in South Africa hold directors personally liable for environmental transgressions? University of the Western Cape <http://etd.uwc.ac.za/xmlui/handle/11394/8008>.

<sup>492</sup> Section 24(2) of NEMA.

<sup>493</sup> Section 24F of NEMA.

<sup>494</sup> Section 49(1)(a) of NEMA.

<sup>495</sup> Environmental impact Assessment Regulations Listing Notice 1 of 2014, as amended.

<sup>496</sup> Environmental impact Assessment Regulations Listing Notice 2 of 2014, as amended.



or unpredictable environmental impacts, as all relevant listed activities are only found under Listing Notice 1. These activities only attract a basic assessment requirement in order for an application for an environmental authorisation to be considered by competent authorities. This creates the (false, in our view) impression that these farming activities are less “harmful” to the environment, and authorisations are more easily obtained because the application process is simpler and shorter.

There are several activities specifically applicable to poultry farming and **for which an environmental authorisation must be obtained prior to commencing such activity**. These include Activities 3, 4, 5, 8, 38, 40 and 43 under Listing Notice 1, which are set out further below.

Listing Notice 1 defines: “concentration of animals” to mean “*the keeping of animals in a confined space or structure, including a feedlot, where they are fed in order to prepare them for slaughter or to produce products such as milk or eggs.*” It further defines “*unit*” to mean “*in relation to a quantity standard for determining throughput of facilities or infrastructure for the slaughter of animals, has the meaning assigned to it in Regulations promulgated in terms of the Meat Safety Act, 2000 (Act No. of 40 of 2000)*”.

- **Activity 3:** the “development and related operation of facilities or infrastructure for the slaughter of animals with a product throughput of poultry exceeding 50 poultry per day...”.
- **Activity 4:** the “development and related operation of facilities or infrastructure for the concentration of animals for the purpose of commercial production in densities that exceed... 8 square meters per small stock unit”.
- **Activity 5:** the “development and related operation of facilities or infrastructure for the concentration of:
  - more than 1000 poultry per facility situated within an urban area, excluding Chicks younger than 20 days;
  - more than 5000 poultry per facility situated outside an urban area, excluding Chicks younger than 20 days;
  - more than 5000 Chicks younger than 20 days per facility situated within an urban area; or
  - more than 25000 Chicks younger than 20 days per facility situated outside an urban area”.
- **Activity 8:** the “development and related operation of hatcheries or agri-industrial facilities outside industrial complexes where the development footprint covers an area of 2 000 square metres or more”.
- **Activity 38:** the “expansion and related operation of facilities for the slaughter of animals where the daily product throughput will be increased by more than 50 poultry...”.
- **Activity 40:** the “expansion and related operation of facilities for the concentration of poultry, excluding Chicks younger than 20 days, where the capacity of the facility will be increased by 40. (i) more than 1 000 poultry where the facility is situated within an urban area; or (ii) more than 5 000 poultry per facility situated outside an urban area”.
- **Activity 43:** the “expansion and related operation of hatcheries or agri-industrial facilities outside industrial complexes, where the development footprint of the hatcheries or agri-industrial facilities will be increased by 2 000 square metres or more”.

Other activities listed under Listing Notice 1 could also apply to poultry farming including if structures are constructed to for example transport sewerage and waste. Others may be applicable to poultry such as Activity 27, which relates to the clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation. The development of a chicken farm may require the clearing of indigenous vegetation, and therefore this activity may be applicable. Additional activities may also be triggered in other Listing Notices, of which there are 3.

## 2. SEMAs

### SEMA: NEM:AQA

NEM:AQA was enacted to reform the regulation of air quality in order to protect the environment and improve ambient air quality in the country. It prescribes that listed activities - which are activities that result in atmospheric emissions that have a significant detrimental effect on the environment - may not commence without a provisional atmospheric emission licence or an atmospheric emission licence (“**AEL**”).<sup>497</sup>

While the intensive farming of poultry is responsible for the emission of various harmful gases including methane, nitrogen and carbon dioxide, these processes do not currently require an AEL.<sup>498</sup> As such, the farms are not obligated to assess the impact of the emissions, or be subjected to licence conditions such as monitoring and reporting obligations, and the relevant authorities are then unable to hold them liable for the environmental harm caused by such emissions. The absence of intensive poultry farming from the NEM:AQA Listed Activities results in a gap in the legislation, and impairs the government and public’s ability to hold farms accountable for their emissions.

