

SCRAMBLING FOR THE TRUTH **V2**


ANIMAL LAW REFORM
SOUTH AFRICA

*EGGSPOSING
CORPORATE
HYPOCRISY
AND NON-
TRANSPARENCY*

**ENVIRONMENTAL
AND
CONSUMER RIGHTS
IN THE
EGG INDUSTRY IN
SOUTH AFRICA**

2024 -> (2025)



www.eggssouthafrica.org

***NOTE:** This is Version 2 of the report titled “Scrambling for the Truth: Eggsposing Corporate Hypocrisy and Non-Transparency” (“**Supplementary Report v2**”) originally published in September 2024 (**v1**). For a full record of all substantive changes made to the report, see the Revision Note on page 277 below. Any reference to the Supplementary Report or “this report” made throughout this document should be regarded as a reference to Version 2, rather than Version 1 of the Supplementary 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 is a civil society organisation and registered non-profit company and NPO acting in the public interest.

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 SA 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 SA, and that the impact of our work is enhanced through an intersectional understanding of animal flourishing, social justice and environmental protection.

To learn more about our work generally, please visit [our website](#). To learn more about our multi-phase Corporate Accountability Programme, please visit our dedicated [Project website](#), which contains this Supplementary Report, as well as our Initial Report, titled “*Laying Down the Facts: Animal Welfare Standards of the Companies Providing Your Favourite Foods*” (v2)*.

Please note that our Initial Report was originally published in August 2023. An updated version (v2) of the Initial Report (published in September 2024) contains minor amendments following input from a particular Selected Stakeholder post publication of version 1, and a further updated version (v3) of the Initial Report (published in February 2025), contains amendments related to the Regulations Regarding the Grading, Packing, and Marking of Eggs Intended for Sale in the Republic of South Africa. Any reference to the Initial Report made throughout this Supplementary Report should be regarded as a reference to Version 3 of the Initial Report.

RECOMMENDED CITATION

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CO-AUTHORS' DISCLAIMER

The co-authors of this Supplementary Report are Amy P. Wilson, Michaela Tafani-du Preez, Cheslyn C. Ceaser, and Melanie J. Murcott, each contributing expertise and legal research including in the areas of animal law, environmental law, corporate law. For detailed backgrounds, please refer to our [organisational website](#).

***PLEASE READ OUR LEGAL AND DISCLAIMERS SECTION.**

Please consult our Supplementary Glossary and Glossary from our Initial Report for a list of defined terms. Unless the context otherwise requires, capitalised terms have the meanings ascribed to them in the Supplementary Glossary or the Glossary from our Initial Report, as appropriate.

We value transparency and remain committed to ensuring accuracy in our reporting. We value effective engagement and welcome queries, comments, corrections, suggestions on and proposed amendments to this Supplementary Report as well as the Initial Report including by the (Phase 2) Selected Stakeholders, as appropriate. We reserve the right to amend this Supplementary Report, as needed.

Please email outreach@animallawreform.org for communications in respect of this Supplementary Report.

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'THE PUBLIC HAS A RIGHT TO BE INFORMED OF THE HUMANE OR INHUMANE TREATMENT OF ANIMALS... MEMBERS OF THE PUBLIC HAVE THE FREEDOM TO DECIDE WHICH COMMERCIAL ENTERPRISE THEY SUPPORT AND WHICH THEY DO NOT. THAT FREEDOM OF CHOICE CAN ONLY BE EXERCISED IF ACTIVITIES...ARE LAID BARE FOR THE PUBLIC'.

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(3) SA 425 (SCA)



THE PECKING ORDER:

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PUTTING OUR EGGS IN ONE BASKET

EXECUTIVE SUMMARY



PUTTING OUR EGGS IN ONE BASKET:

EXECUTIVE SUMMARY

BACKGROUND

In accordance with a growing international trend,¹ consumers in South Africa reportedly care about animal welfare when purchasing food.² This begs the question, *how much do consumers know about the realities and impacts of their food choices, such that they can act on their caring?* Further, animal welfare is but one component relevant to the production of food and consumer choices. Additional critical components include environmental impacts, food safety and health concerns, corporate and consumer practices, rights and social justice implications - which consumers may equally care about. However, consumers might not be fully aware of how these components factor into food production, let alone the scope of them. A dearth of publicly accessible and understandable information on food production, and corporate practices are part of the problem.

According to the United Nations Educational, Scientific and Cultural Organization (“UNESCO”), equal and universal access to information is vital for upholding basic human rights (including the right to dignity), eradicating poverty, and building inclusive societies.³ In recognition of the link between access to information and the fulfilment of human rights, UNESCO designated 28 September as “**International Day for Universal Access to Information**”. The purpose of this day is to raise awareness about the importance of expanding information laws and ensuring their effective implementation.⁴

In recognition of this significant day, this “**Supplementary Report**” is published, which aims to highlight the critical need for access to information in the context of animal agriculture in South Africa (“SA”). More specifically, it seeks to explore current gaps in awareness and understanding pertaining to key issues of: environmental, consumer, animal, food safety and health and human protection and rights. Without accurate, reliable, complete, relevant, timely and understandable information relating to these matters, consumers are constrained in their ability to make informed and empowered food choices. In addition to their freedom of choice, it impacts various other constitutional rights. The Egg Industry is the lens through which we explore

¹ National Sanitation Foundation (NSF) <https://www.nsf.org/news/nsf-reveals-americans-say-animal-wellness-important-role-purchasing-decisions> (accessed 18 August 2024).

² National Sanitation Foundation (NSF) <https://www.nsf.org/za/en/news/new-research-finds-84-of-south-africans-demand-animal-wellness-from-food-companies> (accessed 18 August 2024).

³ United Nations Educational, Scientific and Cultural Organization (“UNESCO”) <https://www.unesco.org/en/days/universal-access-information> (accessed on 14 August 2024).

⁴ *Ibid.*

these issues, however, the lessons from this study extend beyond this focus, and raise pressing questions about hidden socio-environmental impacts of the food system more broadly.

Approximately 202 million chickens are slaughtered for food every day globally.⁵ This means that approximately every single minute, 140 000 chickens are killed for human consumption.⁶ In SA, over 1 billion chickens are killed annually for food.⁷ This number does not include the millions of Egg-Layer Hens who are used in the Egg Supply Chain,⁸ nor the thousands of male chicks who are culled in production. Chickens are sentient beings with various capacities and capabilities,⁹ and deserving of legal protection, as supported by (among other factors) their inclusion in SA's predominant anti-cruelty statute, the Animals Protection Act¹⁰ and animal welfare provisions in other legislation, such as the Meat Safety Act¹¹ (specifically, the Poultry Regulations).¹²

The practice of '*factory farming*' originated in the Global North, specifically the United States of America ("U.S."), where currently 99% of livestock animals produced are factory farmed.¹³ Factory farming is a form of intensive agriculture designed to maximize profits using as few resources as possible.¹⁴ On factory farms, large numbers of animals are confined in small spaces, which often means keeping animals indoors for the duration of their lives.¹⁵ This practice is spreading to other parts of the world including the Global South,¹⁶ with Global North companies increasingly moving their operations into African countries.¹⁷ By 2030, meat consumption is projected to increase by 30% in Africa (from a low starting point), 18% in the Asia-Pacific

⁵ Our World in Data <https://ourworldindata.org/how-many-animals-get-slaughtered-every-day> (accessed on 14 August 2024).

⁶ Calculated using data *Ibid*.

⁷ United Nations FAO <https://www.fao.org/faostat/en/#data/QCL> (accessed on 14 August 2024).

⁸ See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

⁹ Marino, L (2017) Thinking chickens: a review of cognition, emotion, and behavior in the domestic chicken. *Animal cognition*, 20(2), pp.127-147, accessible at: <https://link.springer.com/article/10.1007/S10071-016-1064-4>.

¹⁰ Animals Protection Act 71 of 1962 ("APA"), accessible at: <https://www.gov.za/documents/animals-protection-act-22-jun-1963-0000> (accessed on 20 September 2024).

¹¹ Meat Safety Act 40 of 2000 ("MSA"), accessible at: <https://www.gov.za/documents/meat-safety-act> (accessed on 20 September 2024).

¹² Poultry Regulations published under Government Notice R.153, in *Government Gazette* 31021 on 24 February 2006, in terms of s 22 of the Meat Safety Act, accessible at: <https://www.gov.za/documents/meat-safety-act-regulations-poultry> (accessed on 20 September 2024).

¹³ Our World in Data <https://ourworldindata.org/how-many-animals-are-factory-farmed> (accessed on 14 August 2024).

¹⁴ Humane League, What is Factory Farming, <https://thehumaneleague.org/article/what-is-factory-farming> (accessed on 14 August 2024).

¹⁵ *Ibid*.

¹⁶ World Animal Protection <https://www.worldanimalprotection.org/latest/press-releases/11-emissions-climate-disasters/> (accessed on 14 August 2024).

¹⁷ Feed Navigator <https://www.feednavigator.com/Article/2020/02/24/Africa-s-rising-poultry-and-egg-market> (accessed on 14 August 2024).

region, and 12% in Latin America.¹⁸ Moreover, it is projected that by 2050, there will be 1.53 billion land animals raised in factory farmed conditions in SA.¹⁹

In 2022, it was estimated that there were 27.40 million Egg-Laying Hens in SA,²⁰ over 86% of which are confined to live in Battery Cages.²¹ That year approximately 723 million dozen eggs were sold in SA,²² equating to close to 8.7 billion eggs, meaning close to 7.5 billion eggs were produced from Layer Hens in cages.

Egg production is the fourth largest animal agriculture industry in SA.²³ The Egg Industry in SA consists of players across different sectors, including those involved directly in the Egg Supply Chain being egg producers; major retailers; hotel chains; fast food outlets and restaurants; wholesalers; animal feed producers and manufacturers; equipment producers. Many of the Corporations which are the largest egg producers in the country are vertically integrated companies which hold tremendous power over the sector.²⁴ Three major egg producers own 51% of the egg production market, while 49% of producers are small, medium and micro enterprises.²⁵

Eggs are a staple for many consumers in SA,²⁶ due to them being one of the most affordable sources of *animal* protein on the market.²⁷ They are also considered to be a ‘healthy’ food option,²⁸ with fewer environmental

¹⁸ *Ibid.*

¹⁹ Animal Advocacy Africa <https://www.animaladvocacyafrica.org/blog/ticking-clock-the-rapid-rise-of-farmed-animals-in-africa> (accessed on 14 August 2024).

²⁰ South African Poultry Association (“SAPA”) <https://www.sapoultry.co.za/wp-content/uploads/2023/06/Egg-industry-stats-summary-for-2022.pdf> (accessed on 14 August 2024).

²¹ National Council of Societies for the Prevention of Cruelty to Animals (“NSPCA”) <https://nspca.co.za/nspca-refutes-layer-hencage-sizes-in-south-africa/> (accessed on 14 August 2024).

²² South African Poultry Association: <https://www.sapoultry.co.za/wp-content/uploads/2023/06/Egg-industry-stats-summary-for-2022.pdf> (accessed on 16 September 2024).

²³ *Supra* note 20.

²⁴ Department of Agriculture Land Reform and Rural Development, A Profile Of The South African Egg Market Value Chain 2022, accessible at: <http://webapps1.daff.gov.za/AmisAdmin/upload/Egg%20Market%20Value%20Chain%20Profile%202022.pdf> (accessed on 14 August 2024), and Competition Commission South Africa https://www.compcom.co.za/wp-content/uploads/2024/02/PoultryMarket-Inquiry_Draft-TOR_Jan24_gazette-6-Feb-24.pdf (accessed on 14 August 2024) and Nkukwana, T.T (2018) *Global poultry production: Current impact and future outlook on the South African poultry industry*. South African Journal of Animal Science, 48(5), pp.869-884, accessible at: https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S0375-15892018000600007 (accessed on 14 August 2024).

²⁵ Department of Agriculture, Land Reform and Rural Development (“DALRRD”) 2021 <http://webapps1.daff.gov.za/AmisAdmin/upload/Egg%20Market%20Value%20Chain%20Profile%202021.pdf> (accessed on 14 August 2024).

²⁶ Tiwari, C et al (2023) Benefits, perceived and actual risks and barriers to egg consumption in low-and middle-income countries. *Frontiers in Animal Science*, 4, p.1270588, accessible at: <https://www.frontiersin.org/journals/animal-science/articles/10.3389/fanim.2023.1270588/full>.

²⁷ APE <https://www.afr1canpoultryequipment.co.za/blogs/news/why-chicken-egg-laying-business-is-lucrative-in-south-africa> (accessed on 14 August 2024).

²⁸ Healthline <https://www.healthline.com/nutrition/6-reasons-why-eggs-are-the-healthiest-food-on-the-planet> (accessed on 14 August 2024).

impacts than other animal protein sources.²⁹ The demand for eggs, and products containing eggs, is high and increases every year.³⁰ There are plans to significantly increase egg production in SA.³¹

However, the intensification of animal production, including in the Egg Industry, significantly impacts animal welfare³² and well-being; the environment; and society more generally.³³ Intensive egg production systems require vast amounts of land, including for soy and corn cultivation which are commonly used for feed and which have been shown to drive deforestation.³⁴ The Egg Industry contributes to greenhouse gas (“GHG”) emissions, accounting for around 4% of total livestock emissions in the US.³⁵ Manure from concentrated animal feeding operations can pollute air, soil and water with excess nutrients, pathogens and antibiotics.³⁶ Egg production requires excessive amounts of fresh water, with each kilogram of eggs requiring thousands of litres.³⁷ Transitioning to more sustainable farming practices and reducing egg consumption could substantially decrease the environmental footprint of the Egg Industry.³⁸

Many consumers may be unaware of the potential impacts and harms of the food they consume. This includes in relation to the harm caused to animals (such as Layer Hens and male chicks in the Egg Industry), as well as the environmental harm caused by the Egg Supply Chain from farm to fork.³⁹ Due to a lack of accurate and easily accessible information in relation to egg production, consumers may unwittingly contribute to these harms, many of which they might oppose, if the full picture was revealed to them.

²⁹ Egg Info <https://www.egginfo.co.uk/egg-facts-and-figures/sustainability> (accessed on 14 August 2024).

³⁰ *Ibid.*

³¹ SAPA <https://www.sapoultry.co.za/wp-content/uploads/2022/06/SAPA-ANNUAL-REPORT-2021.pdf> (accessed on 14 August 2024). According to SAPA, the “Egg Master Plan aims to drive growth for the South African Egg sector through several initiatives that include; enhanced per capita consumption, the substitution of imported egg products by local production, and encouraging export eggs by taking advantage of the African Continental Free Trade Area (AfCFTA).”

³² Fraser, D (2008) Animal welfare and the intensification of animal production. In *The ethics of intensification: Agricultural development and cultural change* (pp. 167-189). Dordrecht: Springer Netherlands, accessible at: https://link.springer.com/chapter/10.1007/978-1-4020-8722-6_12.

³³ Animal Law Reform South Africa, Laying Down the Facts (August 2023 updated September 2024). Available at: www.animallawreformsouthafrica.org/ (“Initial Report”).

³⁴ Estrada-Gonzalez, I.E et al (2020) Decreasing the environmental impact in an egg-producing farm through the application of LCA and lean tools. *Applied Sciences*, 10(4), p.1352, accessible at: <https://www.mdpi.com/2076-3417/10/4/1352>.

³⁵ Rogers, G.B et al (1976) *Energy use and conservation in the poultry and egg industry* (No. 354). US Department of Agriculture, Economic Research Service, [Commodity Economics Division, accessible at: <https://books.google.co.za/books?hl=en&lr=&id=s9sHRvH5WOgC&oi=fnd&pg=PR3&dq=Energy+Use+and+Conservation+in+the+Poultry+and+Egg+Industry>.

³⁶ Egg Farmers of Alberta <https://eggs.ab.ca/about-us/efa-blog/sustainable-egg-production-case-studies-energy-efficiency-green-power/> (accessed on 14 August 2024).

³⁷ Poultry World <https://www.poultryworld.net/poultry/environmental-footprint-of-the-egg-industry-revealed/> (accessed on 14 August 2024).

³⁸ Poultry Care <https://www.poultry.care/blog/modern-techniques-for-improving-sustainability-in-egg-production> (accessed 18 August 2024).

³⁹ Rahmani, D et al (2019) Are consumers’ egg preferences influenced by animal-welfare conditions and environmental impacts?. *Sustainability*, 11(22), p.6218, accessible at: <https://www.mdpi.com/2071-1050/11/22/6218>.

The Constitution of the Republic of SA, 1996 (“**Constitution**”) guarantees many rights – including the right to access to food.⁴⁰ It also contains rights to an environment not harmful to health and well-being⁴¹ and access to information.⁴² Stakeholders in the Egg Supply Chain hold (or ought to hold) information, which is crucial to their operations (and long-term sustainability), including about the impacts of their activities. The Constitution applies to Corporations through its inclusion of the principle of horizontal application, meaning that the Bill of Rights binds private entities like companies to the extent that it is applicable, taking into account the nature of the right and the duty imposed by it.⁴³

In ALRSA’s Phase 1⁴⁴ Report entitled “*Laying Down the Facts: Animal Welfare Standards of the Companies Providing your Favourite Foods*”,⁴⁵ we explored the Egg Industry in SA with a primary focus on the treatment of animals and a secondary focus on the environment. Our analysis revealed that Cruel Practices⁴⁶ such as the use of Battery Cages,⁴⁷ de-toeing, debeaking, and the culling of day-old male chicks were commonplace in egg production, and such practices could be and often were hidden from consumers. Further, our initial analysis revealed that Corporations in the Egg Supply Chain do not fully appreciate or understand the link between animal welfare and protection, environmental protection, and consumer protection (as well as food health and safety, and social justice and rights). This lack of understanding extends to a failure to recognise the interrelated nature of relevant guaranteed constitutional rights and law and policy. We also observed that laws governing the Egg Industry are deficient in terms of content, application, and enforcement.

Despite guaranteed constitutional rights to access to information and legal mechanisms aimed at transparency, such as the Promotion of Access to Information Act 2 of 2000 (“**PAIA**”),⁴⁸ obtaining access to information is not easy. Our experience in Phase 1, corroborated by this subsequent Phase 2⁴⁹ Project (expanded more

⁴⁰ S 27(b) of the Constitution of the Republic of SA, 1996 (“Constitution”), accessible at: <https://www.justice.gov.za/constitution/pdf.html>.

⁴¹ S 24 of the Constitution.

⁴² S 32 of the Constitution.

⁴³ See section 8 of the Constitution and Mupangavanhu, B.M (2019) Impact of the Constitution's Normative Framework on the Interpretation of Provisions of the Companies Act 71 of 2008. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 22(1), accessible at: <https://www.saflii.org/za/journals/PER/2019/59.html>.

⁴⁴ For the purposes of this Supplementary Report, “Phase 1” is defined as: Phase 1 of ALRSA’s Corporate Accountability Project relating to the poultry (specifically egg) industry in South Africa, entitled “*Laying Down the Facts: the Animal Welfare Standards of the Companies Providing your Favourite Foods*” subtitled “*Corporate Accountability in the Egg Industry*” which was undertaken from June 2022 and in terms of which ALRSA requested records and analysed Selected Stakeholders related to animal welfare for the period of 1 November 2018 to 30 November 2022, culminating in the publication of its Initial Report in August 2023 (updated in September 2024).

⁴⁵ *Supra* note 33.

⁴⁶ See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

⁴⁷ *Ibid*.

⁴⁸ The Promotion of Access to Information Act 2 of 2000 (“PAIA”), accessible at: https://www.gov.za/sites/default/files/gcis_document/201409/a2-000.pdf.

⁴⁹ Phase 2 of ALRSA’s Corporate Accountability Project relating to the poultry (specifically egg) industry in South Africa, entitled “*Scrambling for the Truth: Corporate Hypocrisy and Non-Transparency*” subtitled “*Environmental and Consumer Rights in the Egg Industry in South Africa*” which was undertaken from November 2023 to September 2023 and in terms of which ALRSA

upon in the sections below), revealed that many Corporations operating in the Egg Industry are not acting in a transparent and accountable manner. Phase 1 revealed many challenges experienced in seeking information as it related to animal protection (among other issues). To learn more about our engagement with stakeholders in the Egg Supply Chain during Phase 1, please refer to our Initial Report.⁵⁰

Accordingly, we publish this, our Supplementary Report (or Phase 2 Report) entitled “*Scrambling for the Truth, Eggsposing Corporate Hypocrisy and Non-Transparency Environmental and Consumer Rights in the Egg Industry in South Africa*”. For purposes of this investigation, we expanded our focus from animal welfare to environmental (primary) and consumer protection (secondary) aspects of the Egg Industry in South Africa. Our work for this Phase 2 has revealed similar and additional challenges.

SA has robust environmental protection which includes Environmental Legislation, regulations, and standards.⁵¹ However, it appears as if environmental disclosure is not effectively or consistently implemented.⁵² An apparent disconnect exists in understanding the relationship between animal welfare and environmental sustainability, evidenced by (non-)disclosures and reporting by Corporations.⁵³ This could be influenced by the absence of explicit, positive legal requirements imposed on Corporations to report on the treatment of animals as part of environmental sustainability measures despite the relationship between animal treatment and environmental sustainability.