An obligation is, however, imposed by NEM:AQA upon poultry farmers, in terms of the National Greenhouse Gas Emissions Reporting Regulations (“**GHG Reporting Regulations**”).<sup>499</sup> The GHG Reporting Regulations are intended to introduce a single national reporting system for the transparent reporting of GHG emissions,<sup>500</sup> and applies to emissions resulting from various activities including intensive rearing of poultry. Poultry farmers must therefore register their facilities, and comply with the reporting requirements prescribed.<sup>501</sup> It is unclear whether poultry farms have been complying with these regulations, whether the DFFE plans on publishing any of the data reported, and whether the data reported will result in the amendment of existing legislation (so as to reduce or minimise the impact of the GHG emissions, caused by poultry farming, on the environment).

---

<sup>497</sup> Section 21 of NEM:AQA.

<sup>498</sup> While Category 10 includes “animal matter processing”, this only relates to processes involving animal matter “not intended for human consumption”, and therefore a poultry farm is not required to obtain an AEL before commencing activities, despite such processes emitting harmful gases. GN248 of Government Gazette 33064 published on 31 March 2010, as amended (“NEM:AQA Listed Activities”).

<sup>499</sup> Published by GN275 of Government Gazette 40762 of 3 April 2017, as amended.

<sup>500</sup> Regulation 2.

<sup>501</sup> Regulations 5 and 7.

NEM:AQA provides that the occupier of any premise must take all reasonable steps to prevent the emission of any offensive odour caused by any activity on such premises,<sup>502</sup> and this provision would be applicable to Layer Hen farms as the intensive nature of these farms result in the accumulation of excessive quantities of chicken waste products - which often result in offensive odours. Failure to comply with this provision and to take “all reasonable steps to prevent the emission”, is an offence.<sup>503</sup> A person convicted of such an offence is liable to a fine not exceeding five million rand, or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction, to a fine not exceeding R10 million rand or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment.<sup>504</sup>

## SEMA: NEM:WA

NEM:WA regulates waste management activities in order to protect human health and the environment. Selected relevant provisions are discussed briefly below.

### DUTY OF CARE IN RESPECT OF WASTE

NEM:WA imposes a duty on a holder of waste to take all reasonable measures, including avoiding or minimising the generation of waste, ensuring that waste is treated and disposed of in an environmentally sound manner, and managing waste in a manner that does not endanger health or the environment.<sup>505</sup> Due to the generality of this provision, it is applicable to Layer Hen farms as these farms generate a considerable amount of waste that is required to be properly and responsibly managed.

### LISTED ACTIVITIES

Activities listed under section 19 as waste management activities, may not commence without a waste management licence (“**WML**”), or compliance with standards as published by the DFFE.<sup>506</sup> The storage, treatment and processing of animal waste is no longer listed as an activity requiring a WML, and is only regulated by the National Norms and Standards for Organic Waste Composting (the “**Composting Regulations**”).<sup>507</sup> While the Composting Regulations provides a national uniform approach relating to the composting of organic waste, the absence of licensing requirements essentially makes it easier for Layer Hen farms to be established without having to assess their environmental impacts in order to apply for a WML, and to be bound by strict licence conditions thereafter. This

<sup>502</sup> Section 35(2) of NEM:AQA.

<sup>503</sup> Section 51 read with section 35(2) of NEM:AQA.

<sup>504</sup> Section 52(1)(a) of NEM:AQA.

<sup>505</sup> Section 16(1) of NEM:WA.

<sup>506</sup> Section 20 of NEM:WA.

<sup>507</sup> Published by GN 561 of Government Gazette 44762 of 25 June 2021. The composting of organic waste, such as chicken manure, would fall under Category C of the List of Waste Management Activities that have, or are likely to have, a Detrimental Effect on the Environment, as published in GN 921 of Government Gazette 37083 of 29 November 2013, as amended (“NEM:WA Listed Activities”). Category C activities are only required to comply with relevant standards, and are not required to obtain a WML.



may result in poorly managed waste activities on Layer Hen farms, without authorities being able to hold such farms accountable due to the absence of a WML with specific conditions

## STORAGE OF WASTE

NEM:WA imposes waste storage requirements upon any person who stores waste, and this includes ensuring that waste storage does not breed vectors, and cause pollution of the environment or harm to health.<sup>508</sup> These requirements are applicable to Layer Hen farms as the waste accumulated on site contain contaminants that may spread diseases and cause harm to environment and health.

## CONTAMINATED LAND

NEM:WA imposes a duty on the owner of land that is significantly contaminated,<sup>509</sup> or any person who undertakes an activity which causes the land to be significantly contaminated, to notify the relevant authority.<sup>510</sup> The site would then be subjected to an assessment to determine the extent of the contamination, and the authorities may then order the responsible party to remediate the land.<sup>511</sup> The contaminated land provisions are potentially applicable to land used for intensive Layer Hen farming - especially since intensive farming is known to cause significant pollution to soil.

Furthermore, NEM:WA also imposes notification obligations on the transfer of contaminated land<sup>512</sup> and creates a national contaminated land register to record data relating to contaminated land and any restrictions of use on such land.<sup>513</sup>

As the full impact of the long-term application of the contaminants generated through intensive farming of Layer Hens on the soil environment remains largely unknown, it is submitted that Layer Hen farms could potentially be regarded as contaminated land. This issue requires further research, as this provision is a useful tool that may be used to hold farms liable for the contamination caused by their farming activities. This is especially so since the penalties imposed under NEM:WA are significant<sup>514</sup> and could deter would-be offenders.

---

<sup>508</sup> Section 21(d) and (e) of NEM:WA.

<sup>509</sup> “Contaminated” is defined in section 1 of NEM:WA as “the presence in or under any land, site, buildings or structures of a substance or micro-organism above the concentration that is normally present in or under that land, which substance or micro-organism directly or indirectly affects or may affect the quality of soil or the environment adversely” (writer’s emphasis). As this definition is quite broad, any contaminants that may affect the quality of soil or adversely impact the environment, would be regarded as contaminated.

<sup>510</sup> Section 36(5) of NEM:WA.

<sup>511</sup> Sections 37-39 of NEM:WA.

<sup>512</sup> Section 40(1) of NEM:WA.

<sup>513</sup> Section 41 of NEM:WA.

<sup>514</sup> In terms of section 68, a person convicted of an offence may be liable to a fine of up to R10 million or imprisonment for up to 10 years.

## SEMA: NEM:BA

Given the vast impacts of industrialised animal agriculture on biodiversity, the National Environmental Management: Biodiversity Act<sup>515</sup> may find further application. This is particularly so with the new amendments to NEMBA in terms of NEMLA.

## NEMLAA

With the promulgation of the National Environmental Management Laws Amendment Act,<sup>516</sup> which came into force in June 2023, a definition of “well-being” in relation to animals was introduced as a legislative mandate of the DFFE. The term “well-being” is defined 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”. It amends section 2 of NEMBA to provide for a new objective, within the framework of NEMA, “to provide for the consideration of the well-being of animals in the management”. Furthermore, it provides that the Minister may, by notice in the Gazette and subject to such conditions as the Minister may specify in the notice, prohibit any activity”.