In parallel, SA also has robust consumer protection legislation including in the form of the Consumer Protection Act (“CPA”).⁵⁴ The CPA aims to promote a fair, accessible and sustainable marketplace for consumer products and services by establishing national norms and standards relating to consumer protection.⁵⁵ It provides for improved standards of consumer information, prohibits certain unfair marketing and business practices, and promotes responsible consumer behaviour and a consistent legislative framework.⁵⁶ Moreover, the CPA establishes the National Consumer Commission (“NCC”) and gives consumers nine key statutory rights.⁵⁷

requested records and analysed Phase 2 Selected Stakeholders related to environmental protection and Consumer Protection Measures for the period of 1 December 2022 to 30 November 2023, culminating in the publication of this Supplementary Report in September 2024.

⁵⁰ *Supra* note 33.

⁵¹ Bowmans <https://www.bowmanslaw.com/wp-content/uploads/2020/06/GUIDE-SA-Environmental-Digital-2020.05.26.pdf> (accessed on 14 August 2024).

⁵² The Department of Forestry, Fisheries and Environmental Affairs (“DFFE”) https://www.dffe.gov.za/sites/default/files/docs/series17_environmental_reporting.pdf (accessed on 14 August 2024).

⁵³ The Conversation <https://theconversation.com/theres-still-a-gap-between-consumer-protection-and-sustainability-in-africa-81641> (accessed on 14 August 2024),

⁵⁴ The Consumer Protection Act 68 of 2008 (“CPA”), accessible at: https://www.saflii.org/za/legis/consol_act/cpa2008246.pdf.

⁵⁵ S 3 of the CPA.

⁵⁶ *Ibid.*

⁵⁷ S 5 and Chapter 2 of the CPA, respectively.

Corporations frequently make claims and statements about their operations, products, and impact through Public Statements and reporting about environmental sustainability and animal welfare. These narratives are often carefully crafted and controlled by the Corporations themselves and relate to only selected aspects of their operations. We found that there is a significant lack of independent, verifiable information available to the public when it comes to accurately determining the true impacts of corporate operations, including for example: their actual environmental footprint, labour practices, supply chain integrity, treatment of animals, compliance with regulatory standards, and Consumer Protection Measures. This lack of information including through non-disclosure is not in alignment with the principles of transparency and accountability required by our constitutional dispensation and could pose significant risks to both the Corporations themselves, and society at large.

The absence of disclosure and transparency also opens the door to various problematic practices and consumer risks, including as a result of Greenwashing,⁵⁸ Humane-washing,⁵⁹ Health-washing⁶⁰ and Blue-washing.⁶¹ We use the term ‘**Corporate Hypocrisy**’⁶² to encapsulate these various phenomena. This Supplementary Report, to be read in conjunction with our Initial Report, seeks to shed light on some of these issues and practices.

While the concept of ‘*corporate hypocrisy*’ has been used in other contexts around the world, including with reference to unfair labour practices,⁶³ inconsistent approaches to Corporate Social Responsibility (“**CSR**”),⁶⁴

⁵⁸ The making of false, misleading, or exaggerated claim/s about the impact that a company, industry, product or service has on the environment. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, marketing or other product-related communications - including in media, annual reports, or otherwise. Greenwashing is often used as an umbrella term to include other forms of problematic practices.

⁵⁹ The making of false, misleading or exaggerated claim/s about the treatment of animals or the conditions in which they are born, raised, transported, or killed, creating the impression that animals are treated with compassion or in an ethical manner. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.

⁶⁰ The making of false, misleading or exaggerated claim/s about the impact that a company, industry, product or service has on consumer or public health. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.

⁶¹ The making of false, misleading, or exaggerated claim/s about Corporate Social Responsibility (CSR), or the impact that a company, industry, product or service has, particularly as these relate to society, communities, human rights and international obligations. These practices can create a deceptive impression of ethical and responsible conduct. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.

⁶² False, misleading, or exaggerated claim/s or action/s made by a Corporation about the impact that a company, industry, product or service has on the environment, animals and/or people – which may create a perception that a Corporation is acting hypocritically. For purposes of this Supplementary Report, it encompasses practices such as Greenwashing, Humane-washing, Blue-washing and Health-washing.

⁶³ Wang, Y et al (2024) Silent Majority: How Employees’ Perceptions of Corporate Hypocrisy are Related to their Silence. *Journal of Business Ethics*, pp.1-20, accessible at: <https://link.springer.com/article/10.1007/s10551-024-05647/>.

⁶⁴ Zhigang, W., Lei, Z. and Xintao, L., 2020. Consumer response to corporate hypocrisy from the perspective of expectation confirmation theory. *Frontiers in Psychology*, 11, p.580114, accessible at: <https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2020.580114/full>.

and consumer perceptions,⁶⁵ its core meaning remains consistent: it represents the discrepancy between a company's stated values or commitments, and its actual practices or behaviours.

Comprehensive disclosure empowers consumers to make informed choices, especially as they become increasingly conscious of how their purchases affect their health, the environment, and animal welfare.⁶⁶ Disclosure is particularly important in the context of food, and more specifically and for purposes of this Supplementary Report, within the Egg Supply Chain,⁶⁷ one of the largest and most impactful animal agriculture industries in SA.⁶⁸

THIS PROJECT

ALRSA's Corporate Accountability Programme

Against this background, ALRSA, through its Corporate Accountability Programme, and as a member of the Open Wing Alliance, has undertaken a multi-phase into the Egg Industry in SA ("**Project**") yielding two public reports that seek to '*egg-spouse*' issues within the Egg Industry in SA, including poor governance measures (legislation, policy and industry-set standards), and unacceptable and problematic practices, and to further seek improved protections through tangible actions for relevant stakeholders.

We seek to incentivise **Corporations** through various measures including to: be more accountable specifically through transparency and cooperation with consumers and civil society; do better for the animals implicated in their supply chains, including through making and enforcing Cage-Free Commitments;⁶⁹ developing and implementing Internal Policies⁷⁰ that prohibit and, if prohibition is not possible, then to mitigate suffering and promote animal welfare and flourishing; and more generally to take actions that protect animals, the environment, their consumers and the public at large, impacted by their operations.

We seek to inform **the public** as to their rights, foster an interest in the SA regulatory regime as it pertains to food production (specifically animal agriculture and the Egg Industry); contribute to the discourse around these and related matters in SA; and provide resources the public can use in educational and advocacy efforts. We aim to aid **NGOs** in better understanding of and enhanced advocacy efforts relating to rights, Corporate Accountability and duties of Corporations, and foster collaboration in the shared goal of bettering the lives of animals, people, and the environment, all of which are intertwined.

⁶⁵ Jauernig, J et al (2021) The ethics of corporate hypocrisy: An experimental approach. *Futures*, 131, p.102757, accessible at: <https://www.sciencedirect.com/science/article/pii/S0016328721000665>.

⁶⁶ Axies Digital <https://axies.digital/transparency-matters-to-consumers/> (accessed on 14 August 2024).

⁶⁷ See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

⁶⁸ *Supra* note 20.

⁶⁹ See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

⁷⁰ See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

Lastly, we seek to provide **government** with non-industry sourced research and information on the Egg Industry in SA, which provides additional resources to assist with much-needed legislative and policy reform.

This Supplementary Report introduces a new spotlight on ‘egg-sposing’ Corporate Hypocrisy and in parallel introduces ethical and sustainable corporate practices, including Good Environmental, Social and Governance (“**ESG**”) Practices. Accordingly, we have centred our Research Component, contained in Section II of this Supplementary Report, on two key Pillars relevant to the South African Egg Industry: Environmental and Consumer Protection. These same Pillars (among others) were introduced in our Initial Report. For this Supplementary Report, we build on that research to deepen our analysis and offer further insights for enriched understanding. Our two selected Phase 2 Pillars contextualise potential harms relating to the Egg Industry; provide an overview of how the selected issues intersect with the Egg Supply Chain in SA; draw on relevant empirical data and other research relevant to these topics; outline the main governance frameworks related to them; highlight international and best practices, case studies and research; and propose reforms.

For the Stakeholder Component, we follow a similar methodology to the Initial Report, including selecting and rating 36 (or *3 dozen*) Corporations in the Egg Supply Chain based on criteria (and indicators) related to animal welfare, environmental practices, consumer protection, transparency and cooperation. Having evaluated the responses received from the Phase 2 Selected Stakeholders following PAIA requests and subsequent engagements, we allocated colour-ratings to each Phase 2 Selected Stakeholder as summarised in the table on the following pages against the six main categories of Supplementary Rating Criteria, each with specific Indicators (Demonstrates Compliance with and Enforcement of Relevant Environmental and Animal (Welfare) Legislation; Publishes and Implements Environmental and Animal Welfare Related Internal Policies; Adopts and Practices Consumer Protection Measures; Exercises Oversight of Suppliers to advance Responsible Sourcing; PAIA Manual Compliance; and Cooperates with Civil Society).

Finally, based on our research, and following our analysis of the Phase 2 Selected Stakeholders, thirteen recommendations are proposed in Section IV to promote Corporate Accountability and Corporate Transparency in SA’s Egg Supply Chain, particularly in relation to animal, environmental and consumer protection. Recommendations include both non-legal and legal avenues and tools including for corporate commitments, policies, transparency, standards, third-party certifications, and legal reforms in the egg industry, with updates and new proposals to address environmental, animal welfare, and consumer protection concerns.

STAKEHOLDER RATINGS

Stakeholders have been chosen for purposes of Phase 2 utilising the Supplementary Stakeholder Selection Criteria detailed in the Stakeholder Component contained in Section III. Certain Selected Stakeholders listed in the Initial Report were removed due to not meeting requirements determined in Phase 2. In some cases we shifted focus (e.g., from subsidiaries to holding companies) in light of a Selected Stakeholder’s corporate structure, and additional stakeholders were identified with reference to our Supplementary Stakeholder Selection Criteria. As per the Initial Report, Phase 2 Selected Stakeholders were separated into groups based on their role within the Egg Supply Chain, namely: Major Retailers; Fast Food Outlets and Restaurants;

Wholesalers; Hotels; Egg producers and Hatcheries; and Equipment Manufacturers. Two initial general observations are that most stakeholders either provided no response to us or provided limited information, and that Selected Stakeholders (chosen for both phases) were not necessarily more responsive in Phase 2, suggesting that civil society engagement and rating exercises of this nature do not necessarily incentivise transparency.

RATINGS PHASE 2 SELECTED STAKEHOLDERS

PHASE 2 SELECTED STAKEHOLDER	OVERALL RATING
MAJOR RETAILERS	
(1) Pick n Pay Group (Pick n Pay and Boxer) ⁷¹ (“ Pick n Pay ”), (2) Shoprite (Checkers and OK) ⁷² (“ Shoprite ”), (4) Woolworths ⁷³	●
(5) Massmart (Game* and Makro*) ⁷⁴ (“ Massmart ”)	●
(3) Spar ⁷⁵	□
FAST FOOD OUTLETS AND RESTAURANTS	
(6) Spur Corporation (Spur and Rocommamas) ⁷⁶ (“ Spur ”), (7) Famous Brands (including Mugg n Bean; Wimpy; and Steers) ⁷⁷ (“ Famous Brands ”), (8) Nando’s, ⁷⁸ (11) McDonalds, ⁷⁹ (13) Burger King, ⁸⁰ (14) Krispy Kreme ⁸¹	●

⁷¹ ALRSA’s request for access to information made in terms of the Promotion of Access to Information Act 2 of 2000 (“PAIA”) (“PAIA request”) for purposes of Phase 2 of our Project was addressed to Pick n Pay Stores Ltd, which includes its wholly owned subsidiary, Boxer Superstores (Pty) Ltd and Pick n Pay Retailers (Pty) Ltd (“Pick n Pay”). In Phase 1, we addressed Pick n Pay Retailers (Pty) Ltd.

⁷² ALRSA’s Phase 2 PAIA request was addressed to Shoprite Holdings Ltd, which includes its wholly owned subsidiaries, Shoprite Checkers (Pty) Ltd and OK Bazaars (Venda) Ltd (“Shoprite”). In Phase 1, we addressed Shoprite Holdings Ltd.

⁷³ ALRSA’s Phase 2 PAIA request was addressed to Woolworths Holdings Ltd (“Woolworths”).

⁷⁴ ALRSA’s Phase 2 PAIA request was addressed to Massmart Holdings Ltd, which includes its subsidiaries, Masstores (Pty) Ltd t/a Game and Masstores (Pty) Ltd t/a Makro (“Massmart”). In Phase 1, we addressed Massmart Holding Ltd.

⁷⁵ ALRSA’s Phase 2 PAIA request was addressed to Spar Group Ltd (“Spar”).

⁷⁶ ALRSA’s Phase 2 PAIA request was addressed to Spur Corporation Ltd, which includes its wholly owned subsidiaries, Spur Group (Pty) Ltd and Rocomamas Franchise Co (Pty) Ltd (“Spur”). In Phase 1, we addressed Spur Corporation Ltd.

⁷⁷ ALRSA’s Phase 2 PAIA request was addressed to Famous Brands Ltd, Steers (Pty) Ltd, which includes its subsidiaries, Mugg n Bean Franchising (Pty) Ltd and Wimpy Marketing Fund (Pty) Ltd (“Famous Brands”). In Phase 1, we addressed Mugg n Bean (Famous Brands Ltd), Wimpy (Famous Brands Ltd) and Steers (Famous Brands Ltd) as separate entities. For Phase 2, we approached them under their holding company, Famous Brands Ltd.

⁷⁸ ALRSA’s Phase 2 PAIA request was addressed to Chickenland (Pty) Ltd t/a Nando’s (“Nando’s”).

⁷⁹ ALRSA’s Phase 2 PAIA request was addressed to McDonald’s Corporation and its associated company MSA DEVCO (Pty) Ltd t/a McDonalds. In Phase 1, we addressed MSA DEVCO (Pty) Ltd t/a McDonalds.

⁸⁰ ALRSA’s Phase 2 PAIA request was addressed to Restaurant Brands International Inc., and its associated company, Burger King SA (Pty) Ltd (“Burger King”).

⁸¹ ALRSA’s Phase 2 PAIA request was addressed to Krispy Kreme Doughnut Corporation and Krispy Kreme (KK Doughnuts SA (Pty) Ltd) (“Krispy Kreme”).

PHASE 2 SELECTED STAKEHOLDER	OVERALL RATING
(9) Kauai, ⁸² (12) Starbucks ⁸³	<input type="checkbox"/>
(10) KFC ⁸⁴	<input type="radio"/>
WHOLESALE	
(15) Pioneer Food Group, ⁸⁵ (18) Unilever ⁸⁶	<input type="radio"/>
(16) Rhodes Food Group ⁸⁷	<input type="radio"/>
(17) Bidcorp, ⁸⁸ (19) Nestlé ⁸⁹	<input type="radio"/>
HOTELS	
(20) Sun International ⁹⁰	<input type="checkbox"/>
(21) City Lodge ⁹¹	<input type="radio"/>
(22) Southern Sun, ⁹² (23) Marriott Hotels, ⁹³ (24) Hilton Hotels ⁹⁴	<input type="radio"/>
EGG PRODUCERS AND HATCHERIES	

⁸² ALRSA's Phase 2 PAIA request was addressed to Real Foods Group (Pty) Ltd t/a Kauai.

⁸³ ALRSA's Phase 2 PAIA request was addressed to Starbucks Corporation and its associated company, Rand Capital Coffee (Pty) Ltd t/a Starbucks SA ("Starbucks").

⁸⁴ ALRSA's Phase 2 PAIA request was addressed to YUM!Brands Inc and KFC (Pty) Ltd t/a KFC. In Phase 1, we addressed KFC (YUM!Brands Inc).

⁸⁵ ALRSA's Phase 2 PAIA request was addressed to Pioneer Food Group (Pty) Ltd ("Pioneer Food Group").

⁸⁶ ALRSA's Phase 2 PAIA request was addressed to Unilever PLC and its associated company, Unilever (Pty) Ltd ("Unilever").

⁸⁷ ALRSA's Phase 2 PAIA request was addressed to Rhodes Food Group Holdings Ltd ("Rhodes Food Group").

⁸⁸ ALRSA's Phase 2 PAIA request was addressed to Bid Corporation Ltd and its subsidiary, Bidfood (Pty) Ltd ("Bidcorp"). In Phase 1, we addressed Bid Corporation Ltd.

⁸⁹ ALRSA's Phase 2 PAIA request was addressed to Nestlé S.A. (Switzerland Corporation) and its associated company, Nestlé (SA) (Pty) Ltd ("Nestlé").






⁹⁰ ALRSA's Phase 2 PAIA request was addressed to Sun International Ltd ("Sun International").

⁹¹ ALRSA's Phase 2 PAIA request was addressed to City Lodge Hotel Group ("City Lodge").

⁹² ALRSA's Phase 2 PAIA request was addressed to Southern Sun Ltd ("Southern Sun").

⁹³ ALRSA's Phase 2 PAIA request was addressed to Luxury Hotels International SA (Pty) Ltd t/a Protea Hotels by Marriott Hotels ("Marriott Hotels").

⁹⁴ ALRSA's Phase 2 PAIA request was addressed to Hilton Hotels Worldwide Holdings Inc. in respect of its hotels located in SA ("Hilton Hotels").

PHASE 2 SELECTED STAKEHOLDER	OVERALL RATING
(25) Kuipers (Eggbert) ⁹⁵ (“ Eggbert ”), (29) Lohmann, ⁹⁶ (30) Rossgro, ⁹⁷ (31) Windmeul, ⁹⁸ (32) Alzu ⁹⁹	
(26) Quantum Foods (Nulaid and Nova Feeds) ¹⁰⁰ (“ Quantum Foods ”), (27) Toplay ¹⁰¹ (28) Hy-Line ¹⁰²	
EQUIPMENT MANUFACTURERS	
(33) Big Dutchman ¹⁰³	
(34) AFGRI, ¹⁰⁴ (36) Astral (Meadow Feeds) (“ Astral ”)	
(35) RCL Foods (Epol and Driehoek Feeds) ¹⁰⁵ (“ RCL Foods ”)	

⁹⁵ ALRSA’s Phase 2 PAIA request was addressed to Kuipers Group (Pty) Ltd’s wholly owned subsidiary, and Eggbert Eggs (Pty) Ltd (“Eggbert”).

⁹⁶ ALRSA’s Phase 2 PAIA request was addressed to Lohmann Breeders SA (“Lohmann”).

⁹⁷ ALRSA’s Phase 2 PAIA request was addressed to Rossouw Poultry (Pty) Ltd t/a Rossgro (“Rossgro”).

⁹⁸ ALRSA’s Phase 2 PAIA request was addressed to Windmeul Eierboere (Pty) Ltd (“Windmeul”).

⁹⁹ ALRSA’s Phase 2 PAIA request was addressed to ALZU Agri (Pty) Ltd (“Alzu”).

¹⁰⁰ ALRSA’s Phase 2 PAIA request was addressed to Quantum Foods (Pty) Ltd, which includes its brands, Nulaid and Nova Feeds (“Quantum Foods”).

¹⁰¹ ALRSA’s Phase 2 PAIA request was addressed to Toplay Egg Co-Operative Ltd (“TopLay”).

¹⁰² ALRSA’s Phase 2 PAIA request was addressed to Hy-Line International and its associated company, Hy-Line SA (Pty) Ltd (“Hy-Line”).

¹⁰³ ALRSA’s Phase 2 PAIA request was addressed to Big Dutchman SA (Pty) Ltd (“Big Dutchman”).

¹⁰⁴ ALRSA’s Phase 2 PAIA request was addressed to Afgri Group Holding (Pty) Ltd (“AFGRI”).

¹⁰⁵ ALRSA’s Phase 2 PAIA request was addressed to RCL Foods Ltd, including its brands, Epol and Driehoek Feeds (“RCL Foods”).

SECTION I

CHICKEN & EGG INTRODUCTORY MATTERS



SECTION I:

INTRODUCTORY MATTERS

PART A: SUPPLEMENTARY GLOSSARY

Below are definitions and explanations of terms and abbreviations used widely in this Supplementary Report. The Glossary for the Initial Report (“**Initial Glossary**”), contains a list of defined terms utilised in this Supplementary Report, and should be read in conjunction with this Supplementary Glossary.

Additional terms and abbreviations not widely utilised are defined in the relevant part and section.