## NATIONAL WATER ACT (NWA)

The NWA is structured similarly to NEMA and the other SEMAs, in that it provides a duty of care in respect of water pollution,<sup>517</sup> as well as regulates the use of water through licensing requirements.<sup>518</sup>

As discussed earlier, Layer Hen farming generates contaminants that are also easily leached through the soil into groundwater and adjacent water sources and have the potential to cause detrimental harm to our water resources. As such, the disposal of waste undertaken by Layer Hen farms is considered a “water use” in terms of section 21 and a water use licence (“WUL”) is necessary.<sup>519</sup> There may be other water uses ordinarily undertaken by Layer Hen farms that would also be subject to the licence requirement, such as taking water from a water resource or storing water.<sup>520</sup> The NWA therefore finds specific relevance in the regulation of the environmental impacts of industrial farming, as these farms

---

<sup>515</sup> Act 10 of 2004 <https://www.gov.za/documents/national-environmental-management-biodiversity-act-0>.

<sup>516</sup> Act 2 of 2022 [https://www.gov.za/sites/default/files/gcis\\_document/202207/4660224-6-natenvmanaglawsamendact2%EF%80%A22022.pdf](https://www.gov.za/sites/default/files/gcis_document/202207/4660224-6-natenvmanaglawsamendact2%EF%80%A22022.pdf).

<sup>517</sup> Section 19(1) provides that an “owner of land, a person in control of land or a person who occupies or used the land on which (a) any activity or process is or was performed or undertaken, or (b) any other situation exists, which causes, has caused or is likely to cause pollution to a water resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring”.

<sup>518</sup> Chapter 4 of the NWA.

<sup>519</sup> Section 21(g) of NWA. A WUL will not be required only if such water use is permissible in terms of a general authorisation, is a continuation of an existing lawful use, permissible in terms of Schedule 1, or the licence requirement is dispensed by the responsible authority (see section 22(1) of NWA).

<sup>520</sup> Sections 21(a) and (b) of the NWA.

produce large amounts of waste which need to be properly managed in order to protect our scarce water resources.

### III. INTERNATIONAL CONTEXT

#### 1. Status

As mentioned above in relation to the Animal Welfare Pillar, international law can be (and has been) influential in the courts and in law and policy-making. The below international laws are relevant to the environmental impacts of the Egg Supply Chain.

#### 2. UNFCCC

Climate change law has been described as the protection of people and the planet against global warming by seeking and enforcing ways to reduce GHG emissions.<sup>521</sup> The United Nations Framework Convention on Climate Change (“UNFCCC”), which seeks to impose obligations on states in relation to climate change, is one of five principal international law instruments adopted as a result of the Rio Conference.<sup>522</sup> Signatory states commit to the stabilisation of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.<sup>523</sup> The UNFCCC provides, in article 3(1), that parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity, in accordance with their common but differentiated responsibilities and respective capabilities.<sup>524</sup>

The UNFCCC provides mechanisms for the proper implementation and compliance of the ambitions contained in the convention. These include a burden sharing mechanism in which developing countries rely on assistance from developed countries in order to effectively implement commitments under the auspices of the UNFCCC.<sup>525</sup> It is an example of the recognition of climate change as a global dilemma and the need for a global solution. One of the most notable contributions of the UNFCCC was the establishment of Conference of the Parties (“COP”) decisions to promote continued action in addressing climate change.<sup>526</sup> Various COP decisions have been made since the UNFCCC entered into force in 1994, with the most recent meeting being COP27, held in Egypt towards the end of 2022.

---

<sup>521</sup> Reynolds J ‘Climate Engineering and International Law’ and Ghaleigh NS ‘Carbon Capture and Storage as a bridging technology’ in Farber DA and Peeters M (eds.) ‘Climate Change Law’ (2016). Also Farber DA and Peeters M ‘The emergence of global climate law’ in Farber DA and Peeters M (eds.) ‘Climate Change Law’ (2016) 688.

<sup>522</sup> Carter S and Barnard M ‘Demystifying the Global Climate Change Regime’ in Humby T et al ‘Climate Change Law and Governance in South Africa’ (2016) 3-2.

<sup>523</sup> Article 2 of the UNFCCC.

<sup>524</sup> Article 3(1) of the UNFCCC.

<sup>525</sup> Article 4 of the UNFCCC. Also Stoll P ‘The Climate as a global concern’ in Farber DA and Peeters M ‘Climate Change Law’ (2016) 136.

<sup>526</sup>

[https://unfccc.int/sites/default/files/convention\\_text\\_with\\_annexes\\_english\\_for\\_posting.pdf](https://unfccc.int/sites/default/files/convention_text_with_annexes_english_for_posting.pdf)[http://unfccc.int/essential\\_background/convention\\_bodies/items/2629.php](http://unfccc.int/essential_background/convention_bodies/items/2629.php). It is noteworthy to mention that the COP has two



### 3. Paris Agreement

Among the most notable of these COP decisions was the Paris Agreement, adopted at COP21 in 2015, and signed in 2016. It is an inclusive and ambitious international agreement with the goal of combating climate change.<sup>527</sup> The Paris Agreement's key objectives relate to mitigation of GHG emissions, adaptation to climate harms, financing for climate mitigation and adaptation, as well as addressing loss and damage for climate harms. The main aims of climate change are found in articles 2 and 4.1.<sup>528</sup> Both these articles highlight the long-term mitigation objective of maintaining the increase in global average temperature to well below 2 degrees Celsius above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degree Celsius above pre-industrial levels.<sup>529</sup>

The Paris Agreement expresses a desire to increase the ability to adapt to the adverse impacts of climate change while fostering climate resilience and low GHG emissions development.<sup>530</sup> The Paris Agreement is to be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in light of different national circumstances.<sup>531</sup>

The agreement addresses mitigation primarily through requiring that states prepare National Determined Contributions (“NDC”)<sup>532</sup> (see articles 3 and 4). Each party is required to prepare, communicate and maintain successive NDCs that it intends to achieve to promote the objectives of the Paris Agreement. In doing so, they shall pursue their own domestic measures with the aim of achieving their contribution to keeping global temperature increases to safe levels.<sup>533</sup>

Parties are to pursue the global goal of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change.<sup>534</sup> The sharing of information, good practices and experiences learned including science, planning, policies and implementation measures are envisaged.<sup>535</sup> Furthermore, the agreement provides that parties should submit and update periodically adaptation

---

subsidiary bodies that undertake technical discussions namely the Subsidiary Body for Implementation (“SBI”) and the Subsidiary Body for Scientific and Technological Advice (“SBSTA”). This holds true to the linkages between the science behind climate change and international climate change law.

<sup>527</sup> Ladan MT ‘SDGs Framework as the Blueprint for Climate Change Action and Sustainable Development in Africa: Role of Law and Parliaments’ (2016) 22 SAJELP 159 at 162.

<sup>528</sup> Bodansky D., “The Paris Climate Change Agreement: A New Hope?” 110 (2016): 288 at 302.

<sup>529</sup> Article 2.1(a) of the Paris Agreement.

<sup>530</sup> Article 2.1 (b) of the Paris Agreement.

<sup>531</sup> Article 2.2 of the Paris Agreement.

<sup>532</sup> ALRSA and ELA's comments on the NDC, with a statement to the effect that:

ALRSA has expressed concern about the failure of South Africa's NDC to address mitigation in the animal agriculture sector. See their joint submission on South Africa's proposed updated Nationally Determined Contribution in terms of the UNFCCC and the Paris Agreement from April 2021: <https://www.animallawreform.org/wp-content/uploads/2021/04/NDC-Submission-ALRSA-and-ELA.pdf>.

<sup>533</sup> Article 4 of the Paris Agreement.

<sup>534</sup> Article 7.1 of the Paris Agreement.