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
Audit Notices	A notice confirming that the checking of a company's environmental practices for compliance with laws has taken place.
Authorisations	Authorisations refers to the formal approval required for activities impacting the environment, which includes licences, permits, and other regulatory approvals. These Authorisations ensure that operations are sustainable and compliant with environmental laws.
Avian Flu	A highly contagious viral infection that primarily affects birds, especially poultry such as chicken and turkey.
Blue-washing	The making of false, misleading, or exaggerated claim/s about Corporate Social Responsibility (CSR), or the impact that a company, industry, product, or service has, particularly as these relate to society, communities, human rights and international obligations. These practices can create a deceptive impression of ethical and responsible conduct. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.
Consumer Awareness Statement	A Consumer Awareness Statement is a statement made by a Corporation informing consumers about a Corporation's practices and policies, especially regarding animal welfare and environmental issues. The statement is intended to provide true and correct information to consumers that will assist them in making informed decisions in respect

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
	of products sold by the Corporation. The information must therefore be clear and easy for the consumer to understand. Linked to Public Statements as defined in our Initial Report, it includes details about egg sourcing, the conditions that Layer Hens are kept in, and the Corporation's adherence to environmental responsibilities. This information reflects the Corporation's engagement with the public on these matters and empowers consumers to make informed decisions.
Consumer Protection Legislation	Consumer Protection Legislation (including any amendments, rules, lists, notices, regulations, etc.) which relates to the Egg Supply Chain, and for the purposes of this Supplementary Report includes, but is not limited to: Consumer Protection Act 68 of 2008, Competition Act 89 of 1998; and Marketing of Agricultural Products Act 47 of 1996.
Consumer Protection Measures	Encompasses measures taken by a Corporation to engage in fair dealings with consumers, emphasising the accountability of these Corporations in their production and marketing practices. From an environmental and animal use perspective, this protection mandates that Corporations adhere to sustainable practices, transparently disclose their environmental impact, and ensure that their products are ethically sourced. This includes minimising harm to the environment, reducing carbon footprints, and ensuring humane treatment of animals in their supply chains, among other issues. Additionally, it requires rigorous enforcement of laws and standards to prevent misleading claims about the environmental and ethical attributes of products, thereby safeguarding consumers' rights to make informed and conscientious choices.
Corporate Hypocrisy	False, misleading, or exaggerated claim/s or action/s made by a Corporation about the impact that a company, industry, product, or service has on the environment, animals and/or people – which may create a perception that a Corporation is acting hypocritically. For purposes of this Supplementary Report, it encompasses practices such as Greenwashing, Humane-washing, Blue-washing, and Health-washing.
Corporate Transparency	For purposes of this Supplementary Report, Corporate Transparency refers to a particular Phase 2 Selected Stakeholder's openness and willingness to disclose accurate and comprehensive information about its operations, governance, and practices. It involves providing clear and truthful communication about such corporation's activities, risks,

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
	impacts, and decision-making processes, promoting accountability, and building trust with shareholders, employees, customers, and the public and other stakeholders.
Emergency Incidents	S 30A of NEMA states that a company may be directed verbally or in writing to carry out a listed or specified activity without obtaining an environmental authorisation contemplated in s 24(2)(a) or (b) of NEMA, in order to prevent or contain an emergency situation or to prevent, contain or mitigate the effects of the emergency situation. We request records relating to any such emergency incidents and activities associated therewith during the relevant period.
Environmental Membership	Membership with regulatory bodies and/or associations that aid corporations in maintaining compliance with environmental laws and regulations, fostering responsible corporate behaviour, and contributing to a more sustainable and environmentally conscious business landscape.
ESG	Environmental, Social, Governance.
Environmental Legislation	Environmental Legislation (including any amendments, rules, lists, notices, regulations, etc.) which relates to the egg supply chain, and for the purposes of this Supplementary Report includes, but is not limited to: National Environmental Management Act 107 of 1998; National Environmental Management: Waste Act 59 of 2008; National Environmental Management: Air Quality Act 39 of 2004; National Water Act 36 of 1998; National Energy Act 34 of 2008; Carbon Tax Act 15 of 2019; and Climate Change Act 15 of 2024.
Greenwashing	The making of false, misleading, or exaggerated claim/s about the impact that a company, industry, product, or service has on the environment. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, marketing or other product-related communications - including in media, annual reports, or otherwise. Greenwashing is often used as an umbrella term to include other forms of problematic practices.
Good ESG Practice/s	Environmental, Social, and Governance (“ESG”) refers to a framework used to evaluate a company's impact on the environment, society, and its governance practices. It assesses factors such as environmental sustainability, social responsibility, diversity and inclusion, labour practices, ethical standards, transparency, and adherence to laws and regulations. Integrating ESG criteria helps investors and organisations

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
	make informed decisions that prioritise sustainability, risk management, and positive societal outcomes. Good ESG Practice sees corporations aligning business practices with constitutional and societal values related to environmental protection, consumer interests, and social responsibility. Adherence with ESG principles can help the Egg Industry minimise its negative environmental impact, enhance transparency and trust with consumers, and promote sustainable and ethical practices that benefit both the industry and society as a whole.
Health-washing	The making of false, misleading, or exaggerated claim/s about the impact that a company, industry, product or service has on consumer or public health. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.
Humane-washing	The making of false, misleading, or exaggerated claim/s about the treatment of animals or the conditions in which they are born, raised, transported, or killed, creating the impression that animals are treated with compassion or in an ethical manner. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.
Initial Glossary	The glossary of abbreviations and terms used in our Initial Report (defined as Glossary therein).
Initial Report	ALRSA's report published in August 2023, entitled " <i>Laying Down the Facts: Animal Welfare Standards of the Companies Providing your Favourite Foods</i> " in respect of Phase 1 (and updated in September 2024), accessible at: www.animallawreform.org .
Just Transition	An approach aimed at the reduction of the negative impacts on environmentally degrading activities, specifically as it relates to the use of non-renewable energy sources and its effect on climate change. It involves the transition to a zero-carbon economy.
Listed Activities	NEMA lists various activities (known as "listed activities") 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. Failure to do so is an offence.

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
Mitigation Measures	Actions taken to reduce or prevent adverse environmental impacts caused by development activities. These measures aim to minimise harm to the environment and mitigate any negative consequences on ecosystems, biodiversity, or communities.
Multinational Corporation	OWA Africa defines Multinational Corporations as enterprises that are headquartered in an African country and conduct business operations in other countries in Africa, and abroad, beyond their country of origin, thereby extending their reach and influence.
Phase 1	Phase 1 of ALRSA’s Corporate Accountability Project relating to the poultry (specifically egg) industry in South Africa, entitled “ <i>Laying Down the Facts: the Animal Welfare Standards of the Companies Providing your Favourite Foods</i> ” subtitled “ <i>Corporate Accountability in the Egg Industry</i> ” which was undertaken from June 2022 and in terms of which ALRSA requested records and analysed Selected Stakeholders related to animal welfare for the Phase 1 Period. culminating in the publication of its Initial Report in August 2023 (updated in September 2024).
Phase 1 Period	Period of 1 November 2018 to 30 November 2022, for purposes of Phase 2 requests, analysis and rating.
Phase 2	Phase 2 of ALRSA’s Corporate Accountability Project relating to the poultry (specifically egg) industry in South Africa, entitled “ <i>Scrambling for the Truth: Corporate Hypocrisy and Non-Transparency</i> ” subtitled “ <i>Environmental and Consumer Rights in the Egg Industry in South Africa</i> ” which was undertaken from November 2023 to September 2023 and in terms of which ALRSA requested records and analysed Phase 2 Selected Stakeholders relating to among others environmental protection and Consumer Protection Measures for the Phase 2 Period, culminating in the publication of this Supplementary Report in September 2024.
Phase 2 Period	Period of 1 December 2022 to 30 November 2023, for purposes of Phase 2 requests, analysis, and ratings. (<i>To be differentiated from the period over which Phase 2 occurred, as defined above</i>).
Phase 2 Selected Stakeholder(s)	All or any one of the entities in the Egg Supply Chain being either a major retailer, fast food outlets and restaurants, wholesalers, hotels, egg producers and hatcheries and equipment manufacturers identified as

ABBREVIATION OR TERM UTILISED	FULL NAME / DESCRIPTION
	such based on factors (as further elaborate on in this Supplementary Report) including the size of their market share; whether they have been identified as a relevant entity for purposes of OWA’s cage-free agenda; their popularity (i.e. whether they are well-known or associated with iconic brands in SA to the general public); whether they are a Multinational Corporation, potentially headquartered in Africa (or SA) and has a presence in SA; the existence of a Cage-free Commitment and/or their messaging and marketing to consumers, selected by ALRSA as a Stakeholder for purposes of this Supplementary Report.
Relevant Legislation <i>*updated definition from Initial Glossary</i>	Environmental Legislation and Consumer Protection Legislation as defined in this Supplementary Glossary and Animal Legislation as defined in the Initial Glossary, and any other legislation that may be relevant to the Egg Industry.
Responsible Sourcing	Responsible Sourcing by Corporations, involves sourcing materials, products, and/or services from suppliers that have measures in place, such as Internal Policies which they are compliant with, to ensure the ethical treatment of animals and minimise environmental impacts.
Supplementary Glossary	This Glossary of abbreviations and terms used in this Supplementary Report, which includes updates to terms from the Initial Glossary as well as additional terms introduced in Phase 2.

***Note: All references to legislation, regulations, policies, and other legal documents are as amended and include the regulations, notices and similarly gazetted documents.*

PART B: BACKGROUND, PURPOSE, GOALS AND NEED

BACKGROUND

Phase 1¹⁰⁶ and Our Initial Report

In August 2023, ALRSA published its first report entitled “*Laying Down the Facts: Animal Welfare Standards of the Companies Providing your Favourite Foods*” (the “**Initial Report**”),¹⁰⁷ which set out our extensive research into the Egg Supply Chain and practices occurring therein, as well as analysed 36 (or 3 dozen) key stakeholders in SA’s Egg Supply Chain across six critical areas.¹⁰⁸ Phase 1 focused specifically on animal welfare and aimed to set the scene of the current Egg Industry in SA at a high level. It laid out information relating to the supply and value chain in the country; identified key stakeholders; and provided significant information relating to animal welfare considerations. As far as we are aware, this was the first of its kind report relating to animals and animal agriculture more specifically in the context of Corporate Accountability in the country and it sought to provide much needed research on farmed animal realities and regulation.

The Initial Report discussed interrogated the egg industry in six main issue areas, termed “Pillars” including Animal Welfare,¹⁰⁹ Environmental,¹¹⁰ Food Safety and Health¹¹¹, Social Issues and Rights¹¹², Consumer Protection¹¹³ and Corporate and Business¹¹⁴. It explored how these issues were governed in SA through a focused lens of animal protection, and recognised that even where positive law existed, enforcing this remains an uphill battle.¹¹⁵

¹⁰⁶ For purposes of this Supplementary Report, Phase 1 refers to the period commencing in June 2022 upon which ALRSA requested records and analysed Selected Stakeholders related to animal welfare for the period of 1 November 2018 to 30 November 2022, culminating in the publication of the Initial Report.

¹⁰⁷ *Supra* note 33.

¹⁰⁸ *Ibid* at pages 50-203.

¹⁰⁹ *Ibid* at pages 53 – 137.

¹¹⁰ *Ibid* at pages 138 – 160.

¹¹¹ *Ibid* at pages 161-170.

¹¹² *Ibid* at pages 171-179.

¹¹³ *Ibid* at pages 180-193.

¹¹⁴ *Ibid* at pages 193-201

¹¹⁵ *Ibid* at pages 53 - 137 and 138 – 160.

Animal Welfare



Graphic Representation of Summary of Key Research Areas from Phase 1 reflected as “Pillars (adapted from Initial Report)”

Our analysis initially revealed that the Egg Industry negatively impacts on animal welfare through practices like Battery Cage¹¹⁶ confinement of Layer Hens¹¹⁷ and the culling of day-old male chicks.¹¹⁸ These and other issues cause immense suffering and have broader negative impacts on the environment, human rights, and consumer protection.¹¹⁹ These practices further have significant constitutional and environmental consequences due to their substantial environmental footprint, including GHG emissions, water, and soil pollution, and resource competition, to name a few.¹²⁰ In tackling these practices, enhancing Corporate Transparency¹²¹ is imperative.

¹¹⁶ See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

¹¹⁷ See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

¹¹⁸ *Supra* note 33 at pages 81-82.

¹¹⁹ *Supra* note 33 at pages 257 - 258.

¹²⁰ In terms of the Constitution of the Republic of SA, 1996 (“Constitution”), companies have a constitutional mandate outlined in s 24 to protect the environment for present and future generations, necessitating actions to prevent pollution, ecological degradation, and promote conservation and sustainable development. This includes complying with the National Environmental Management Act 107 of 1998 (“NEMA”) for obtaining environmental authorisations, conducting environmental impact assessments (“EIAs”), and developing Environmental Management Plans (“EMPs”) to manage environmental risks. Additionally, companies must adhere to the Specific Environmental Management Acts (“SEMA”) and related legislation.

¹²¹ For purposes of this Supplementary Report, Corporate Transparency refers to a Selected Stakeholder’s openness and willingness to disclose accurate and comprehensive information about its operations, governance, and practices. It involves providing clear and truthful communication about the Corporation’s activities, risks, and decision-making processes, promoting accountability and building trust amongst shareholders, employees, customers, and the public.

In addition, our Initial Report revealed that many Selected Stakeholders¹²² view environmental protection and animal welfare as separate issues, failing to recognise their interconnectedness.¹²³ This is despite constitutional and other court rulings to this effect and law and policy, and against the context that many Corporations push eco- and animal- friendly narratives that they are committed to “sustainability” and “going green” (among others) while simultaneously showing little, if any, concern for the animals implicated in their supply chains.

PURPOSE AND GOALS

Phase 2¹²⁴ and this Supplementary Report

Recognising the need for deeper investigation, specifically as matters relating to animal welfare are interlinked to the environment and consumer protection, ALRSA publishes this Supplementary Report.

The Supplementary Report centres on two main research Pillars: Environmental Protection and Consumer Protection. We seek to reveal the intrinsic links between Corporate Accountability (specifically transparency), consumer rights, and environmental protection. The links extend to the environmental impacts of animal agriculture, including the Egg Supply Chain, and the protection of animals and their interests within these systems. Furthermore, it deals with Corporate Hypocrisy, and increasing criticism of practices included therein, including Greenwashing, which underscores the urgent need to address Corporate Transparency, environmental concerns, and Consumer Protection Measures¹²⁵ concurrently.¹²⁶

Accordingly, through investigating consumer protection, animal welfare, and environmental practices,¹²⁷ ALRSA seeks to enhance transparency in the Egg Industry and shed light on the challenges

¹²² See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

¹²³ *Supra* note 33 at page 252.

¹²⁴ The period upon which ALRSA requested records and analysed Phase 2 Selected Stakeholders related to animal welfare, the environment and consumer protection for the period of November 2023 to September 2023 culminating in the release of this Supplementary Report.

¹²⁵ Encompasses measures taken by a Corporation to engage in fair dealings with consumers, emphasising the accountability of these Corporations in their production and marketing practices. From an environmental and animal use perspective, this protection mandates that Corporations adhere to sustainable practices, transparently disclose their environmental impact, and ensure that their products are ethically sourced. This includes minimising harm to the environment, reducing carbon footprints, and ensuring humane treatment of animals in their supply chains. etc. Additionally, it requires rigorous enforcement of laws and standards to prevent misleading claims about the environmental and ethical attributes of products, thereby safeguarding consumers' rights to make informed and conscientious choices.

¹²⁶ Bowmans <https://bowmanslaw.com/insights/south-africa-developments-in-the-regulation-of-green-claims-and-greenwashing/> (accessed on 14 August 2024).

¹²⁷ The foundation of our requests for access to information, submitted under the Promotion of Access to Information Act 2 of 2000 (“**PAIA**”), is rooted in the environmental right enshrined in s 24 of the Constitution of the Republic of SA, 1996 (“**Constitution**”). Our PAIA requests address the significant environmental impacts of the Egg Industry and the welfare of millions of chickens. Accordingly, we requested information from Selected Stakeholders about their animal welfare,

and opportunities within the Egg Supply Chain, while offering actionable recommendations for improvement.

Building on the Initial Report, Phase 2 is aimed at taking a deeper and more comprehensive look into the Egg Industry in SA, and is premised on the understanding that Corporations cannot, in SA's constitutional dispensation, merely focus on profit maximisation. They owe constitutional, legal, and various other duties and obligations to society at large, including animals. Specifically, they are and must be held accountable for the infringement of rights and interests as well as harmful practices which are inherent to and associated with industrial animal agriculture and which impact not only animals, but the environment and society more generally. Accordingly, Corporations need to adopt Good ESG Practices (including ecologically sustainable and just egg production), since a healthy environment is a precondition to all other rights, including sustainable food systems.

It is no secret that Corporations operating in a neo-liberal capitalist economy are largely driven by profitability. However, given the critical and dominant role that they play in society, it is no longer acceptable that their bottom line is the only motivating factor and that they are only accountable internally.

Our goals with this Supplementary Report are to:

- Build on work done in the Initial Report with a context-sensitive focus that is aligned with ALRSA's organisational vision, mission, and goals;
- Illustrate the extent to which issues of environmental, consumer and animal protection, rights, and concerns (such as health) and transparency are of import and relevant to the Egg Industry in SA;
- Educate consumers and raise public awareness around farmed animal issues in SA, particularly in relation to Layer Hens (some of the most abused animals on the planet), including on matters such as animal welfare and its intersections with consumer protection issues and environmental harms;
- Contextualise and create an understanding of the scope of farmed animal use in SA, particularly for chickens, including extent of use, stakeholders, governmental support and policies, regulation and gaps, reporting, oversight, and enforcement, specifically on animal welfare and environmental issues and its intersections;
- Develop a rating of corporate role players in the Egg Supply Chain on factors such as their transparency and accountability in respect of animal welfare, environmental and consumer protection;

environmental, and Consumer Protection Measures within the Egg Supply Chain. We report on our findings in this Supplementary Report.

- Explore key avenues and strategies including legal and non-legal creative approaches to encourage state and non-state actors to undertake actions which improve protection for Layer Hens and other animals;
- Contribute to and update our designated [website for egg matters](#) in SA in order to support online campaigns, for use by other relevant stakeholders, and to empower consumers to make more ethical choices and/or advocate for enhanced disclosure from Corporations, particularly pertaining to chickens and Layer Hens; and
- Work towards legal and policy reform for tangible change for animals.

PART C: CORPORATE ACCOUNTABILITY AND TRANSPARENCY

CONSTITUTIONAL AND LEGAL GROUNDING

In 2016, the Constitutional Court recognised that the human right to have the environment protected under s 24 of the Constitution of the Republic of SA, 1996 (“**Constitution**”) includes the protection of animal welfare.¹²⁸ The court further recognised that animals are sentient beings with intrinsic value as individuals.

South African Constitution – Extracted Right

24. Environment

Everyone has the right

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

The Constitution has horizontal application, meaning that it not only applies to relationships between the state or government and the public, but also applies as between members of the public and non-state actors such as Corporations.¹²⁹ Our Constitution also recognises the right to access to information.¹³⁰

¹²⁸ *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016), accessible at: <https://www.saflii.org/za/cases/ZACC/2016/46.html>.

¹²⁹ S 8(2) of the Constitution.

¹³⁰ S 32 of the Constitution.

From this constitutional starting point, our Project seeks to improve regulatory governance relating to animal production and use, through enhanced Corporate Accountability mechanisms.

Our stakeholder engagements in developing both this Supplementary Report and the Initial Report relied on the constitutional right to access to information¹³¹ and legislation giving effect to that right, namely, PAIA. Originally intended to be entitled “*Spreading their Wings: Exploring Corporate Accountability for Chickens in SA*”, during the Project it became apparent that this was no longer an appropriate title. This was due in large part to the responses received, or rather *not* received, from the Phase 2 Selected Stakeholders. Accordingly, a more apt name for Phase 2 of the Project emerged: “*Scrambling for the Truth: Eggsploring Corporate Hypocrisy and Non-Transparency Environmental and Consumer Rights in the Egg Industry in SA*”.

Our engagements have yielded mixed results: in a few cases, the results are positive, and in others, the information we received was unhelpful and even negative.¹³² Overall, our engagements and analysis have revealed that there is a dearth of information when it comes to determining the true impact of egg production on animals, the environment and the public. Due to the lack of publicly available information, consumers remain largely in the dark on these matters. This is particularly so in relation to the extent to which stakeholders in the Egg Industry are adhering to Good ESG Practice.¹³³ This uncertainty is concerning and requires further engagement and advocacy efforts in seeking increased Corporate Transparency and Corporate Accountability¹³⁴ in the Egg Industry in SA, and potentially other industries, including animal agriculture more broadly.

CORPORATE ACCOUNTABILITY

In this Supplementary Report, Corporate Accountability broadly speaking means mechanisms to ensure responsibility and compliance with applicable laws, standards, and other governance measures.¹³⁵

¹³¹ *Ibid.*

¹³² *Supra* note 33 at page 204-256.

¹³³ For purposes of this Supplementary Report, Good Environmental, Social, and Governance (“ESG”) Practice has been defined as follows: ESG refers to a framework used to evaluate a company’s impact on the environment, society, and its governance practices. It assesses factors such as environmental sustainability, social responsibility, diversity and inclusion, labour practices, ethical standards, transparency, and adherence to laws and regulations. Integrating ESG criteria helps investors and organisations make informed decisions that prioritise sustainability, risk management, and positive societal outcomes. Good ESG Practice sees corporations aligning business practices with constitutional and societal values related to environmental protection, consumer interests, and social responsibility. Adherence with ESG principles can help the Egg Supply Chain minimise its negative environmental impact, enhance transparency and trust with consumers, and promote sustainable and ethical practices that benefit both the industry and society as a whole. According to <https://iclg.com/practice-areas/environmental-social-and-governance-law/south-africa>, “Under the current disclosure regime in SA, there is no explicit duty to provide disclosures on ESG matters. However, JSE-listed companies are subject to general continuing disclosure obligations under the JSE Listings”.

¹³⁴ While there is no universal definition of what this term means, Corporate Accountability broadly speaking means mechanisms to ensure responsibility and compliance with applicable laws, standards and other governance measures.

¹³⁵ *Supra* note 33 at page 25.

Corporations are driven largely by profitability and are accountable to shareholders, investors and other internal stakeholders, but increasingly, given the critical and dominant role Corporations play in society, it is no longer acceptable that their bottom line is the only motivating factor and that they are only accountable internally.

Corporations are responsible for the impacts that they have on the world around them. They are responsible to those that their operations have an impact on, which expands past shareholders and investors, and includes the public and society at large, employees, and other specific stakeholders, such as the environment and animals. It includes legal dimensions and non-legal ones, such as ethical and moral responsibilities. These responsibilities (and duties) in respect of the Pillars identified, are expanded on in Sections II and III of this Supplementary Report.