<sup>535</sup> Article 7.7 (a) of the Paris Agreement.

communication which may include its priorities, implementation and support needs without creating any additional burden for developing countries.<sup>536</sup>

South Africa is a signatory state to the Paris Agreement. In its updated NDC report of September 2021, South Africa states that the country:

*“aims to capitalise on the national and global shift to the green economy, through green industrialisation and by creating new opportunities for South Africa’s rich mineral endowment, many of which are vital for low emission and climate resilient development”.*<sup>537</sup>

Whilst there are mitigation targets which should reach agriculture, the Presidential Climate Commission's Just Transition Framework does speak to agriculture, as do adaptation plans that intend to give effect to the NDC. However, as can be seen from the below extract, much of the initial focus is on the electricity sector and the transport sector:

*“[t]he long-term decarbonization of the South African economy will in the 2020s focus primarily on the electricity sector; in the 2030s, deeper transition will take place in the electricity sector, coupled with a transition in the transport sector towards low emission vehicles; while the 2040s and beyond will be characterised by the decarbonization of the hard-to-mitigate sectors”.*<sup>538</sup>

Although environmentally detrimental, as highlighted above, the government views agriculture as a sector critical in attracting foreign exchange, job creation and production of raw material for the economy.<sup>539</sup>

Nevertheless, in its first adaptation communication, South Africa sets out actions to be taken or measures to be implemented during the period 2021 - 2030, including relating to the agriculture sector in the country. It states “development of early warning systems for small scale farmers; and supporting climate-smart agriculture. The development of a multi-hazard early warning system; capacity building for the farming sector on climate change; and full implementation of a climate-smart agriculture framework should be prioritised”.<sup>540</sup>

---

<sup>536</sup> Article 7.10 of the Paris Agreement.

<sup>537</sup> Page 4 of South Africa’s First Nationally Determined Contribution Under the Paris Agreement Report available at South Africa updated first NDC September 2021.

<sup>538</sup> Page 5 of South Africa’s First Nationally Determined Contribution Under the Paris Agreement Report available at South Africa updated first NDC September 2021.

<sup>539</sup> Page 7 of South Africa’s First Nationally Determined Contribution Under the Paris Agreement Report available at South Africa updated first NDC September 2021.

<sup>540</sup> Page 10 of South Africa’s First Nationally Determined Contribution Under the Paris Agreement Report available at South Africa updated first NDC September 2021.

#### 4. Agenda for Sustainable Development (“SDGs”)

In 2012, the United Nations (the “UN”) established an Open Working Group (“OWG”) mandated to develop a list of global goals that had the central theme of sustainable development.<sup>541</sup> The 2030 Agenda for Sustainable Development (the “Agenda”) consists of a list of 17 goals and 169 targets for the achievement of sustainable development.<sup>542</sup> These global goals or sustainable development goals are regarded as essential in addressing all the facets of sustainable development,<sup>543</sup> including the eradication of poverty (SDG 1), zero hunger (SDG 2), inclusive and equitable quality education (SDG 4), gender equality and empowerment for women and girls (SDG 5), sustained and inclusive economic growth and productive employment (SDG 8), and sustainable consumption and production patterns (SDG 12).<sup>544</sup> The SDGs can be regarded as an encapsulation of the global sustainable development agenda and as a result of the adoption of monitoring and assessment mechanisms to attain these goals, the SDGs have not only political, but policy implications for states, including South Africa.<sup>545</sup>

References are made throughout the Agenda of the importance of environmental protection as it relates to sustainable development.<sup>546</sup> The environmental SDGs or ‘environmental cluster’ comprise of the sustainable management of water resources,<sup>547</sup> climate change,<sup>548</sup> the conservation and sustainable use of marine resources,<sup>549</sup> and biodiversity.<sup>550</sup>

Historically, food sourcing has been associated with environmentally harmful food sources such as palm oil or seafood.<sup>551</sup> As such, SDG 12 seeks to promote sustainable consumption and production patterns, which would entail a shift away from harmful food sources. According to the United Nations, “unsustainable patterns of consumption and production are the root cause of triple planetary crises, namely climate change, biodiversity loss and pollution”. It further noted that “our reliance on natural resources is increasing, rising over 65% globally from 2000 to 2019”.<sup>552</sup> ALRSA is of the view that

<sup>541</sup> ‘Open Working Group on Sustainable Development Goals’ A/67/L.48/rev.1.

<sup>542</sup> UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.

<sup>543</sup> Ladan MT ‘SDGs Framework as the Blueprint for Climate Change Action and Sustainable Development in Africa: Role of Law and Parliaments’ (2016) 22 SAJELP 159 at 169.

<sup>544</sup> UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.

<sup>545</sup> Ceaser C (2020) Agenda 2030: A South African Perspective on the Sustainable Development Goals University of the Western Cape <http://hdl.handle.net/11394/7348>.

<sup>546</sup> 89 of the total 169 targets of the SDGs relate to the environment and environmentally related issues. These targets include access to and control over land and natural resources, the reduction of vulnerability to climate related extreme events, ensuring sustainable food production and implement resilient agricultural practices taking into account the maintenance of ecosystems and the improvement of water quality through the reduction of pollution, elimination of dumping and the minimising of hazardous chemicals and materials.

<sup>547</sup> SDG 6.

<sup>548</sup> SDG13.

<sup>549</sup> SDG 14.

<sup>550</sup> SDG 15.

<sup>551</sup> <https://asiareengage.com/responsible-protein-sourcing-in-asia-baseline-benchmark/>.

<sup>552</sup> <https://sdgs.un.org/goals/goal12>.

unsustainable consumption and production patterns are ubiquitous within the Egg Industry due to the environmental harms caused by egg production and consumption, as well as the Cruel Practices inherent in intensive factory farming..

SDG 13 states that urgent action is required to combat climate change as well as its impacts. It includes strengthening resilience and adaptive capacity to climate-related hazards and natural disasters,<sup>553</sup> the integration of climate change measures into national policy adoption, strategies and planning,<sup>554</sup> the inclusion of climate education,<sup>555</sup> awareness raising and human and institutional capacity on climate change mitigation, adaptation and impact reduction.<sup>556</sup> Most notably, it provides for the promotion of mechanisms for raising capacity for effective climate change related planning and management, specifically for vulnerable countries, i.e. least developed countries and small island developing states in accordance with the provisions of the UNFCCC.<sup>557</sup> The goal is phrased using obligatory verbs requiring mitigation and adaptation in the context of the climate emergency, calling for the adoption of national policy, planning measures and the utilisation of technology in relation to capacity building for developing States. Although the SDGs are soft law, this phrasing encourages states to take mitigation, adaptation, and the use of measures to bolster capacity building seriously.

The UNEP is regarded as the global authority for setting the environmental agenda, the promotion of coherent implementation of the environmental dimensions of sustainable development, and the aforementioned environmental cluster of the SDGs.<sup>558</sup> The UNEP works with 193 member states and representatives from civil society, businesses and others to address environmental challenges through the UN Environment Assembly, the world's highest-level-decision-making body on the environment.<sup>559</sup>

The Intergovernmental Panel on Climate Change (“**IPCC**”) is the global UN body for the assessment of climate change related science. Its reporting increasingly informs climate policy globally and within states. The IPCC has recognised the link between sustainable development and climate change, noting that climate change poses an increasing threat to equitable and sustainable development. It urged that climate policy be aligned with sustainable development and requires attention to adaptation and mitigation as well as strategies and action to be pursued towards climate-resilient pathways to sustainable development.<sup>560</sup> The IPCC has acknowledged that climate change is projected to undermine all aspects of food security including food production, access, use and price stability, with

---

<sup>553</sup> Target 13.1.

<sup>554</sup> Target 13.2.

<sup>555</sup> Target 13.b.

<sup>556</sup> Ladan MT ‘SDGs Framework as the Blueprint for Climate Change Action and Sustainable Development in Africa: Role of Law and Parliaments’ (2016) 22 SAJELP 159 at 167.

<sup>557</sup> Target 13.b.

<sup>558</sup> United Nations Environmental Programme available at <https://www.unep.org/about-un-environment>.

<sup>559</sup> [https://www.unep.org/environmentassembly/about-united-nations-environment-assembly?\\_ga=2.240966917.763181779.1633334104-825198589.1628667604](https://www.unep.org/environmentassembly/about-united-nations-environment-assembly?_ga=2.240966917.763181779.1633334104-825198589.1628667604).