Corporations have both negative and positive duties to their stakeholders. They have negative duties not to do harm to people, the environment, as well as animals. Increasingly, around the globe, pressure is being put on Corporations and work is being done to address the negative impacts of corporations on socio-ecological systems as a feature of predatory capitalism.¹³⁶

They have positive duties to their stakeholders, not only to minimise harm but to be responsible. In recent years, terms such as Corporate Social Responsibility (“**CSR**”) and Environmental, Social, Governance (“**ESG**”) have become more well-known and part of business models.¹³⁷ In brief, **Environmental** relates to impact: resource use; waste; carbon emissions; climate change; **Social** relates to: human & consumer rights; community engagement; and **Governance** relates to Honesty and transparency.¹³⁸

CORPORATE TRANSPARENCY

In the context of this Supplementary Report, and due to the vast potential impacts of the Egg Supply Chain on animal welfare, the environment, and consumer protection (among other key issues), it is imperative that Corporations are transparent about these impacts. While there are several ways to ensure accountability, some of which were expanded on in our Initial Report, we have looked at accountability through transparency (Corporate Transparency),¹³⁹ with a focus on the environment (primary) and

¹³⁶ Alnesafi, A et al (2016) Global Capitalism and Predatory Practices of Transnational Corporations in Developing Countries, accessible at: https://www.researchgate.net/publication/305403660_Global_Capitalism_and_Predatory_Practices_of_Transnational_Corporations_in_Developing_Countries_pp61-86.

¹³⁷ Malinauskaite, J. and Jouhara, H., 2024. Corporate Social Responsibility (CSR) and Environmental, Social and Governance (ESG). Introduction to sustainable business models. *Sustainable Energy Technology, Business Models, and Policies*, pp.41-66, accessible at: https://www.researchgate.net/publication/377508885_Corporate_Social_Responsibility_CSR_and_Environmental_Social_and_Governance_ESG_Introduction_to_sustainable_business_models.

¹³⁸ Tractian <https://tractian.com/en/blog/esg-environmental-social-governance> (accessed on 14 August 2024).

¹³⁹ For purposes of this Supplementary Report, Corporate Transparency refers to a Selected Stakeholders Corporate Transparency refers to a company’s openness and willingness to disclose accurate and comprehensive information about its operations, governance, and practices. It involves providing clear and truthful communication about the Corporation’s

consumer protection (secondary). One key manner to achieve transparency is through an outright request for documentation and records in terms of PAIA (“**PAIA requests**”), as we have done for Phases 1 and 2 respectively. Whether these are forthcoming or not, Corporations have Public Statements on their websites, in their annual reports, in media, and other fora. By performing a cross-check on what a Corporation says, compared to what they do, one might determine whether they are being transparent, responsible, and accountable.

Efforts for increased transparency involve the inclusion of additional key role players (outside of Corporations themselves), including but not limited to key industry bodies (which often represent industry interests both formally and informally); bodies constituted to protect or adjudicate on rights and disputes such as the Information Regulator;¹⁴⁰ Consumer Protection Forum (“**CPF**”) (part of the NCC);¹⁴¹ Competition Commission of South Africa (“**CCSA**”);¹⁴² Consumer Goods Council of South Africa (“**CGCSA**”);¹⁴³ and even government departments, tribunals and courts. This is particularly relevant and useful in instances where stakeholders are unresponsive, non-compliant, act in an obstructive and reluctant manner, or where there is otherwise a need to challenge the *status quo*.

Our definition of “*Corporate Transparency*” for purposes of this Supplementary Report refers to a particular Phase 2 Selected Stakeholder’s openness and willingness to disclose accurate and comprehensive information about its operations, governance, and practices. It involves providing clear and truthful communication about the Corporation’s activities, risks, and decision-making processes, promoting accountability, and building trust with shareholders, employees, customers, the public and other stakeholders.

Corporate Transparency assists with and enables consumers to make informed purchasing decisions. Of particular import is animal-related products purchased and consumed by members of the public, given the potentially harmful nature of animal agriculture. By ensuring accurate information about Corporations’ supply chains, animal welfare, environmental and Consumer Protection Measures, consumers are more empowered to support ethical businesses, encourage better corporate practices, and hold companies accountable for their actions.¹⁴⁴

activities, risks, and decision-making processes, promoting accountability and building trust with shareholders, employees, customers, and the public.

¹⁴⁰ The Information Regulator is, among others, empowered to monitor and enforce compliance by public and private bodies with the provisions of the Promotion of Access to Information Act 2 of 2000 (“PAIA”), and the Protection of Personal Information Act 4 of 2013 (“POPIA”) <https://inforegulator.org.za/wp-content/uploads/2020/07/Information-Regulator-Annual-Report-2023-Compressed.pdf>.

¹⁴¹ National Consumer Commission (“NCC”) <https://thencc.org.za/consumer-protection-forum/> (accessed on 14 August 2024).

¹⁴² Competition Commission of SA <https://www.compcom.co.za/>.

¹⁴³ Consumer Goods Council of SA <https://www.cgcsa.co.za/>.

¹⁴⁴ *Smuts and Another v Botha* (887/2020) [2022] ZASCA 3; 2022 (3) SA 425 (SCA) (10 January 2022) accessible: <https://www.saflii.org/za/cases/ZASCA/2022/3.html>.

From an environmental protection and sustainability perspective, Corporate Transparency would involve Corporations being open about their environmental impacts and mitigation efforts, including but not limited to their carbon emissions, waste, and resource use and management.¹⁴⁵ This information is crucial for consumers and investors prioritising sustainability,¹⁴⁶ promoting compliance with environmental laws,¹⁴⁷ and safeguarding company reputations.

In terms of consumer protection, transparency in relation to the sourcing of ingredients, manufacturing, and supply chains helps consumers understand product safety and production and consumption impacts.¹⁴⁸ It allows them to avoid products that are made in ways that cause harm to the environment (including animals), and make more ethical choices, fostering trust between companies and consumers.¹⁴⁹ It also protects them from Corporate Hypocrisy and being potentially misled by deceitful or harmful practices.

Overall, Corporate Transparency may enhance reputations, customer loyalty, and competitive advantage by aligning ethical values with environmental protection (including animal welfare and well-being).¹⁵⁰ It helps identify and mitigate risks early, addressing potential issues proactively. Transparency may also attract investors by demonstrating Good ESG Practices, including enhanced reporting, meeting the growing demand for responsible business conduct.¹⁵¹ Increasingly, transparency is becoming a legal requirement, scattered throughout different pieces of legislation, soft law, court rulings, and otherwise.

CORPORATE TRANSPARENCY IN THE EGG INDUSTRY

Our Initial Report revealed that there is a lack of accountability and transparency in the Egg Industry.¹⁵² Food safety is a critical concern when it comes to eggs produced by Layer Hens kept in Battery Cages.¹⁵³ These intensive confinement systems can lead to higher stress levels and a greater susceptibility to diseases

¹⁴⁵NRDC: <https://www.nrdc.org/bio/josh-axelrod/corporate-honesty-and-climate-change-time-own-and-act>.

¹⁴⁶ Investopedia: <https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp>.

¹⁴⁷ 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 (“NEM:WA”); The National Environmental Management: Air Quality Act 39 of 2004 (“NEMAQA”) and the National Water Act 36 of 1998 (“NWA”).

¹⁴⁸ Qimaone <https://www.qimaone.com/resource-hub/benefits-of-supply-chain-transparency> (accessed on 14 August 2024).

¹⁴⁹ Oracle <https://www.oracle.com/za/scm/supply-chain-transparency/> (accessed on 14 August 2024).

¹⁵⁰ *Ibid.*

¹⁵¹ ESW <https://esw.com/blog/the-rising-importance-of-supply-chain-transparency/> (accessed on 14 August 2024); and Blendhub <https://blendhub.com/the-benefits-of-transparency-engaging-consumers-mitigating-risks-discovering-new-opportunities/> (accessed on 14 August 2024). Adherence with ESG principles can help the Egg Industry minimise its negative environmental impact, enhance transparency and trust with consumers, and promote sustainable and ethical practices that benefit both the industry and society as a whole. CFA Institute <https://www.cfainstitute.org/en/rpc-overview/esg-investing> (accessed on 14 August 2024).

¹⁵² *Supra* note 33.

¹⁵³ Humane Society International https://www.hsi.org/wp-content/uploads/assets/pdfs/hsi-fa-white-papers/food_safety_risks_of_cage_egg.pdf (accessed on 14 August 2024).

among Layer Hens, which can compromise the safety of the eggs for human consumption.¹⁵⁴ Battery Cages often result in poor sanitary conditions, increasing the risk of contamination with pathogens such as salmonella.¹⁵⁵ Transparent practices in the Egg Industry can expose the conditions under which eggs are produced, allowing consumers to make more informed choices and potentially avoid purchasing eggs from systems that may pose higher health and environmental risks. By being transparent about their production methods and supply chains, Corporations can also be pressured to adopt more humane and sanitary practices, thereby improving both animal welfare and food safety.¹⁵⁶

(MIS)REPRESENTATION BY CORPORATIONS

Corporate Transparency is often overshadowed when Corporations mislead consumers in an effort to appear as if they display the highest standards of animal welfare and environmental protection measures.¹⁵⁷ A major challenge that consumers face is that numerous Corporations portray themselves as “sustainable”, “environmentally friendly” and proponents of good animal welfare in their marketing; on their products; and in other public statements and arenas.¹⁵⁸ Such claims may however, be vastly exaggerated, misleading, or even false.¹⁵⁹ For example, Corporations that utilise or source eggs from cruel and inhumane Battery Cages may hold themselves out to be committed to responsible and ethical sourcing. These statements are not only broad and otherwise problematic, but are difficult to verify, given there is a general lack of transparency around sourcing in the Egg Supply Chain.

This Supplementary Report delves into marketing practices adopted by Corporations within the Egg Supply Chain illustrative of potential Corporate Hypocrisy. These marketing practices can actively impact consumers’ right to be informed about the true impacts of their purchases on animals; health (animal, individual and public); and the environment,¹⁶⁰ among other issues. It may particularly impact their right to make an informed choice when purchasing eggs or egg products.

EMPOWERING CONSUMERS THROUGH AWARENESS

As aforementioned, egg production, including through intensive systems such as Battery Cages, has wide-ranging implications that go beyond animal welfare concerns (although the impact on animals is

¹⁵⁴ *Supra* note 33.

¹⁵⁵ *Supra* note 33 at page 161-170.

¹⁵⁶ Sardar, M.A et al (2023) Farm animal welfare as a key element of sustainable food production: Animal welfare and sustainable food production. *Letters In Animal Biology*, 3(2), pp.01-08, accessible at: https://www.researchgate.net/publication/378687982_Farm_animal_welfare_as_a_key_element_of_sustainable_food_production_Animal_welfare_and_sustainable_food_production.

¹⁵⁷ World Favor <https://blog.worldfavor.com/why-corporate-transparency-is-so-necessary> (accessed on 14 August 2024).

¹⁵⁸ DOLCEMASCOLO, D. and MARTINA, G., 2010. Sustainable marketing: how environmental and social claims impact on the consumer’s purchasing behavior https://www.politesi.polimi.it/retrieve/a81cb059-db0c-616b-e053-1605fe0a889a/2011_12_Dolcemascolo_Martina.pdf (accessed on 14 August 2024).

¹⁵⁹ MamaMagic <https://www.mamamagic.co.za/milestones-magazine/debunking-greenwashing-claims-when-green-is-not-so-clean/> (accessed on 14 August 2024).

¹⁶⁰ In terms of the CPA consumers have the right to equality in the consumer market and Protection against discriminatory marketing practices.

hugely problematic and vast).¹⁶¹ Educating consumers about these impacts is essential for informed decision-making and promoting sustainable practices.

Consumers cannot exercise their right to freedom of choice, especially in relation to food products, without access to information.¹⁶² Access to information is an important aspect of realising the environmental right, as it enables consumers to make informed decisions that reflect their commitment to environmental stewardship and sustainability.¹⁶³ Understanding the true environmental footprint of production methods can empower consumers to align their choices with environmental standards, promote sustainability, and hold industries accountable. This encourages enhanced transparency and recognises environmental sustainability as a fundamental consumer right.¹⁶⁴ As consumer preferences increasingly lean toward sustainability,¹⁶⁵ addressing environmental issues in the Egg Supply Chain becomes imperative to avoid market backlash and regulatory scrutiny.¹⁶⁶

Investing in alternative production methods may reduce resource consumption and GHG emissions, promoting long-term sustainability.¹⁶⁷ Consumer protection, encompassing health, safety, ethics, and sustainability, is bolstered by providing environmental impact information to consumers.¹⁶⁸ This Supplementary Report therefore highlights the need for Corporate Transparency regarding Cruel Practices¹⁶⁹ in the Egg Supply Chain and their potential impacts, aiming to empower consumers with knowledge and promote accountability for a more sustainable food system.

¹⁶¹ Supra note 33.

¹⁶² EJSSH https://ejssh.uitm.edu.my/images/Vol6Sept22/BUS18016_EJSSHVOL6_2_SEPT2022.pdf (accessed on 14 August 2024).

¹⁶³ National State Of The Environment Project Environmental Governance, *Background Research Paper produced for the South Africa Environment Outlook report on behalf of the Department of Environmental Affairs and Tourism* https://soer.environment.gov.za/soer/UploadLibraryImages/UploadDocuments/080218190523_Environmental_Governance_-_Background_Paper_WU45Q.pdf (accessed on 14 August 2024).

¹⁶⁴ European Union Agency for Fundamental Rights <https://fra.europa.eu/en/publication/2024/enforcing-consumer-rights-combat-greenwashing> (accessed on 14 August 2024).

¹⁶⁵ Supra note 2.

¹⁶⁶ Retailing Africa <https://retailingafrica.com/blog/2023/04/04/qa-why-consumers-are-shopping-for-sustainability/> (accessed on 14 August 2024).

¹⁶⁷ Poultry Site <https://www.thepoultrysite.com/articles/how-solar-lightens-the-load-for-free-range-egg-farming> (accessed on 14 August 2024).

¹⁶⁸ Environment: <https://www.environment.co.za/environmental-laws-and-legislation-in-south-africa/consumer-protection-act-protects-environment-too.html>.

¹⁶⁹ As noted in our Phase 1 Report, Practices involved in the Egg Supply Chain that cause suffering and pain to layer-hens including, but not limited to the use of Battery Cages, beak trimming, de-toeing or toe clipping, and/or overstocking within cages and in relation to male Chicks - culling. Many of these practices have been banned or are being phased out elsewhere in the world due to their cruel nature.

Consumers cannot fully exercise their right to freedom of expression without access to information, as informed expression requires a clear understanding of the issues at hand, enabling them to voice opinions, advocate for change, and engage in meaningful discourse.¹⁷⁰

South African Constitution – Extracted Right

“16. Freedom of expression

1. Everyone has the right to freedom of expression, which includes

- a. freedom of the press and other media;
- b. freedom to receive or impart information or ideas;
- c. freedom of artistic creativity; and
- d. academic freedom and freedom of scientific research...”

TOOLS TO ENSURE CORPORATE TRANSPARENCY

S 32 of the Constitution recognises the right to access to information. PAIA was enacted to give effect to that right. PAIA empowers the public to make requests for access to records to both public bodies and private bodies (subject to certain requirements), and imposes duties on those bodies to provide access, subject to a number of grounds of refusal listed in PAIA, in fulfilment of the right.

South African Constitution – Extracted Right

“32. Access to information

1. Everyone has the right of access to

- a. any information held by the state; and
- b. any information that is held by another person and that is required for the exercise or protection of any rights.

2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.”

PAIA AND CORPORATE ACCOUNTABILITY

The right of access to information and enabling legislation, PAIA, were important for purposes of our Project, as they empowered us to request information from Corporations within the Egg Industry (private bodies), for the purposes of protecting the environmental right recognised in s 24 of the Constitution. This includes both the environmental aspects included explicitly in the right, as well as its less explicit but clear interpretation by the Constitutional Court, other courts, and other legislation as it pertains to animals and their welfare and well-being.

¹⁷⁰ International Media Support <https://www.mediasupport.org/wp-content/uploads/2015/02/foe-briefingnotes-ims-cld.pdf> (accessed on 14 August 2024).

PAIA IN PRACTICE

Every private and public body is required to have a publicly available, and readily accessible PAIA Manual as well as a dedicated Information Officer.¹⁷¹ The PAIA Manual must contain information such as: types of records available without a formal request; how to request access to information; contact details of the Information Officer; remedies available if access is denied; description of public services and how to access them; security measures for information protection; Legislation that is applicable to the private or public body's work; etc.

When requesting information from a public or private body, one must approach their Information Officer.

There are prescribed forms that must be used when making requests which are available in the PAIA Regulations and on the Information Regulator's [website](https://info regulator.org.za/paia-forms/).¹⁷²

If a public or private body decides to refuse a request, their refusal must be based on recognised grounds provided for in PAIA and must be coupled with justifications for refusal.

If the record is not applicable to the private body or public body, does not exist, or is not available, an affidavit detailing steps taken to locate the record must be provided in accordance with s 55 of PAIA.

There are procedures that must be followed including internal appeal processes, complaints to the Information Regulator, and judicial review.

¹⁷¹ As defined in s 1 of PAIA.

¹⁷² Information Regulator, website: <https://info regulator.org.za/paia-forms/>.

TOOLS FOR TRANSPARENCY

INFORMATION REQUESTS



What is PAIA?

- The Promotion of Access to Information Act 2 of 2000
- Implements constitutional right to access information (s32, Constitution)¹
- Allows public to request records from public and private bodies
- Requires bodies to provide access to requested records



Why PAIA matters

- Empowers informed decisions through access to among others:
 - Product safety information
 - Environmental impact data
 - Animal welfare practices
 - Corporate Social Responsibility claims
 - Holds companies accountable
 - Promotes business transparency



Common Misconceptions

- "Only lawyers can use PAIA" (False - anyone can!)
- "You can only request information from government" (False - PAIA include private bodies, subject to requirements)
- "A body's refusal is final" (False - appeal processes apply)



How to use PAIA

- Use the guide on Information Regulator website²
- Identify the relevant body, including to determine whether they are private or public. Note: private bodies have additional requirements (constitutional rights impacted)
- Submit request using correct form & documents
- Follow up within legal time frames



**YOU HAVE THE RIGHT
TO ACCESS TO INFORMATION!**

TRANSPARENCY IS KEY IN AN OPEN DEMOCRATIC SOCIETY, AND PAIA IS ONE TOOL YOU CAN USE TO ENSURE YOUR RIGHTS ARE PROTECTED, AND THAT CORPORATIONS, GOVERNMENT (AND OTHERS) ARE HELD ACCOUNTABLE!

¹ The Constitution of the Republic of South Africa, 1996.

² Information Regulator: https://infoeregulator.org.za/wp-content/uploads/2020/07/PAIA-Guide-English_20210905.pdf.

PART D: SCOPE AND STRUCTURE OF SUPPLEMENTARY REPORT

COMPONENTS

Against the above background, Phase 2 of the Project and this Supplementary Report consist of two main interrelated components reflecting processes which ran parallel over the course of approximately 12 months since the publication of the Initial Report in August 2023¹⁷³:

- **Component 1: Research Component** (primarily contained in Section II of this Supplementary Report); and
- **Component 2: Stakeholder Component** (primarily contained in Section III of this Supplementary Report).

This Supplementary Report aims to enrich the ongoing discourse on crucial matters such as Corporate Accountability and Corporate Transparency, animal protection, environmental protection, and consumer protection. It also aims to serve as a resource for the public, NGOs, the government, and Corporations. However, this Supplementary Report cannot feasibly provide a comprehensive analysis of all relevant issues; it acknowledges the complexities and nuances inherent in these topics, recognising that there are many important realities and issues that may not be fully included or highlighted herein.

RESEARCH COMPONENT 2: SUMMARY

The Research Component in Section III of this Supplementary Report¹⁷⁴ builds on the Initial Report and provides additional detailed insights into the selected Research Pillars for purposes of this Supplementary Report: Environmental and Consumer Protection. It highlights that the Egg Supply Chain has the potential to contribute significantly to environmental harm and that, despite expansive environmental laws, implementation, including in the form of reporting is not thorough enough to ensure effective accountability. While some reporting is mandated by the government, it is insufficiently enforced, leaving gaps in environmental accountability. Similarly, despite strong consumer protection laws, consumers are still kept in the dark about many practices, risks, and harms, leaving gaps in consumer accountability.

We have divided our two selected Pillars into the following main Parts:

- **PART A:** Laying the Foundations

¹⁷³ As updated in September 2024.

¹⁷⁴ *Supra* note 33.

- **PART B:** Laying Down the Facts
- **PART C:** Laying Down the Law
- **PART D:** Laying it On the Line
- **PART E:** Laying it at Stakeholders' Doors

Supplementary Environmental Pillar

This Supplementary Report has a primary focus on the environmental aspects of industrial egg production processes due to the potential far-reaching (negative) impacts of the egg industry on environmental rights and interests. Accordingly, the Environmental Pillar takes an in-depth look into certain environmental issues applicable to the Egg Industry in SA; relevant environmental laws; the environmental right and its intersection with other rights; how the environmental right protects animals; duties on Corporations; and consequences of non-compliance with legislation. It also provides an overview of the information contained in our PAIA requests to Phase 2 Selected Stakeholders insofar as they relate to the environment. Finally, the Pillar explores the regulation of environmental reporting in SA; potential gaps and challenges, and opportunities and recommendations for reform.