<sup>560</sup> Intergovernmental Panel on Climate Change AR5 Synthesis Report (2014:90).



rural areas expected to experience the major impacts of this.<sup>561</sup> As livestock systems contribute significantly to GHG emissions and climate change, law and policy reform should introduce mitigation measures such as improving manure management, soil and nutrient management, water management, implementing cooling systems, improving livestock management, and feeding practices for animals, and modifying demand practices (such as dietary choices).<sup>562</sup>

The IPCC is currently in its Sixth Assessment cycle during which the body is producing its Assessment report from its three internal Working Groups, three Special Reports and the Synthesis Report, which was released in March 2023.<sup>563</sup> The Synthesis Report notes that (emphasis added):

*“Projected adverse impacts and related losses and damages from climate change escalate with every increment of global warming (very high confidence), but they will also strongly depend on socioeconomic development trajectories and adaptation actions to reduce vulnerability and exposure (high confidence). For example, development pathways with higher demand for food, **animal feed**, and water, more resource-intensive consumption and production, and limited technological improvements result in higher risks from water scarcity in drylands, land degradation and food insecurity (high confidence)”.*

This finding confirms that as the Poultry Industry in South Africa is the highest consumer of animal feed, it faces significant risk due to climate change.

#### IV. REPORTING ON ENVIRONMENTAL ENFORCEMENT

The legal mandate of the DFFE is to manage, protect and conserve South Africa’s environment and natural resources, and this mandate is informed by section 24 of the Constitution.<sup>564</sup> As discussed earlier, case law has called for the recognition of the intrinsic value of individual animals, and to consider animal welfare issues as environmental issues. Thus, animal welfare issues fall within the DFFE’s mandate.

The DFFE publishes annual environmental compliance and enforcement reports (“**NECERs**”) with the primary objective of providing a national overview of the environmental and compliance enforcement activities undertaken by relevant institutions to give effect to the environmental right. It also provides a deterrent effect to would-be offenders by publishing the consequences for those who choose to flout environmental laws.

Currently, the NECERs report on wildlife crimes, such as rhino poaching, but do not report on animal welfare issues. The introduction of NEMLAA may result in a shift towards reporting on animal well-being. The exclusion of animal welfare issues from the NECERs results in the public being less informed on the relationships between animal well-being and environmental protection. Further, the

<sup>561</sup> Intergovernmental Panel on Climate Change AR5 Synthesis Report (2014:69).

<sup>562</sup> The IPCC Special Report on Climate Change and Land: Food Security, available at <https://www.ipcc.ch/srccl/chapter/chapter-5/>.

<sup>563</sup> <https://www.ipcc.ch/report/ar6/syr/>.

<sup>564</sup> <https://www.dffe.gov.za/aboutus/department>.

Companies responsible for animal welfare issues as connected to environmental protection do not benefit from the deterrent effect of such reports.

It is clear that intensive livestock farming systems are major contributors towards climate change and cause significant environmental pollution and harm. If farms are able to improve the welfare conditions for Layer Hens, there would be less reliance on antibiotic drugs and other pharmaceuticals, for example, for controlling and preventing disease, and this would in turn result in less contaminants being released into the environment, reducing the risk of water and soil pollution. The need to improve sanitary and welfare conditions for Layer Hens in intensive confinement is therefore not only essential for the welfare of Hens, but vital for environmental protection, too.

Recommendations, including concerning environmental governance, are set out in Section V: Recommendations.

## 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:<br>VERSION 1 OF THE<br>INITIAL REPORT | PAGE NUMBER:<br>VERSION 2 OF THE<br>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> .<br><i>*Note – The Green rating awarded to Bidcorp for</i>  | 244  | 244  |



| DESCRIPTION OF AMENDMENT   | PAGE NUMBER:<br>VERSION 1 OF THE<br>INITIAL REPORT | PAGE NUMBER:<br>VERSION 2 OF THE<br>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

---

## SOUTH AFRICA



OPEN WING  
ALLIANCE®