Supplementary Consumer Protection Pillar

This Supplementary Report has a secondary focus on the consumer aspects of industrial egg production due to the potential far-reaching impacts (negative) impacts on consumer rights and interests. In the Consumer Protection Pillar, we follow a similar structure and style to the Environmental Pillar. We provide a high-level overview of consumer protection laws applicable to the Egg Supply Chain; consumer protection rights (from our Constitution, legislation, and international guidelines) and the effects thereof; the duties on Corporations to uphold consumer protection; and the consequences of non-compliance with consumer protection laws. We also provide an overview of the information contained in our PAIA requests to Phase 2 Selected Stakeholders insofar as they relate to consumer protection. Finally, the Pillar explores transparency issues in the Egg Industry and provides some opportunities/ recommendations for reform.

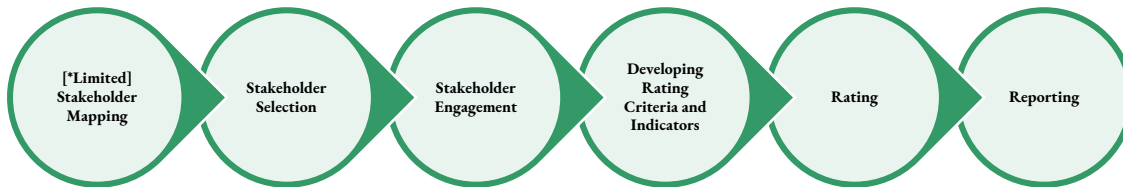
STAKEHOLDER COMPONENT 2: SUMMARY

In this Supplementary Report, we adopted largely the same overall methodology as the Stakeholder Component of as our Initial Report.¹⁷⁵ (See summary graphic representation of our methodology below.) We amended certain aspects within the methodology, as expanded on in Section III, the Stakeholder Component. For example, we expanded our stakeholder selection range and added or removed stakeholders from our list. For more information on the 6-step process adopted in Phase 1, see our Initial Report.¹⁷⁶

¹⁷⁵ *Supra* note 33 at pages 207-232.

¹⁷⁶ *Supra* note 33 at pages 204 – 256.

Step 1 Step 2 Step 3 Step 4 Step 5 Step 6



Graphic Representation of Methodology: Phase 2 Component 2

Phase 2 Stakeholders were chosen utilising the Supplementary Stakeholder Selection Criteria detailed in the Stakeholder Component contained in Section III. Certain Selected Stakeholders listed in the Initial Report were removed due to not meeting requirements for our Phase 2 selection criteria and additional stakeholders were added, as appropriate.¹⁷⁷ As per our Initial Report, Phase 2 Selected Stakeholders were separated into groups based on their role within the Egg Supply Chain, namely: Major Retailers; Fast Food Outlets and Restaurants; Wholesalers; Hotels; Egg producers and Hatcheries; and Equipment Manufacturers.

SUPPLEMENTARY REPORT FORMAT

This Supplementary Report is divided into five main Sections with additional Pillars and Parts and one Appendix, which are:

- **Section I:** *Chicken & Egg*: Introductory Matters
- **Section II:** *Shedding Light*: Research Component
 - Supplementary Environmental Pillar [2.2]: *Stomping on Eggshells*: “Egg-Sposing” Environmental Harm In The Egg Industry
 - Supplementary Consumer Protection Pillar [5.2]: *Running Fowl*: “Egg-Noring” Buyer’s Rights & Corporate Obligations
- **Section III:** *Ruffling Feathers*: Stakeholder Component
- **Section IV:** *Coming Home to Roost*: Key Observations & Recommendations
- **Appendix I:** *Ruling the Roost*: Selected PAIA Correspondence and Engagement with the NSPCA
- **Legal and Disclaimers**

¹⁷⁷ As aforementioned in some cases, in Phase 2, we selected holding companies directly and included requests relating to their subsidiaries, instead of selecting subsidiaries.

DISCLAIMERS, EXCLUSIONS, LIMITATIONS, SCOPE

These disclaimers are to be read in conjunction with the Disclaimers in the Initial Report and as contained on our dedicated website: www.eggssouthafrica.org.

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 Supplementary 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 SA 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 Supplementary 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 Supplementary Report.

As an organisation focused primarily on animal law, this is the predominant lens through which this Supplementary Report (as read with the Initial Report) has been drafted and should be considered, i.e., the centering of animals, their interests, and their intrinsic worth in the dialogue. This Supplementary Report (as read with the Initial Report) is further aimed at providing information related to the environment and consumer protection as interrelated to animal protection. 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. Should the contents of this Supplementary Report (as read with the Initial Report) affect the reputation or business interests of any company, organisation, government entity, or individual mentioned, it constitutes the truth and fair comment and is stated in the public interest.

This Supplementary Report (as read with the 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 30 September 2024 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, human rights, environmental law, consumer protection, and Corporate Accountability, particularly as it relates to food systems, and requires 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.

The focus of this Supplementary Report is on industrialised animal agricultural operations and practices occurring therein. Given the various types of such systems, these all have different considerations and consequences. Statements, observations and recommendations may / do / 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 in relation thereto. 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 Supplementary Report (as read with the Initial Report). Statements made will not apply to all facilities and stakeholders and should not be construed as such.

This Supplementary Report (as read with the 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 Supplementary 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 Supplementary Report (as read with the 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 Supplementary Report (as read with the Initial Report) and neither ALRSA nor the co-authors or commenter accept responsibility or liability to any party, whether in contract, delict (including negligence) or otherwise relating hereto.

This Project has been conducted and this Supplementary Report (as read with the 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 right of freedom of expression as contained in the Constitution of the Republic of SA, 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 Supplementary Report (as read with the Initial Report) does not constitute legal advice.

The inclusion of any resources or referenced materials, sources or sites in this Supplementary Report (as read with the Initial Report) does not constitute endorsement thereof, nor do ALRSA and/or the co-authors, nor donors accept any responsibility for the content, or the use of or reliance upon same.

ALRSA aims to promote constructive dialogue and encourage responsible and ethical practices concerning animals, human and environmental rights, consumer protection, corporate transparency and accountability, among others.

SECTION II

SHEDDING LIGHT

RESEARCH COMPONENT



INTRODUCTION

This Section II contains the Research Component of this Supplementary Report and provides context about the Egg Industry in practice, including its impacts and its regulation. Research conducted for this component informed the Stakeholder Component as further set out in Section IV. Specifically, the matters and governance measures identified within them, informed the PAIA Requests sent to the Phase 2 Selected Stakeholders as well as the Phase 2 rating Criteria and Indicators.

Section II of our Initial Report titled: “*Chicken and Egg: Industry Overview*” provided an overview of the Egg Industry in SA, including different role players, the process involved in egg production, the types of egg products sold, different kinds of production systems, the SA market (local, regionally and internationally), job and economic related matters and industry challenges and threats.

Section III of our Initial Report titled: “*Revealing the Cracks*”, provided context of the Egg Industry in practice, through the six identified Pillars being Animal Welfare; Environment; Food Safety and Health; Social Issues and Rights, Consumer Protection, and Corporate and Business. Due to the focus of the Initial Report, animal welfare and well-being was highlighted throughout each of the Pillars.



Graphic Representation of focus of Initial Report intersecting Key Research Areas reflected as “Pillars”

Given the focus of this Supplementary Report on environmental and consumer related issues, only these two pillars are expanded on below, however the aforementioned pillar issues are woven in throughout, given their intersection and interconnectedness.

ENVIRONMENTAL PILLAR

STOMPING ON EGGSHELLS?

EGG-SPOSING ENVIRONMENTAL HARM IN THE EGG INDUSTRY



SECTION II:

Supplementary Environmental Pillar:

Stomping on Eggshells: “Egg-Sposing” Environmental Harm In The Egg Industry

PART A: LAYING THE FOUNDATIONS

A WORLD IN CRISIS

Our planet is facing converging socio-ecological crises, including an environmental and climate crisis.¹⁷⁸ Intensive animal agriculture, or “factory farming,”¹⁷⁹ is a significant but often overlooked contributor to these problems.¹⁸⁰ It is considered a “silent culprit” of climate change.¹⁸¹ In SA, a country grappling with many challenges, including severe poverty, food insecurity, and inequality, these environmental issues exacerbate existing socio-economic problems.¹⁸² The government tends to promote intensive animal production as a solution to many socio-economic problems.¹⁸³ However, in reality, such practices tend to worsen rather than alleviate socio-ecological vulnerabilities.¹⁸⁴ These global challenges are intensified by the rise of meat and animal product consumption around the world.

¹⁷⁸ United Nations <https://press.un.org/en/2021/sc14445.doc.htm> (accessed on 14 August 2024).

¹⁷⁹ Factory farming is defined as “a system of farming in which a lot of animals are kept in a small closed area, in order to produce a large amount of meat, eggs, or milk as cheaply as possible”. Cambridge Dictionary <https://dictionary.cambridge.org/dictionary/english/factory-farming> (accessed on 14 August 2024).

¹⁸⁰ Compassion in World Farming <https://www.ciwf.org.uk/factory-farming/environmental-damage/> (accessed on 14 August 2024).

¹⁸¹ World Animal Protection <https://www.worldanimalprotection.org/siteassets/pdfs/climate-change-and-cruelty-a-world-animal-protection-report.pdf> (accessed on 14 August 2024).

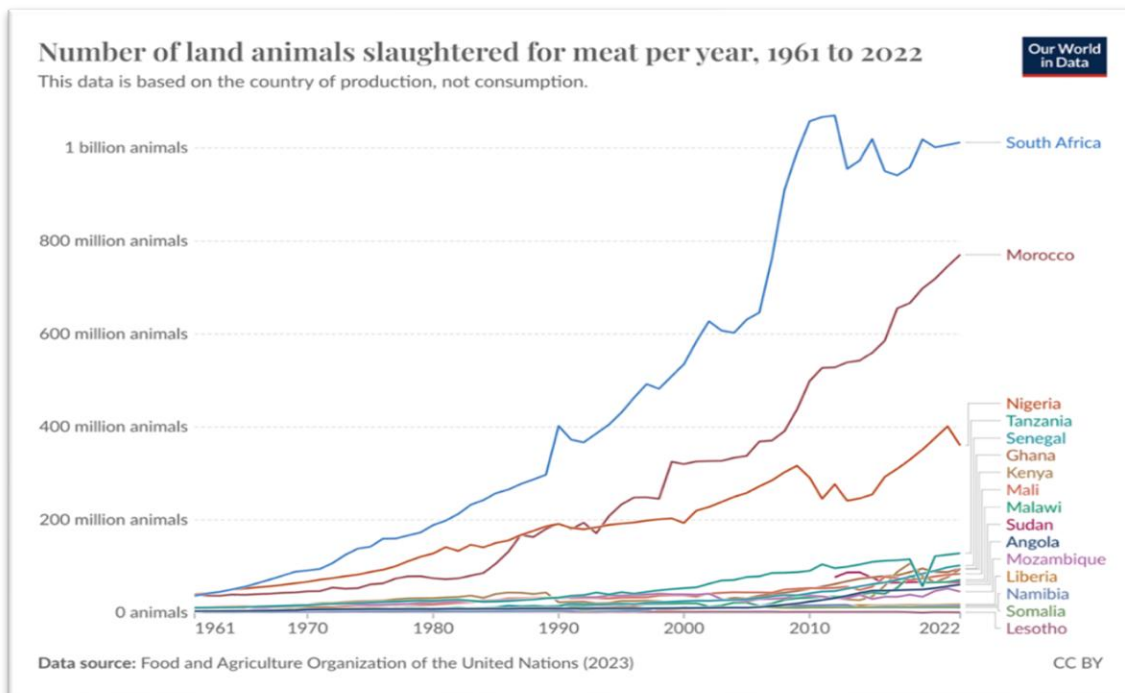
¹⁸² Presidential Climate Commission <https://pcccommissionflow.imgix.net/uploads/images/A-Just-Transition-Framework-for-South-Africa-2022.pdf> (accessed on 14 August 2024). SA is regarded as one of the most unequal countries in the world: Stats SA <https://www.statssa.gov.za/?p=12930> (accessed on 14 August 2024).

¹⁸³ DALRRD and DFFE, are promoting laws and policies to boost animal use, citing reasons like food security and job creation. However, they have been criticised for overlooking the negative impacts, worsening inequalities, and adding to environmental problems like the climate crisis.

¹⁸⁴ See Swemmer, S (2019) International law, domestic violence, and the intersection with nonhuman animal abuse. *Society & Animals*, 29(2), pp.203-222, accessible at: https://brill.com/view/journals/soan/29/2/article-p203_5.xml, and Murcott, M.J. and Ndlela, T (2021) Innovative regulation of meat consumption in SA: An environmental rights perspective. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 24(1), accessible at: <https://scielo.org.za/pdf/pej/v24n1/07.pdf> and Pro Veg <https://proveg.org/5-pros/pro-justice-hunger/> (accessed on 14 August 2024).

Meat [and Egg] Consumption Globally and in SA

The global rise in meat consumption is often linked to unsustainable agricultural practices.¹⁸⁵ The dramatic increase in demand for meat is disproportionate to population growth. For instance, in 1961, SA had a population of 16.91 million people,¹⁸⁶ with 36.56 million land animals slaughtered for meat in that year.¹⁸⁷ Fast forward to 2022, the population was 62.38 million,¹⁸⁸ while the number of land animals slaughtered in 2022 skyrocketed to 1.01 billion.¹⁸⁹ This data reveals a 269% increase in population alongside an astonishing 2,800% increase in meat consumption. Keeping up with these production levels, requires sacrificing vast areas of land, water resources, and biodiversity, while significantly increasing GHG emissions,¹⁹⁰ which is untenable in a time of climate crisis. These sacrifices extend beyond environmental concerns, affecting various groups of society in ways that are often overlooked. For instance, small-scale farmers experience dispossession of land, displacement, loss of livelihoods, food insecurity, water insecurity, and become more vulnerable to the impacts of climate change.¹⁹¹



¹⁸⁵ Earth.org <https://earth.org/how-animal-agriculture-is-accelerating-global-deforestation/> (accessed on 14 August 2024).

¹⁸⁶ Our World in Data <https://ourworldindata.org/population-growth> (accessed on 14 August 2024).

¹⁸⁷ Our World in Data <https://ourworldindata.org/explorers/animal-welfare?f> (accessed on 14 August 2024).

¹⁸⁸ *Supra* note 186.

¹⁸⁹ *Supra* note 187.

¹⁹⁰ Kozicka, M et al (2023) Feeding climate and biodiversity goals with novel plant-based meat and milk alternatives. *Nature Communications*, 14(1), p.5316, accessible at: <https://www.nature.com/articles/s41467-023-40899-2>.

¹⁹¹ See for example, Science Direct *Intensive Farming*, <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/intensive-farming> and Institute for Poverty, Land and Agrarian Studies (PLAAS), *Climate Change And Rural Livelihoods In Southern Africa An Agenda For Policy-Oriented Research*, Plaas Research Report No. 57, accessible at: https://repository.uwc.ac.za/bitstream/handle/10566/8074/bennie_climate%20change_2022.pdf.

The above graphic illustrates the disparity between meat consumption in SA and selected African countries.¹⁹² In 2020, South Africa's egg production reached approximately 594,000 tons, a 5% increase from the previous year.¹⁹³

The Unseen & Unknown Consequences of Egg Production

Harm caused by animal agriculture is often overlooked, particularly as such harm affects marginalised and vulnerable groups.¹⁹⁴ This is partly because poverty limits consumer choices. Impoverished communities in urban areas rely on affordable protein sources like eggs but lack access to information concerning the potential associated harms. Furthermore, some of these individuals may live in close proximity to egg production facilities and bear the brunt of the resulting environmental impacts, such as water pollution.¹⁹⁵ Many from these communities also work on the farms, where they are susceptible to contracting respiratory diseases like asthma and chronic bronchitis due to harmful exposure to toxins.¹⁹⁶ Workers are subjected to distressing conditions, including witnessing sick and dying chickens, being required to engage in acts that desensitise them to violence,¹⁹⁷ such as putting live male chicks into macerators or performing painful procedures like debeaking and de-toeing without anaesthetic.

Layer Hens themselves are among the most vulnerable to this system, viewed as “stock” or even “biological assets”.¹⁹⁸ The lack of societal interest in protecting these animals results in the law imposing limited corporate responsibilities concerning their welfare (or where it does, there is limited enforcement of such responsibilities), perpetuating a cycle of exploitation and suffering. Addressing these issues and making the public aware of the potential harms caused by the Egg Industry is crucial for fostering a more ethical and compassionate approach to animal agriculture. By highlighting these concerns, consumers

¹⁹² *Supra* note 187.

¹⁹³ *Supra* note 20.

¹⁹⁴ Compassion in World Farming <https://www.ciwf.org.uk/factory-farming/people-and-poverty/> (accessed on 14 August 2024). and Animal Legal Defense Fund <https://aldf.org/article/industrial-animal-agriculture-exploiting-workers-and-animals/> (accessed on 14 August 2024).

¹⁹⁵ Food Print <https://foodprint.org/reports/the-foodprint-of-eggs/> (accessed on 14 August 2024).

¹⁹⁶ See for example, Hoppin, J.A et al (2014) Respiratory disease in United States farmers. *Occupational and environmental medicine*, 71(7), pp.484-491. accessible at: <https://oem.bmj.com/content/71/7/484.short>, and Viegas, S et al (2013) Occupational exposure to poultry dust and effects on the respiratory system in workers. *Journal of Toxicology and Environmental Health, Part A*, 76(4-5), pp.230-239, accessible at: <https://www.tandfonline.com/doi/abs/10.1080/15287394.2013.757199>, and Sigsgaard, T et al (2020) Respiratory diseases and allergy in farmers working with livestock: a EAACI position paper. *Clinical and Translational Allergy*, 10, pp.1-30, accessible at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7336421/>.

¹⁹⁷ Victor, K. and Barnard, A., 2016. Slaughtering for a living: A hermeneutic phenomenological perspective on the well-being of slaughterhouse employees. *International journal of qualitative studies on health and well-being*, 11(1), p.30266, accessible at: <https://www.tandfonline.com/doi/full/10.3402/qhw.v11.30266>. New Roots Institute <https://www.newrootsinstitute.org/articles/dangerous-conditions-factory-farms> (accessed on 14 August 2024).

¹⁹⁸ In addition, baby male chicks, who are culled / killed shortly after birth due to them not being useful in the context of the egg industry.

may reconsider the notion that animal products are the best source of protein, opening the door for them to explore alternative options.

PAIA Request: Asset Register and Stock

We requested records from Phase 2 Selected Stakeholders, and/or their suppliers, related to their asset register and stock, specifically in respect of their egg supply or production, to assess the number of eggs sold or produced by the Corporation and/or their suppliers of eggs. Such information reveals the potential nature and extent of the Corporations' impact on the environment (which includes Layer Hens, chicks, and eggs).

Challenges in Reforming the Egg Industry

The SA government has signed on to many important climate and environmental initiatives (such as the Paris Agreement in 2015). These initiatives require reductions of harm to the environment, which includes animals. Despite this, many government departments and institutions continue to prioritise intensive, environmentally harmful production methods of animals and animal products, ostensibly to achieve food security.¹⁹⁹ This approach raises significant concerns, as the Egg Supply Chain's reliance on factory farming methods potentially poses substantial threats to long-term environmental sustainability, and, in turn, food security.²⁰⁰

The intensification of animal agriculture, especially through factory farming, is a global concern that threatens both the environment and broader food systems.²⁰¹ As such, the Egg Industry is in need of reformation in order to achieve intersectional environmental, climate, interspecies, and social justice.²⁰² To address these multifaceted issues, a holistic approach is required, one that prioritises truly sustainable and ethical farming practices, while simultaneously addressing the socio-economic disparities that perpetuate the cycle of exploitation and environmental degradation. Research shows that a 'brutal trade-

¹⁹⁹ The primary departments tasked with animal welfare and animal well-being (DALRRD and DFFE respectively) promote laws and policies which seek to expand and increase the consumption of use of all animals – including through initiatives such as the Poultry Sector Master Plan, as well as others such as the Live Export of animals across the sea, the Game Meat Industry, Aquaculture, and others. These initiatives are often justified as means to achieve anthropocentric aims including food security, job creation and the alleviation of poverty, without properly considering the harmful implications and externalities. They further deepen existing inequalities and contribute to converging socio-ecological crises – including the climate crisis.

²⁰⁰ World Animal Protection <https://www.worldanimalprotection.org/siteassets/pdfs/climate-change-and-cruelty-a-world-animal-protection-report.pdf> (accessed on 14 August 2024).

²⁰¹ *Ibid.*

²⁰² The Elders <https://theelders.org/news/climate-and-human-cost-intensive-farming> (accessed on 14 August 2024).

off' between poverty reduction and ecological sustainability can be avoided by reducing inefficient, harmful production and focusing on meeting basic human needs.²⁰³

Environmental Concerns: A Pervasive Issue

Environmental concerns in the Egg Industry are a central focus of this Supplementary Report due to the potential environmental impacts that permeate the other selected Research Pillars from our Initial Report, namely: Animal Welfare, Food Safety & Health, Social Issues & Rights, Consumer Protection, and Corporate & Business.²⁰⁴ This indicates a pressing need for robust environmental safeguards within the Egg Industry to mitigate against environmental harm and promote a sustainable future.



Graphic Representation of linkages between the Environmental Pillar as a primary focus of this Supplementary Report and other Research Pillars selected for our Initial Report.

THE ROLE OF RIGHTS IN SAFEGUARDING AGAINST HARMS IN THE EGG SUPPLY CHAIN

Constitutional rights are one of the most effective tools in a consumer's arsenal. By understanding and leveraging the environmental right enshrined in our Constitution, consumers can advocate for more ethical practices towards animals and the broader environment within industries such as the Egg Industry. This approach can pave the way towards transforming the industry into a more sustainable and ethical one, ultimately advancing a more compassionate society.

²⁰³ Hickel, J. and Sullivan, D (2024.) How much growth is required to achieve good lives for all? Insights from needs-based analysis. *World Development Perspectives*, 35, p.100612, accessible at: <https://www.sciencedirect.com/science/article/pii/S2452292924000493>.

²⁰⁴ *Supra* note 33 at pages 50-203.

The Environmental Right

The potential impacts and harms associated with the Egg Industry discussed above highlight the pressing need for robust mechanisms to safeguard against these harms. Fortunately, our Constitution includes an environmental right, which imposes corresponding duties on Corporations operating within the Egg Supply Chain. The environmental right, as elaborated on in Section I above is enshrined in s 24 of our Constitution and among other issues seeks to ensure that the environment is not harmful to health and well-being and to ensure that the environment is protected for both current and future generations. It further recognises the need for development and use of natural resources to be ecologically sustainable and for economic and social development to be justifiable.

By demanding that Corporations fulfil their duties stemming from such constitutional rights, consumers can safeguard the environment, promote social justice and promote interspecies protection. This approach promotes a future where all life is valued and protected. To achieve this, it is crucial to examine these rights and responsibilities in relation to the Egg Industry.

Interconnectedness of Environmental Rights and Other Rights

The environmental right serves as a vital link between environmental protection, Corporate Accountability, access to information, and the realisation of other fundamental human rights.²⁰⁵ It empowers individuals and communities to advocate for their environment, fostering a more just and equitable society.

The Environmental Right and Animals

Although the Bill of Rights does not explicitly mention animals, South Africa's courts have interpreted the right to have the environment protected as extending to animal welfare and interests.²⁰⁶ Moreover, the “environment” is defined in section 1 of the National Environmental Management Act 107 of 1998, South Africa's umbrella environmental legislation, explicitly to include “animal life”.

In *S v Lemthongthai*, the court established a connection between animal welfare and biodiversity, stating that animal welfare is intertwined with safeguarding the environment under s 24(b) of the Constitution.²⁰⁷ Furthermore, in *National Society for the Prevention of Cruelty to Animals v Minister of Justice, Constitutional Development, and Another*, the Constitutional Court acknowledged that animals

²⁰⁵ Murcott, M (2023) Minding the Gap: the Constitutional Court's Jurisprudence Concerning the Environmental Right. *Constitutional Court Review*, 13(1), pp.147-170, accessible at: <https://www.saflii.org/za/journals/CCR/2023/11.pdf>.

²⁰⁶ For an in-depth discussion on the status of animals in South African law, see Bilchitz, D.I. and Wilson, A.P (2022) Key animal law in SA. In *Routledge Handbook of Animal Welfare* (pp. 426-435). Routledge, accessible at: <https://www.taylorfrancis.com/chapters/oa-edit/10.4324/9781003182351-38/>.

²⁰⁷ *S v Lemthongthai* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA).

are “sentient beings” with “intrinsic value”.²⁰⁸ These rulings highlight the inextricable link between animal welfare, environmental protection, and the well-being of all living beings in SA.

The Right to Access to Information

Access to information is a practical tool to reinforce environmental protection.²⁰⁹ The interconnectivity between environmental rights, public participation, transparency, and Corporate Accountability is crucial in promoting accountability of and compliance by intensive farming industries like the Egg Supply Chain.²¹⁰ The Supreme Court of Appeal (“SCA”) in *Company Secretary of ArcelorMittal SA and Another v Vaal Environmental Justice Alliance* (“VEJA”),²¹¹ established that transparency, public participation, and accountability are interrelated and give effect to the environmental right.²¹² This interpretation advances the Constitution’s requirement that socio-economic development must be *justifiable* with reference to the constitutional imperative of securing *ecologically* sustainable development.²¹³

ENVIRONMENTAL DUTIES AND RESPONSIBILITIES ON CORPORATIONS: CORPORATE ACCOUNTABILITY

Environmental law and policy imposes obligations on the state, individuals, and Corporations, including stakeholders in the Egg Industry.²¹⁴ Outside of the formal governance framework, there are arguably also ethical obligations on Corporations to the environment, animals, and consumers.

NEMA and Corporate Accountability

NEMA was enacted to implement and enforce the environmental right. NEMA provides a framework for environmental regulation, incorporating national environmental principles and guidelines for

²⁰⁸ *Supra* note 128.

²⁰⁹ Murcott, M (2018) The Procedural Right of Access to Information as a Means of Implementing Environmental Constitutionalism in SA. *Implementing Environmental Constitutionalism: Current Global Challenges* (Cambridge University Press, 2018), accessible at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3831210.

²¹⁰ OHCHR, U (2015) Understanding human rights and climate change. In *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the parties to the United Nations Framework Convention on Climate Change* (Vol. 26), accessible at: <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>; and Lund-Thomsen, P (2005) Corporate accountability in SA: the role of community mobilizing in environmental governance. *International Affairs*, 81(3), pp.619-633, accessible at: <https://www.jstor.org/stable/3569637>.

²¹¹ *Company Secretary of Arcelormittal SA and Another v Vaal Environmental Justice Alliance* (69/2014) [2014] ZASCA 184; 2015 (1) SA 515 (SCA); [2015] 1 All SA 261 (SCA) (26 November 2014), accessible at: <https://www.saflii.org/za/cases/ZASCA/2014/184.html>.

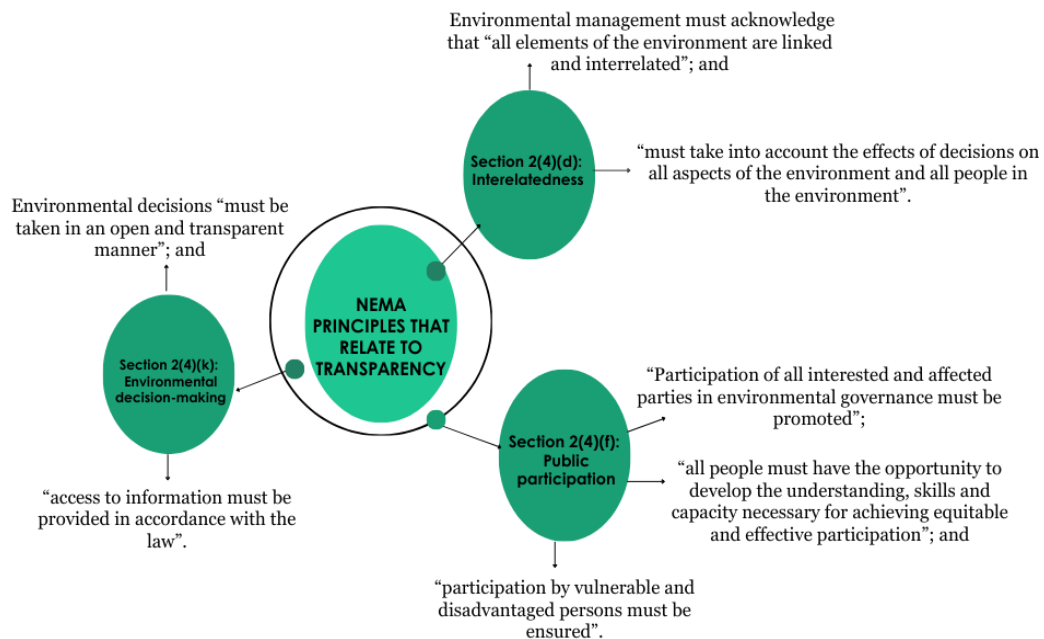
²¹² *Ibid* and *supra* note 209.

²¹³ *Ibid*.

²¹⁴ Glazewski, J (2019) “Environmental Law in SA” 5-14.

decision-making. NEMA is supported by Specific Management Acts (“**SEMA**s”)²¹⁵ that impose Duties of Care on Corporations, regulate resource use through standards, licensing, and conditions, and outline consequences for non-compliance. These and other duties, as well as environmental law in SA more broadly, are discussed in more detail in Part C.

The principles of NEMA, derived from international norms, promote sustainable development and hold both the state and private sector accountable for environmental harm. The court in the *VEJA* (Vaal Environmental Justice Alliance (VEJA)) case²¹⁶ recognised the importance of NEMA principles in environmental governance and transparent decision making by the private sector (i.e. Corporations). The judgment emphasised that Corporations, particularly those with substantial environmental impacts like ArcelorMittal, have a duty to operate transparently. The court ruled that VEJA had the right to access information regarding ArcelorMittal’s environmental practices, thereby underscoring the necessity for Corporations to disclose their environmental impact and strategies for mitigation to civil society organisations who actively participate in promoting, protecting, and fulfilling constitutional rights.



*Graphic Representation of the NEMA principles that relate to and enhance transparency in the private sector.*²¹⁷

²¹⁵ The Specific Management Acts (“SEMA”s) include: the National Environmental Management: Protected Areas Act 57 of 2003; the National Environmental Management: Biodiversity Act 10 of 2004; the National Environmental Management: Air Quality Act 39 of 2004; the National Environmental Management: Integrated Coastal Management Act 24 of 2008; and the National Environmental Management: Waste Act 59 of 2008.

²¹⁶ *Supra* note 211.

²¹⁷ *Supra* note 211.

The diagram above details the NEMA principles that are applicable to and should be used to enhance transparency efforts as confirmed in *VEJA*. The court's findings indicate that Corporate actions must align with constitutional rights and values, including regarding the environmental right.²¹⁸ They also recognise the role of civil society organisations in advancing a culture of corporate compliance, justification, and accountability. This culture is crucial for safeguarding consumer interests and promoting sustainable practices.

(Environmental) Corporate Accountability in the Egg Supply Chain

Corporate Accountability is a critical aspect of environmental protection and consumer safeguarding. As confirmed in *VEJA*, Corporations have a responsibility to be transparent about their environmental impact and to take proactive measures to minimise harm to the planet.²¹⁹ This includes disclosing information about their operations, supply chains, and the environmental consequences of their activities.²²⁰ By providing access to this information, Corporations enable consumers to make informed choices and hold Corporations accountable for harmful actions. Furthermore, transparency encourages Corporations to adopt more sustainable practices, as they are aware that their environmental performance will be scrutinised by the public.²²¹ Ultimately, Corporate Accountability is a practical tool to reinforce environmental protection and consumer trust.²²² Environmental reporting and disclosure requirements will be discussed in more detail in Part D below.

Corporate Accountability plays a significant role in the Egg Supply Chain, particularly concerning ethical practices and consumer rights.²²³ Consumers can rightfully expect Corporations involved in the Egg Supply Chain to uphold standards that ensure the welfare of Layer Hens and the sustainability of their operations.²²⁴ Accountability is crucial as it allows consumers to make informed choices about the

²¹⁸ *Ibid.*

²¹⁹ Shepherd, G (2020) Not Just Profits: The Duty of Corporate Leaders to the Public, Not Just Shareholders. *U. Pa. J. Bus. L.*, 23, p.823, accessible at: [https://heinonline.org/HOL/LandingPage?handle=hein.journals/upjlel23&div=23&id=&page=](https://heinonline.org/HOL/LandingPage?handle=hein.journals/upjlel23&div=23&id=&page=;); Gray Group International <https://www.graygroupintl.com/blog/environmental-responsibility> (accessed on 14 August 2024); and *supra* note 211.

²²⁰ Harvard Business Review <https://hbr.org/2019/08/what-supply-chain-transparency-really-means> (accessed on 14 August 2024).

²²¹ Chen, B. and Madni, G.R (2023) Achievement of sustainable environment through effectiveness of social media in Z generation of China. *Plos one*, 18(11), p.e0292403, accessible at: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0292403>

²²² Fatmawati, I. and Fauzan, N (2021) Building customer trust through corporate social responsibility: The Effects of corporate reputation and word of mouth. *The Journal of Asian Finance, Economics and Business*, 8(3), pp.793-805, accessible at: <https://koreascience.kr/article/JAKO202106438543556.page> and Edisa, K.O.R.O. and JUSUFI, S (2023) The role of corporate social responsibility in consumer trust and perception of company image. *Prizren social science journal*, 7(1), pp.24-32, accessible at: <https://www.prizrenjournal.com/index.php/PSSJ/article/view/407>

²²³ The Humane League <https://thehumaneleague.org/article/corporate-accountability-animals> (accessed on 14 August 2024).

²²⁴ *Ibid.*

products they purchase, knowing that these Corporations are committed to ethical practices and supply chains.²²⁵ For instance, transparency in sourcing cage-free eggs has become a pressing issue, with many consumers demanding to know the conditions under which their food is produced.²²⁶ Recent initiatives, such as the United Kingdom (“UK”) government’s review aimed at increasing fairness and transparency in the UK egg supply chain, highlight the importance of corporate responsibility in addressing unfair practices to ensure consumers’ access to cage-free eggs.²²⁷ Additionally, organisations like Mercy For Animals emphasise the need for food companies to publicly report their commitments to cage-free sourcing, thereby reinforcing consumer trust and promoting animal welfare.²²⁸ Similarly, Corporate Accountability in the Egg Supply Chain in SA has the potential to drive towards more ethical and sustainable practices, in line with these examples.

OBSERVATIONS FROM PHASE 1 OF OUR PROJECT

As consumers increasingly demand transparency and ethical practices in food production, the need for Corporate Accountability becomes more apparent.²²⁹ This growing awareness creates a positive feedback loop: heightened consumer demand for ethical practices encourages Corporations to be more transparent, which in turn further educates consumers and reinforces their demand for accountability.²³⁰ By framing animal welfare issues within environmental concerns, we aim to foster a more comprehensive understanding of sustainable food systems among the public and industry stakeholders alike.

In preparing our Initial Report, we noted the following:

- Corporations often fail to recognise or appreciate the links among animal welfare and environmental protection (despite this being part of SA law).
- Current practices within the Egg Supply Chain, such as the use of Battery Cages, lack of transparency around the sourcing and production of eggs, and the prioritisation of economic gain and productivity over animal welfare and environmental sustainability, perpetuate a cycle of harm that affects not only the environment and animals, but also consumers and the public at large.

²²⁵ Oracle <https://www.oracle.com/za/scm/supply-chain-transparency/> (accessed on 14 August 2024).

²²⁶ Food & Beverage Insider <https://www.foodbeverageinsider.com/food-beverage-operations/consumers-fuel-industry-transition-to-cage-free-eggs> (accessed on 14 August 2024); and Sinclair, M et al (2022) Consumer attitudes towards egg production systems and hen welfare across the world. *Frontiers in Animal Science*, 3, p.995430, accessible at: <https://www.frontiersin.org/journals/animal-science/articles/10.3389/fanim.2022.995430/full>.

²²⁷ Farming UK https://www.farminguk.com/news/defra-launches-review-into-unfair-practices-in-the-egg-supply-chain_63569.html (accessed on 14 August 2024).

²²⁸ Mercy for Animals https://mercyforanimals.org/cagefreeequity/?_ga (accessed on 14 August 2024).

²²⁹ *Supra* note 2.

²³⁰ Faster Capital <https://www.fastercapital.com/content/Corporate-Transparency--Demanding-Corporate-Transparency--A-Pillar-of-Ethical-Consumerism.html> (accessed on 14 August 2024).

- Although there is a lack of regulation around animal welfare and well-being in the Egg Supply Chain, there tends to be more regulation focused on environmental concerns. Therefore, Corporations in the Egg Industry may be reluctant to improve animal welfare and well-being but could potentially be more receptive to addressing environmental issues.

In this Part A, we have introduced environmental issues in the Egg Industry including selected environmental rights and duties and responsibilities of Corporations towards the environment. In Part B, we take a deeper look into potential environmental impacts and harm relevant to activities occurring within the Egg Supply Chain. In Part C, we explore selected governance in respect of the environment including laws, bodies, codes and standards as well as cases of relevance in SA and foreign jurisdictions. In Part D, we explore different types of corporate entities, their obligations in respect of accountability and transparency in environmental matters and other relevant bodies and standards. In Part E we provide selected measures to enhance environmental protection, which are expanded on further in Section IV. Throughout these Parts, we include in blocks, specific PAIA requests ALRSA made in Phase 2 to Selected Stakeholders which correspond to the issues highlighted. We do this to provide a foundation for understanding our requests and how they relate to the matters included in this Supplementary Report (some of which were also included in the Initial Report).

BURSTING OUR PLANETARY BALLOON

THE IMPACTS OF EGGS ON THE ENVIRONMENT

ENVIRONMENTAL CONCERNS

We must protect the environment to secure a sustainable future for all life on Earth. Intensive egg production is harmful to the environment and exacerbates various environmental concerns.

Animal Protection

Animals are sentient beings with intrinsic value; and their welfare is linked to the constitutional right to a healthy environment.¹ The egg industry continues the cruel use of battery cages, culling of day-old male chicks, de-toeing, debeaking on millions of chickens.

Soil Pollution

+/- 9.1 – 13.6 kg manure produced by a single layer hen every year.² Manure with contaminants harms soil quality.

Land Use

38% of South Africa's land is used for commercial agriculture, including egg production.³

Climate Change

Significant greenhouse gas emissions (GHG) (carbon dioxide, methane, nitrous oxide).²

Water Use/ Pollution

135 litres of water is used to produce a single egg;⁴ pathogens from waste cause diseases and pollutes water supplies.⁷

Air Pollution

High nitrous oxide levels; 68% of anthropogenic nitrous oxide remains in the atmosphere for up to 150 years & has 296 times the global warming potential of carbon dioxide.⁵

Energy Crisis

High energy use for machinery, feed production, climate control, etc. - places significant pressure on the country's already strapped energy resources.⁴

Deforestation

Land for feed crops leads to habitat loss, deforestation & increased carbon emissions.⁶

We need to hold the below role players in the Egg Industry accountable for their contribution to environmental concerns.



Retailers



Wholesalers



Egg Producers & Hatcheries



Industry Bodies



Fast Food & Restaurants



Hotels



Equipment Manufacturers



Government

¹ National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another [2016] ZACC 46; and S v Lemthongthai [2014] ZASCA 131; 2015 (1) SACR 353 (SCA).
² Gržinić et al: <https://www.sciencedirect.com/science/article/pii/S0048969722071145>.
³ Jankielsohn: https://www.researchgate.net/publication/283353207_The_Hidden_Cost_of_Eating_Meat_in_South_Africa_What_Every_Responsible_Consumer_Should_Know.
⁴ Gržinić et al: <https://www.sciencedirect.com/science/article/pii/S0048969722071145>; the Conversation: <https://theconversation.com/south-africas-electricity-crisis-a-series-of-failures-over-30-years-have-left-a-dim-legacy-227936> and Government Report for Public Comment: https://www.dffe.gov.za/sites/default/files/legislations/unfccc_greenhousegasinventoryreport9_g50607gon4772.pdf.
⁵ The Humane League: <https://thehumaneleague.org/article/effects-of-deforestation>.
⁶ FAO: <https://x.com/FAO/status/1638506307207692288>.
⁷ Gržinić et al: <https://www.sciencedirect.com/science/article/pii/S0048969722071145>.
⁸ Stats SA: <https://www.statssa.gov.za/publications/Report-11-02-01/CoCA%202017%20Fact%20Sheets.pdf>.
⁹ Gržinić et al: <https://www.sciencedirect.com/science/article/pii/S0048969722071145>.

PART B: LAYING DOWN THE FACTS

POTENTIAL ENVIRONMENTAL HARM IN THE EGG SUPPLY CHAIN

Like many industrialised animal agricultural activities, intensive egg production poses a significant threat to food security and environmental sustainability, both locally and internationally.²³¹ Environmental impacts from the Egg Industry affect animals, and impact on humans, and ecosystems.²³² We discuss some of the most significant potential harms in this part.

● Air Pollution and Climate Change Exacerbation

Food production is responsible for 34% of global anthropogenic emissions,²³³ with the Egg Industry contributing to this significant figure. These emissions arise from among other issues: reliance on resource-intensive practices.²³⁴ Specifically, the production of eggs generates substantial amounts of carbon dioxide, methane, and nitrous oxide.²³⁵ To put it into perspective, global egg production generates an average of 2.2 kg of carbon dioxide equivalent per dozen eggs.²³⁶ According to My Emissions, a food emissions calculator, a dozen eggs is rated as having a 'High Carbon Footprint,' receiving a 'D' on a scale from A to E (where A represents the lowest carbon footprint and E the highest).²³⁷ Therefore, when scaled across populations, dietary choices such as consuming eggs can significantly contribute to individual and household carbon footprints..²³⁸

Key contributors to GHG emissions in the Egg Supply Chain include feed production, manure, and energy use.

²³¹ Gržinić, G et al (2023) Intensive poultry farming: A review of the impact on the environment and human health. *Science of the Total Environment*, 858, p.160014, accessible at: <https://www.sciencedirect.com/science/article/pii/S0048969722071145>.

²³² *Ibid*.

²³³ Crippa, M, et al (2021) Food systems are responsible for a third of global anthropogenic GHG emissions. *Nature food*, 2(3), pp.198-209, accessible at: <https://www.nature.com/articles/s43016-021-00225-9>

²³⁴ *Supra* note 37.

²³⁵ Ghasempour, A and Ahmadi, E (2016) Assessment of environment impacts of egg production chain using life cycle assessment. *Journal of environmental Management*, 183, pp.980-987, accessible at: <https://www.sciencedirect.com/science/article/abs/pii/S0301479716307174>.

²³⁶ Farm Carbon ToolKit <https://farmcarbontoolkit.org.uk/toolkit-page/poultry-egg-production/> (accessed on 14 August 2024).

²³⁷ My Emissions <https://myemissions.co/resources/food-carbon-footprint-calculator/> (accessed on 14 August 2024).

²³⁸ Afrouzi, H.N et al (2023) A comprehensive review on carbon footprint of regular diet and ways to improving lowered emissions. *Results in Engineering*, 18, p.101054, accessible at: <https://www.sciencedirect.com/science/article/pii/S2590123023001810>.

The cultivation of feed crops is responsible for a significant portion of emissions, particularly due to the use of fertilisers and land conversion.²³⁹

Egg production accumulates large amounts of manure, which results in emissions of up to 68% of anthropogenic nitrous oxide, remaining in the atmosphere for 150 years and having 296 times the global warming potential of carbon dioxide.²⁴⁰ The energy consumed in the production, processing, and transportation of eggs also contributes to overall emissions.²⁴¹

● Water-Related Concerns

Egg production has a substantial fresh water footprint, primarily due to the significant water requirements for raising feed crops and maintaining the health of Layer Hens.²⁴² Research indicates that the water footprint for egg production can vary widely, with estimates suggesting an average of approximately 3.5 cubic meters of water per kilogram of eggs produced (which equates to around 42 baths full of water).²⁴³ In SA in 2020, nearly 180 million chickens existed in the country,²⁴⁴ resulting in the usage of 39,600,000 litres of water daily.²⁴⁵ In 2022, 27 million Layer Hens were recorded, with approximately 5,940,000 litres of water used daily.²⁴⁶ This figure includes the Green, Blue, and Grey water components.²⁴⁷ Green Water is the rainwater absorbed by plants for feed crop production, forming the largest part of the water footprint; Blue Water is the fresh water sourced from rivers, lakes, or aquifers used directly in production; and Grey Water represents the fresh water needed to dilute pollutants from manure management and other waste in egg production.²⁴⁸

²³⁹ *Ibid* and Grassauer, F, et al (2023) Towards a net-zero greenhouse gas emission egg industry: A review of relevant mitigation technologies and strategies, current emission reduction potential, and future research needs. *Renewable and Sustainable Energy Reviews*, 181, p.113322, accessible at: <https://www.sciencedirect.com/science/article/pii/S1364032123001788>.

²⁴⁰ Jankielsohn, A (2015) The hidden cost of eating meat in SA: what every responsible consumer should know. *Journal of Agricultural and Environmental Ethics*, 28(6), pp.1145-1157, accessible at: <https://link.springer.com/article/10.1007/s10806-015-9581-8>.

²⁴¹ *Supra* note 239.

²⁴² *Supra* note 234

²⁴³ Xing, H, et al (2019) Water footprint assessment of eggs in a parent-stock layer breeder farm. *Water*, 11(12), p.2546, accessible at: <https://www.mdpi.com/2073-4441/11/12/2546>.

²⁴⁴ Farming SA <https://farmingsouthafrica.co.za/chicken-farming-stats-and-overview-south-africa/> (accessed on 14 August 2024).

²⁴⁵ Calculated using data from SAPA <https://www.sapoultry.co.za/wp-content/uploads/2022/10/Broiler-Book.pdf> (accessed on 14 August 2024).

²⁴⁶ *Ibid*.

²⁴⁷ *Supra* note 243.

²⁴⁸ *Ibid*.

Efficient water management practices are essential to reduce the overall water footprint of egg production, particularly through improved irrigation techniques and better feed crop management strategies.²⁴⁹

● Water Pollution

The Egg Supply Chain contributes to water pollution in various ways, including nutrient runoff, manure management, and chemical inputs. Excess fertilisers used in feed crop production can leach into waterways, leading to nutrient pollution and harmful algal blooms that degrade water quality.²⁵⁰ Improper disposal of manure can contaminate soil and water with pathogens, heavy metals, and excess nutrients, posing risks to human health and the environment.²⁵¹ The use of pesticides and herbicides in feed crop production can lead to soil degradation and water contamination, affecting aquatic ecosystems and drinking water supplies.²⁵²

● Soil Pollution

Soil pollution is another critical issue linked to egg production due to manure application, chemical inputs, and heavy metal accumulation. While manure can be a valuable fertiliser, excessive application can lead to soil nutrient imbalances and contamination with pathogens and heavy metals.²⁵³ This can degrade soil health and reduce agricultural productivity over time.²⁵⁴ The use of pesticides and herbicides in feed crop production can also lead to soil degradation and water contamination.²⁵⁵ Over time, the accumulation of heavy metals from manure and chemical fertilisers can lead to soil toxicity, affecting plant growth and biodiversity.²⁵⁶

● Waste

The Egg Supply Chain generates various types of waste that can have detrimental environmental impacts, such as eggshell waste, packaging waste, and manure waste. In 2018, it was estimated that 8.58

²⁴⁹ Wang, Q et al (2023). Factors affecting crop production water footprint: A review and meta-analysis. *Sustainable Production and Consumption*, 36, pp.207-216. accessible at: <https://www.sciencedirect.com/science/article/abs/pii/S2352550923000076>.

²⁵⁰ United States Environmental Protection Agency <https://www.epa.gov/nutrientpollution/sources-and-solutions-agriculture> (accessed on 14 August 2024) and Zahoor, I. and Mushtaq, A (2023) Water pollution from agricultural activities: A critical global review. *Int. J. Chem. Biochem. Sci.*, 23(1), pp.164-176, accessible at: <https://www.iscientific.org/wp-content/uploads/2023/05/19-IJCBS-23-23-24.pdf>.

²⁵¹ *Supra* note 231.

²⁵² Tudi, M. et al (2021) Agriculture development, pesticide application and its impact on the environment. *International journal of environmental research and public health*, 18(3), p.1112, accessible at: <https://www.mdpi.com/1660-4601/18/3/1112>.

²⁵³ Köninger, J. et al (2021) Manure management and soil biodiversity: Towards more sustainable food systems in the EU. *Agricultural Systems*, 194, p.103251, accessible at: <https://www.sciencedirect.com/science/article/pii/S0308521X21002043>.

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*

²⁵⁶ Alengebawy, A et al (2021) Heavy metals and pesticides toxicity in agricultural soil and plants: Ecological risks and human health implications. *Toxics*, 9(3), p.42 accessible at: <https://www.mdpi.com/2305-6304/9/3/42>.

million metric tons of eggshells were produced and discarded as solid waste, contributing to landfill issues.²⁵⁷ There is potential for recycling eggshell waste into valuable products, such as calcium supplements or soil amendments.²⁵⁸ However, there is no evidence that this is happening in the SA context. The materials used for packaging eggs can also contribute to environmental pollution, particularly if they are not recyclable or biodegradable.²⁵⁹ The production and disposal of packaging materials can increase the overall environmental footprint of the Egg Supply Chain.²⁶⁰ Layer Hen manure is a major waste product that, if not managed properly, can lead to water and soil pollution.²⁶¹ However, when managed effectively, manure can be converted into compost or biogas, reducing its environmental impact.²⁶² Addressing waste management through recycling, composting, and sustainable packaging solutions is crucial for minimising the Egg Supply Chain's environmental footprint.

● Resource Competition

The demand for agricultural resources, particularly land and water, has intensified due to the growing global population and dietary shifts towards more animal-based products.²⁶³ In the context of egg production, this competition manifests in several ways, including land use, water scarcity, and nutrient competition. The expansion of feed crop cultivation for Layer Hen feed often leads to deforestation and habitat destruction, impacting biodiversity and ecosystem services.²⁶⁴ Increased water consumption for feed crops can exacerbate water scarcity issues in regions already facing water stress, leading to conflicts between agricultural and urban water needs.²⁶⁵ Intensive farming practices can lead to nutrient depletion in soils, requiring increased fertiliser use, which further strains natural resources and contributes to

²⁵⁷ Waheed, M et al (2020) Channelling eggshell waste to valuable and utilizable products: a comprehensive review. *Trends in Food Science & Technology*, 106, pp.78-90 accessible at: <https://www.sciencedirect.com/science/article/abs/pii/S0924224420306324>.

²⁵⁸ *Ibid* and Laohavisuti, N. et al (2021) Simple recycling of biowaste eggshells to various calcium phosphates for specific industries. *Scientific Reports*, 11(1), p.15143 accessible at: <https://www.nature.com/articles/s41598-021-94643-1>.

²⁵⁹ Medium <https://medium.com/@poultry692/eco-friendly-egg-packaging-poultry-cartons-in-focus-2deba2b1f256> (accessed on 14 August 2024).

²⁶⁰ Science Daily <https://www.sciencedaily.com/releases/2018/04/180403085959.htm> (accessed on 14 August 2024).

²⁶¹ Zhang, L et al (2023) A review of poultry waste-to-wealth: Technological progress, modelling and simulation studies, and economic-environmental and social sustainability. *Sustainability*, 15(7), p.5620 accessible at: <https://www.mdpi.com/2071-1050/15/7/5620>.

²⁶² Environmental and Energy Study Institute <https://www.eesi.org/papers/view/fact-sheet-biogasconverting-waste-to-energy> (accessed on 14 August 2024).

²⁶³ Committee on Considerations for the Future of Animal Science Research et al (2015) Global considerations for animal agriculture research. In *Critical Role of Animal Science Research in Food Security and Sustainability*. National Academies Press (US), accessible at: <https://www.ncbi.nlm.nih.gov/books/NBK285723/>.

²⁶⁴ Food and Agriculture Organization of the United Nations <https://www.fao.org/4/i0680e/i0680e04.pdf> (accessed on 14 August 2024) and *supra* note 234.

²⁶⁵ Egghub <https://egghub.org/environment> (accessed on 14 August 2024) and Ingrao, C et al (2023) Water scarcity in agriculture: An overview of causes, impacts and approaches for reducing the risks. *Heliyon*, accessible at: [https://www.cell.com/heliyon/fulltext/S2405-8440\(23\)05715-8](https://www.cell.com/heliyon/fulltext/S2405-8440(23)05715-8).

environmental degradation.²⁶⁶ As resource competition intensifies, sustainable farming practices are critical to balancing the needs of the egg industry with environmental conservation efforts.

● Land Use Conflicts

In 2011, it was estimated that if the world population were to adopt the average diet of SA, 60% of the global habitable land area would be needed for agriculture.²⁶⁷ This figure would have drastically increased by 2024 considering population increase and food demand. In 2021, 96,341 thousand hectares were used for agricultural production in SA, which includes Layer Hen operations.²⁶⁸ The Egg Supply Chain requires a great deal of land, which leads to several conflicts. As demand for eggs increases, more land is converted for feed crop production, reducing the availability of land for other crops and contributing to food insecurity.²⁶⁹ The expansion of egg and Layer Hen farming can encroach on natural habitats, leading to biodiversity loss and ecosystem disruption.²⁷⁰ In some regions, agricultural land is being repurposed for urban development, which can limit the expansion of poultry farms and increase land prices.²⁷¹ Addressing these conflicts requires integrated land-use planning that considers the long-term sustainability of both agricultural and natural landscapes.

● Biodiversity Loss

Unsustainable and less sustainable food systems drive biodiversity loss, with intensive agriculture threatening 24,000 of the 28,000 (86%) species at risk of extinction.²⁷² The intensification of egg production is linked to significant biodiversity loss through various factors, including habitat destruction, monoculture practices, and chemical use.²⁷³ The conversion of forests and grasslands into agricultural land for feed production reduces habitats for numerous species, leading to declines in

²⁶⁶ Pozza, L.E & Field, D.J (2020) The science of soil security and food security. *Soil Security*, 1, p.100002 accessible at: <https://www.sciencedirect.com/science/article/pii/S2667006220300022> and Kumar, R., et al (2019). Chapter-5 the impact of chemical fertilizers on our environment and ecosystem. *Chief Ed*, 35(69), pp.1173-1189, accessible at: https://www.researchgate.net/publication/331132826_The_Impact_of_Chemical_Fertilizers_on_our_Environment_and_Ecosystem.

²⁶⁷ Our World in Data <https://ourworldindata.org/agricultural-land-by-global-diets> (accessed on 14 August 2024).

²⁶⁸ Statista <https://www.statista.com/statistics/1303761/agricultural-land-in-south-africa/> (accessed on 14 August 2024).

²⁶⁹ Viana, C.M. et al (2022) Agricultural land systems importance for supporting food security and sustainable development goals: A systematic review. *Science of the total environment*, 806, p.150718 accessible at: <https://www.sciencedirect.com/science/article/pii/S004896972105796X>.

²⁷⁰ Tutor Chase <https://www.tutorchase.com/answers/igcse/biology/what-are-the-effects-of-agricultural-expansion-on-habitats> (accessed on 14 August 2024).

²⁷¹ Ziem Bonye, S., et al (2021) Urban expansion and agricultural land use change in Ghana: Implications for peri-urban farmer household food security in Wa Municipality. *International Journal of Urban Sustainable Development*, 13(2), pp.383-399, accessible at: <https://www.tandfonline.com/doi/full/10.1080/19463138.2021.1915790>.

²⁷² United Nations Environment Programme (“UNEP”) <https://www.unep.org/news-and-stories/press-release/our-global-food-system-primary-driver-biodiversity-loss> (accessed on 14 August 2024).

²⁷³ Emmerson, M et al (2016). How agricultural intensification affects biodiversity and ecosystem services. In *Advances in ecological research* (Vol. 55, pp. 43-97) Academic Press, accessible at: <https://www.sciencedirect.com/science/article/abs/pii/S0065250416300204>.

insect,²⁷⁴ wildlife,²⁷⁵ and other plant and animal populations.²⁷⁶ The reliance on a few key feed crops, such as maize and soy, reduces genetic diversity in agriculture and increases vulnerability of crops to diseases.²⁷⁷ The application of pesticides and fertilisers in feed crop production can harm non-target species, including pollinators and soil organisms, further impacting biodiversity.²⁷⁸ Sustainable agricultural practices, such as crop rotation and organic farming, can help mitigate these impacts and promote biodiversity conservation.²⁷⁹

Understanding the environmental challenges posed by the egg industry is crucial, as it sets the stage for understanding how environmental laws are designed to regulate these practices, ultimately promoting consumer protection and ensuring a more sustainable future.

Feed

The sourcing of feed for Layer Hens (and other animals raised in industrial agriculture) can lead to significant environmental harm (as indicated in the above sections). Sustainable feed production practices are imperative to mitigate these impacts.

PAIA Request: Sourcing of Feed

We requested records relating to where Phase 2 Selected Stakeholders and/or each of their suppliers source feed for Layer Hens from; what the feed contains; and any applicable research/ resources relied upon by the Phase 2 Selected Stakeholders and/or each of their suppliers when sourcing feed.

²⁷⁴ Debinski, D.M (2023) Insects in grassland ecosystems. In *Rangeland wildlife ecology and conservation* (pp. 897-929). Cham: Springer International Publishing, accessible at: https://link.springer.com/chapter/10.1007/978-3-031-34037-6_26.

²⁷⁵ National Wildlife Federation <https://www.nwf.org/Educational-Resources/Wildlife-Guide/Threats-to-Wildlife/Habitat-Loss> (accessed on 14 August 2024).

²⁷⁶ Galindo, V et al (2022) Land use conversion to agriculture impacts biodiversity, erosion control, and key soil properties in an Andean watershed. *Ecosphere*, 13(3), p.e3979, accessible at: <https://esajournals.onlinelibrary.wiley.com/doi/full/10.1002/ecs2.3979>.

²⁷⁷ European Commission <https://projects.research-and-innovation.ec.europa.eu/en/horizon-magazine/rise-and-fall-monoculture-farming> (accessed on 14 August 2024).

²⁷⁸ Rajak, P et al (2023) Agricultural pesticides–friends or foes to biosphere?. *Journal of Hazardous Materials Advances*, 10, p.10026, accessible at: <https://www.sciencedirect.com/science/article/pii/S2772416623000359>.

²⁷⁹ RegenZ <https://regen.co.za/resources/farming-sustainably-in-south-africa/> (accessed on 14 August 2024).

PART C: LAYING DOWN THE LAW

By ensuring compliance with environmental law, and being transparency about environmental practices, including reporting on their commitments to environmental sustainability, food safety, animal welfare, social responsibility, and consumer protection, Corporations enhance brand reputation, build consumer trust, and contribute to a more sustainable and resilient Egg Supply Chain.²⁸⁰ In this Part C, we will discuss environmental law in SA, and investigate how it relates to the Egg Industry. We have also included how the relevant aspects relate to our specific PAIA requests, and included these in blocks, for ease of reference.

OVERVIEW OF ENVIRONMENTAL LAW IN SA

Environmental law in SA is informed by a multitude of legislation, constitutional mandates, and socio-economic realities.²⁸¹ The environmental law landscape is primarily governed by the NEMA, which is an umbrella statute, and which will be discussed in detail below.

✓ Strengths of Environmental Law

The constitutionally enshrined environmental right provides a strong foundation for environmental protection and empowers people in SA to hold the government as well as private entities accountable for environmental degradation.²⁸²

SA environmental law encourages broad public participation in environmental governance, allowing relevant stakeholders, including communities and members of the public to engage in decision-making processes that affect the environment.²⁸³ This participatory approach enhances transparency and accountability in environmental management. The Constitution set in motion a range of policies and procedures to reverse apartheid era laws that, among other harms, empowered systematic exploitation of the nation's natural resources for the benefit of a minority.²⁸⁴ SA's environmental laws aim to ensure equitable access to resources and shared prosperity, while advancing efficient and effective integrated

²⁸⁰ Von Berlepsch, D. et al (2024) The importance of corporate reputation for sustainable supply chains: A systematic literature review, bibliometric mapping, and research agenda. *Journal of Business Ethics*, 189(1), pp.9-34, accessible at: <https://link.springer.com/article/10.1007/s10551-022-05268-x>.

²⁸¹ Kotzé, L.J (2003) The Constitutional Court's contribution to sustainable development in SA. *Potchefstroom Elec. LJ*, 6, p.1, accessible at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/per2003&div=14&id=&page=>.

²⁸² Dullah Omar Institute <https://dullahomarinate.org.za/socio-economic-rights/research-and-publications/resource-book/Chapter%205%20-%20Environmental%20Rights.pdf> (accessed on 14 August 2024).

²⁸³ NEMA and SEMAs including the National Environmental Management Act NEMBA make provision for public participation processes.

²⁸⁴ DFFE
https://www.gov.za/sites/default/files/gcis_document/201409/nationalframeworkforsustainabledevelopmenta0.pdf
(accessed on 14 August 2024).

planning and governance through national, regional, and global collaboration.²⁸⁵ The judiciary has played a critical role in progressively interpreting legal instruments and giving content to the ideals embodied in the environmental right and legislation. SA courts have shown their preparedness to uphold the principles of sustainable development and environmental justice.

X Weaknesses of Environmental Law

Despite a strong legal framework, the effective implementation of environmental laws remains a significant challenge in SA. Issues such as inadequate resources, lack of effective enforcement mechanisms, and bureaucratic inefficiencies hinder the enforcement of existing laws.²⁸⁶ Despite the critical role of law enforcement, there is limited transparency regarding compliance with SA environmental laws.²⁸⁷

The predominant reliance on criminal sanctions for environmental enforcement has been criticised for being insufficiently effective.²⁸⁸ Criminal prosecution for enforcement can be slow and challenging due to evidentiary requirements and institutional complexities.²⁸⁹ A more balanced approach, incorporating administrative and civil remedies, could enhance compliance and accountability.²⁹⁰ Furthermore, environmental laws often operate in silos, with insufficient integration across different sectors and levels of government.²⁹¹ This lack of coordination can lead to fragmented approaches to environmental management, undermining the effectiveness of policies aimed at sustainable development.²⁹²

ENVIRONMENTAL LAW APPLICABLE TO THE EGG SUPPLY CHAIN

Environmental Legislation regulates the Egg Industry's Chain's potential and actual environmental impacts. Our PAIA requests sought various records related to these laws. Responses received from

²⁸⁵ The Presidency of SA

<https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Environment%20and%20Sustainable%20Development.pdf> (accessed on 14 August 2024).

²⁸⁶ Feris, L.A (2006) Compliance notices—a new tool in environmental enforcement. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 9(3), accessible at: <https://www.saflii.org/za/journals/PER/2006/14.html>.

²⁸⁷ Centre for Environmental Rights <https://fulldisclosure.cer.org.za/2015/download/CER-Full-Disclosure.pdf> (accessed on 14 August 2024).

²⁸⁸ Kidd, M (2002) Alternatives to the criminal sanction in the enforcement of environmental law. *South African Journal of Environmental Law and Policy*, 9(1), pp.21-50, accessible at: https://journals.co.za/doi/pdf/10.10520/AJA10231765_167.

²⁸⁹ Centre for Environmental Rights <https://fulldisclosure.cer.org.za> (accessed on 14 August 2024).

²⁹⁰ Fourie, M (2009) How civil and administrative penalties can change the face of environmental compliance in SA. *South African Journal of Environmental Law and Policy*, 16(2), pp.93-127, accessible at: <https://cer.org.za/wp-content/uploads/2011/11/Fourie-M-SAJELP-Paper-June-2009-Final.pdf>.

²⁹¹ Middleton, J et al (2011) Environmental management and local government. *PDG Occasional paper*, (1), pp.1-31, accessible at: <http://pdg.hambisana.com/wp-content/uploads/2022/03/Environmental-Management-and-Local-Government-1.pdf>

²⁹² Kotzé, L.J (2006) Improving unsustainable environmental governance in SA: The case for holistic governance. *Potchefstroom Electronic Law Journal/ Potchefstroomse Elektroniese Regsblad*, 9(1), accessible at: <https://www.researchgate.net/publication/>.

Phase 2 Selected Stakeholders helped shape our Supplementary Rating Criteria. In this section, we examine Environmental Legislation to understand the rationale for their inclusion in our PAIA requests.

****Note:** *Not all law included below is applicable to all Phase 2 Selected Stakeholders, and not all legislation is applicable in the same manner, when it does apply. This includes due to, among other issues, the specific activities which a role player undertakes, and their place within the Egg Supply Chain. For example, on the issue of water usage, in the context of the Egg Supply Chain, this is particularly relevant to egg producers, as opposed to retailers or even restaurants. As such, we provided options for stakeholders to indicate which requests were not applicable to them. Furthermore, in terms of PAIA, should requested information not exist, the respondents are at liberty to confirm by way of affidavit that the information does not exist. Similarly, in our ratings, we have indicated where a specific law or issue may not find application to a particular Phase 2 Selected Stakeholder.*

NEMA

NEMA is the umbrella framework for environmental protection, and enforces accountability through audits, inspections, and penalties for non-compliance, ensuring that all stages—from feed production to egg sales—operate within sustainable environmental parameters.²⁹³ NEMA provides that those responsible for environmental damage have a duty to both the environment and human health, requiring them to implement preventative measures to avoid further pollution or harm.²⁹⁴

Duty of Care: Mitigation Measures

S 28 of NEMA imposes a general Duty of Care on every person who causes, has caused or may cause significant pollution or degradation of the environment 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.

PAIA Request: Duty of Care: Mitigation Measures

We requested records from Phase 2 Selected Stakeholders, and/or their suppliers, demonstrating the reasonable measures they have in place required by s 28 of NEMA, which are necessary to protect the environmental right. This includes records relating to training and education programmes of Phase 2 Selected Stakeholders and/or each of their suppliers, and measures to investigate, assess, and evaluate the impact of significant pollution on the environment, etc.

²⁹³ Through ss 28, 30, 31, 34, and 43 of NEMA.

²⁹⁴ S 28 of NEMA.

NEMA establishes requirements for environmental management actions, including external compliance auditing. These audits assess whether Corporations comply with their operating licenses, particularly in maintaining pollution prevention and mitigation measures, which must be regularly checked and reported.²⁹⁵ For example, any entity involved in activities that may impact the environment, including those in the Egg Supply Chain, must obtain an EA, which must be accompanied by an Environmental Management Programme (“**EMPr**”) and, where applicable, a closure plan.²⁹⁶ EA (including similar authorisations in terms of SEMAs), EMPrs, and closure plans (where applicable) must be audited by an independent party with the relevant environmental auditing expertise and the environmental audit report must be submitted to the DFFE.

Furthermore, NEMA regulates environmental aspects of the Egg Supply Chain by requiring Corporations to obtain EAs for activities that significantly impact the environment prior to commencement, known as Listed Activities.²⁹⁷ Failure to obtain EA when conducting a Listed Activity is an offence.²⁹⁸ The process of obtaining an EA requires the consideration, investigation, assessment, and reporting of potential environmental impacts to the competent authority.²⁹⁹ An environmental impact assessment (“**EIA**”) is one of the requirements for obtaining an EA, and is required during the pre-feasibility and feasibility stages of a project / activity.³⁰⁰ The EIA report will determine whether, and to what extent, proceeding with the intended activity would cause “irreversible harm” to the environment before EA may be granted.³⁰¹

This issue is more relevant to certain role players in the Egg Supply Chain, due to the specific activities they undertake, among other factors. An EIA would be required for the construction of new Layer Hen

²⁹⁵ DFFE https://www.dffe.gov.za/sites/default/files/docs/series14_environmental_auditing.pdf (accessed on 14 August 2024).

²⁹⁶ Regulation 34 of the Environmental Impact Assessment Regulations published under Government Notice R.982 in *Government Gazette* No. 38282 of 4 December 2014, accessible at: <https://www.gov.za/documents/national-environmental-management-act-regulations-environmental-impact-assessment-7>.

²⁹⁷ Ss 24F and 49(1)(a) of NEMA. Listed Activities are categorised into different listings based on their environmental impact. Listing Notice 1 covers small-scale activities, requiring basic assessments, while Listing Notice 2 addresses large-scale activities, necessitating comprehensive environmental impact assessments. Additional activities may also be triggered in other Listing Notices, of which there are 3. See Environmental Impact Assessment Regulations Listing Notice 1 as amended published under Government Notice R.983 in *Government Gazette* No. 33306 of 4 December 2014, as amended, and Environmental impact Assessment Regulations Listing Notice 2 published under Government Notice R.984 in *Government Gazette* No. 38282 of 4 December 2014, as amended, accessible at: https://www.gov.za/sites/default/files/gcis_document/201510/39343gon1030.pdf.

²⁹⁸ S 49(1)(a) of NEMA. NEMA mandates a thorough consideration of the environmental consequences of Listed Activities.

²⁹⁹ S24(1) of NEMA.

³⁰⁰ Western Cape Government https://www.westerncape.gov.za/eadp/sites/eadp.westerncape.gov.za/files/atoms/files/EIA_2015.pdf (accessed on 14 August 2024).

³⁰¹ *Supra* note 296.

farms, the expansion of existing farms, or changes in farming practices.³⁰² The potential harm to air, water, and soil will be assessed, and mitigation measures will be proposed.³⁰³ The diagram below reflects the Listed Activities that may be applicable within the Egg Supply Chain (depending on the particular stakeholder, activities, and other relevant factor as specified therein).

NEMA Listed Activities

Listed Activities under NEMA may not commence unless the competent authority has granted an EA for such activity or, where applicable, the activity is carried out in terms of applicable norms and standards as published by the DFFE – and failure to do so is an offence.³⁰⁴

PAIA Request: NEMA Listed Activities

We requested records related to specific Listed Activities related to the Egg Supply Chain, including Activities 3, 4, 5, 8, 38, 40 and 43 under Listing Notice 1.

³⁰² See Habitat Link <https://habitatlink.co.za/wp-content/uploads/2020/09/Waggie-Background-Information-Document.pdf> (accessed on 14 August 2024) for an example of an EIA prepared for the proposed construction of a poultry broiler facility; and <https://sahris.sahra.org.za/sites/default/files/additionaldocs/Plot%2019%20Eigendon%20%20-%20BAR%20-0.pdf> for an example of an EIA prepared for the proposed “expansion and related operation of facilities for the concentration of poultry, excluding chicks younger than 20 days”; and https://www.ecoimpact.co.za/media/DBAR_EXPANSION_HATCHERY_LAYER_FARM-1.pdf for an example of an EIA for the “proposed expansion of an existing hatchery and layer farm”.

³⁰³ DFFE https://soer.environment.gov.za/soer/UploadLibraryImages/UploadDocuments/230719154553_Updated%20Fact%20Sheet%202019-06-27-28%20Info%20Sheet%20-EIAs.pdf (accessed on 14 August 2024) and Department of Health <https://www.health.gov.za/wp-content/uploads/2021/09/Manual-EIA-2017-compressed.pdf> (accessed on 14 August 2024) for more information on EIAs.

³⁰⁴ As outlined in ss 24F, 24G, 49A, 49B, and 49(1)(a) of NEMA.



Graphic Representation of Listed Activities in NEMA that may apply to the Egg Supply Chain.

Unlawful Commencement of a Listed Activity

S 24F of NEMA prohibits the commencement or continuation of Listed Activities without the necessary authorisation to do so. S 24G of NEMA allows for the rectification of unlawful commencement or continuation of a Listed Activity conducted in the absence of the requisite EA. It is important for consumers to know whether Corporations in the Egg Supply Chain have contravened NEMA as Corporations conducting unlawful activity/ies violate the environmental right. Such knowledge empowers consumers to make informed choices, advocate for environmental protection, and hold Corporations accountable for their impact on the environment and public health.

PAIA Request: Unlawful Commencement of NEMA Listed Activities

We requested records related to ss 24F, 24G, 49A and 49B of NEMA.

Emergency Incidents

S 30A of NEMA states that a company may be directed verbally or in writing to carry out a Listed Activity or specified activity without obtaining an EA as contemplated in s 24(2)(a) or (b) of NEMA, in order to prevent or contain an emergency situation or to prevent, contain or mitigate the effects of the Emergency Incidents.

PAIA Request: Emergency Incidents

We requested records relating to any Emergency Incidents and activities relevant to the Egg Industry during the Phase 2 Period from the Phase 2 Selected Stakeholders and/or their suppliers.

Auditing and Inspection Notices in terms of NEMA and the SEMAs

Auditing and inspection notices, as provided for in s 31 of NEMA and relevant SEMAs, are essential tools for regulatory authorities in SA. They help ensure environmental compliance, protect the environment, and promote sustainable development.³⁰⁵ These mechanisms play a pivotal role in upholding environmental laws and standards. The SEMAs are discussed in further detail in the sections that follow.

³⁰⁵ *Supra* note 295.

PAIA Request: Auditing and Inspection Notices in terms of NEMA and the SEMAs

We requested records relating to the Phase 2 Selected Stakeholders and/or each of their suppliers' environmental audits and inspections. We requested records from Phase 2 Selected Stakeholders, and/or their suppliers, demonstrating the reasonable measures they have in place required by s 28 of NEMA, which are necessary to protect the environmental right. This includes records relating to training and education programmes of Phase 2 Selected Stakeholders and/or each of their suppliers, and measures to investigate, assess, and evaluate the impact of significant pollution on the environment, etc.

National Environmental Management: Waste Act ("NEM:WA")³⁰⁶

NEM:WA regulates the management of waste, and emphasises the importance of effective waste management for mitigating environmental impacts and ensuring compliance with regulations. This issue is more relevant to certain role players in the Egg Supply Chain, due to the specific activities they undertake, among other factors, for example, this is critical for producers, equipment providers, and animal feed manufacturers within the Egg Supply Chain, as both hazardous and non-hazardous waste management is recognised as a significant environmental issue by retailers and consumers.³⁰⁷ NEM:WA mandates the development of waste management plans by farms to prevent pollution and comply with regulations.³⁰⁸ In addition it imposes general obligations, with regard to waste management, including obtaining Waste Management Licences ("WMLs"), on a wide spectrum of role players, which may include stakeholders such as restaurants and retailers in the Egg Supply Chain.³⁰⁹

Ss 20-24 of NEM:WA outline the licensing requirements for WMLs, necessitated by waste management activities, and the need for environmental assessments. Schedule 1 of the Waste Management Activities

³⁰⁶ The National Environmental Management: Waste Act 59 of 2008 ("NEM:WA"), accessible at: <https://cer.org.za/virtual-library/legislation/national/pollution-and-waste/national-environmental-management-waste-act-2008>.

³⁰⁷ Huang, I.Y et al (2021) Food waste management: A review of retailers' business practices and their implications for sustainable value. *Journal of Cleaner Production*, 285, p.125484, accessible at: <https://hau.repository.guilde.ac.uk/id/eprint/17611/1/Iona%20Huang%20Food%20waste%20management%20upload.pdf>. S 36-41 of NEM:WA deal with the identification and remediation of contaminated land.

³⁰⁸ NEM:WA also mandates notification of significantly contaminated land and assessment by authorities. See HomeBioGas <https://www.homebiogas.com/blog/farm-waste-management/> (accessed on 14 August 2024). According to Western Cape Government <https://www.westerncape.gov.za/eadp/sites/eadp.westerncape.gov.za/files/atoms/files/WC%20IWMP%202023-2027.pdf> (accessed on 14 August 2024), "Waste management touches on all aspects of sustainable development i.e., environment, society and economy, and is therefore associated with a range of global issues linked to climate change, public health, poverty, food security, resource efficiency, production and consumption (ECD Monrec, 2018). These cross-cutting issues align with the issues identified in Sustainable Development Goals (SDGs) and national and provincial policy".

³⁰⁹ As per s16 of NEM-WA, a holder of waste, which may include such role players, has a number of general obligations with regard to the management of waste under its control.

Regulations lists the specific waste management activities categorised into A (requires a basic assessment process) and B (requires a full scoping and EIA).

In the Egg Supply Chain, several waste management activities may require a WML under the NEM:WA. These include Waste Storage (Category A), which involves the storage of general waste in lagoons or other facilities; Processing of Waste (Category B), encompassing activities such as sorting, shredding, grinding, and baling of waste materials; Re-use and Recycling (Category A), which pertains to recycling general waste at facilities with an operational area exceeding 500 m²; Recovery of Waste (Category B), including refining, utilisation, or co-processing of waste exceeding specified thresholds (e.g., 10 tons of general waste per day); Treatment of Waste (Category B), which involves any biological or chemical treatment processes applied to waste; and Disposal of Waste (Category A), covering the disposal of waste to land or other means, all of which must comply with licensing requirements to mitigate environmental impacts.³¹⁰ The storage, treatment, and processing of animal waste are no longer classified as activities requiring a WML, and fall under Category C, which means that they are instead governed by the National Norms and Standards for Organic Waste Composting Regulations.³¹¹

Waste Management

In our PAIA requests, we sought information on compliance with waste disposal and management regulations, which are vital for maintaining operational licences and avoiding penalties that could affect all stakeholders in the Egg Supply Chain, including stakeholders such as restaurants and retailers.³¹² This issue is more relevant to certain role players in the Egg Supply Chain, due to the specific activities they undertake, among other factors. We also requested waste management policies, plans for disposing of diseased carcasses and culled male chicks, and details on circular waste feeding systems to assess how responsibly companies manage waste—a significant concern in intensive animal production.³¹³ The policies and plans are essential for egg production facilities, which generate substantial waste, including manure, wastewater from egg processing, and mortalities.³¹⁴

PAIA Request: Waste Management

We requested records on compliance with waste disposal and management regulations, waste management policies, plans for disposing of diseased carcasses and culled male chicks, details on circular waste feeding systems, soil management plans and chemical usage records.

³¹⁰ List of waste management activities that have, or are likely to have, a detrimental effect on the environment of s 19(2) of NEM:WA, published under Government Notice 921 in *Government Gazette* 37083 of 29 November 2013, accessible at: <https://cer.org.za/wp-content/uploads/2009/07/NEMWA-Listed-Activities-updated-2023.pdf>.

³¹¹ Norms and Standards for organic waste composting, 2020, published under Government Notice 561 in *Government Gazette* 44762 of 25 June 2021, accessible at: <https://cer.org.za/wp-content/uploads/2009/07/NEMWA-National-Norms-and-Standards-for-Organic-Waste-Composting-June-2021.pdf>.

³¹² Ss 20, 21 and 45 of NEM:WA.

³¹³ S 28 of NEM:WA: Industry Waste Management Plans.

³¹⁴ Zhang, R. and El-Mashad, H (2017) *Waste management in egg production*. Burleigh Dodds Science Publishing, accessible at: https://www.researchgate.net/publication/315804012_Waste_management_in_egg_production

Soil Matters

Additionally, soil management plans and chemical usage records would provide insights into the industry's impact on land resources and potential contamination risks, which are crucial for evaluating the overall sustainability of egg production practices.³¹⁵

PAIA Request: Soil Quality

We requested records related to soil quality management in the Egg Supply Chain, specifically, under ss 36, 37, 38, 39, 40, and 41 of the NEM:WA and other legislation, including soil pollution prevention plans, soil management plans, chemical usage details, soil conservation training, and soil health indicators.

Avian Influenza ("Avian Flu")

During 2023, SA experienced one of the most severe outbreaks of Avian Flu in the country's history.³¹⁶ This resulted in millions of chickens being killed on the orders of the government.³¹⁷ Chickens are killed even when they are not infected to avoid the spread of the disease. The primary mode of transmission of Avian Flu is through direct contact with infected birds.³¹⁸ If a flock of Layer Hens becomes infected with Avian Flu, the virus can spread rapidly among the birds in close proximity due to the fact that many of them are kept in Battery Cages.³¹⁹ This can occur through respiratory secretions, faeces, and other bodily fluids of infected birds.³²⁰ Avian Flu affects access to food, food safety, the right to a healthy environment, animal welfare, etc.³²¹ This issue is more relevant to certain role players in the Egg Supply Chain, due to the specific activities they undertake, among other factors. In this case, egg producers. Please refer to

³¹⁵ S 36-41 of NEM:WA. These sections deal with the identification and remediation of contaminated land.

³¹⁶ Financial Mail <https://www.businesslive.co.za/fm/features/cover-story/2023-11-02-worst-bird-flu-epidemic-yet-ravages-south-africa/> (accessed on 14 August 2024).

³¹⁷ NPR <https://www.npr.org/2023/10/04/1203542047/south-africa-culls-millions-of-chickens-in-an-effort-to-contain-bird-flu-outbreak> (accessed on 14 August 2024).

³¹⁸ DALRRD <https://www.dalrrd.gov.za/images/outbreaks/Avian%20Influenza/Reports/h5-and-h7-update-15-sept-2023-signed.pdf> (accessed on 14 August 2024).

³¹⁹ The Humane League <https://thehumaneleague.org/article/avian-influenza-global-health> (accessed on 14 August 2024).

³²⁰ CDC <https://www.cdc.gov/bird-flu/virus-transmission/avian-in-humans.html>. (accessed on 14 August 2024).

³²¹ World Organisation for Animal Health <https://www.woah.org/en/avian-influenza-vaccination-why-it-should-not-be-a-barrier-to-safe-trade/> (accessed on 14 August 2024).

Appendix I which contains statements in the 2023 NSCPA Annual Report relating to Avian Flu and specific instances witnessed on South African farms.

PAIA Request: Avian Flu

We requested records concerning the impact of Avian Flu on Phase 2 Selected Stakeholders, and/or their suppliers, specifically including information related to whether they have been affected by the virus, the number of chickens killed due to the virus, the policies or plans implemented to manage Avian Flu outbreaks, and the waste management policies or plans for the disposal of infected bird carcasses.

Soil Quality

Maintaining healthy soil uphold the right to a healthy environment as it is crucial for agricultural sustainability, ecosystem health, water quality protection, human health, biodiversity conservation, regulatory compliance, soil erosion prevention, climate change mitigation, and long-term sustainability. This issue is more relevant to certain role players in the Egg Supply Chain, due to the specific activities they undertake, among other factors.

PAIA Request: Soil Quality

We requested records related to soil quality management in the Egg Supply Chain, specifically, under ss 36, 37, 38, 39, 40, and 41 of the NEM:WA and other legislation, including soil pollution prevention plans, soil management plans, chemical usage details, soil conservation training, and soil health indicators.

National Environmental Management: Air Quality Act (“NEM:AQA”)³²²

The NEM:AQA emphasises the need for air quality monitoring and pollution prevention, which is particularly relevant for Layer Hen farming and egg processing facilities that emit GHG emissions,³²³ however it is more relevant to certain role players in the Egg Supply Chain, due to the specific activities they undertake, among other factors. Compliance with air quality standards helps minimise the

³²² The National Environment Management: Air Quality Act 39 of 2004 (“NEM:AQA”), accessible at: <https://cer.org.za/wp-content/uploads/2010/03/NEMAQA-May-2014.pdf>.

³²³ See CSIR <https://www.csir.co.za/sites/default/files/Documents/Final%20Draft%20Report%20Lungile-min.pdf> (accessed on 14 August 2024) for an example.

environmental footprint of egg production and processing, ensuring that Corporations adhere to consumer protection standards regarding health and safety.³²⁴

Furthermore, NEM:AQA sets the requirements for Atmospheric Emission Licences (“AELs”).³²⁵ An AEL is required when the operation of certain activities, listed in NEM:AQA regulations, result in atmospheric emissions that exceed specified “trigger” values.³²⁶ In the Egg Supply Chain, egg production facilities with incinerators processing 10 kg of waste per hour or larger,³²⁷ installations handling over 1 ton of raw materials daily for animal matter processing,³²⁸ and facilities using solid fuels for energy generation with a capacity of 50 MW heat input or greater,³²⁹ are required to obtain AELs. Role players in the Egg Supply Chain who do not operate above these thresholds are accordingly not required to have AELs. By enforcing compliance with air quality standards, NEM:AQA seeks to minimise the environmental footprint of industries, including egg farming and processing, ensuring adherence to consumer protection standards regarding health and safety, and promoting sustainable practices within the agricultural sector.

Air Quality

We sought records related to air quality management in the Egg Supply Chain, highlighting the importance of improving air quality and preventing air pollution³³⁰ to uphold the right to a healthy environment.

³²⁴ Mitrovic, M et al (2022) Assessment of Environmental Impacts from Different Perspectives—Case Study of Egg Value Chain System in Serbia. Foods, 11(12), p.1697, accessible at: https://www.researchgate.net/publication/318396517_Improving_Unsustainable_Environmental_Governance_in_South_Africa_the_Case_for_Holistic_Governance.

³²⁵ S 21 of NEM:AQA outlines the need for a list of activities that result in atmospheric emissions, which require an Atmospheric Emissions Licence (“AEL”) prior to commencement. Additionally, s 37(10) specifies the requirement for an AEL for undertaking activities listed in terms of s 21 of NEM:AQA.

³²⁶ List of activities which result in atmospheric emissions which have or may have a significant detrimental effect on the environment, including, health, social conditions, economic conditions, ecological conditions or cultural heritage as contemplated in s 21(1)(a) of NEM:AQA, published in *Government Gazette* No. 33064, GN 248 on 31 March 2010, accessible at: <https://www.gov.za/documents/notices/national-environmental-management-air-quality-act-list-activities-associated>.

³²⁷ *Ibid*, Category 8.

³²⁸ *Ibid*, Category 10. Animal matter and animal waste material is described in the Western Cape Government ‘Mini guide to the Management of Abattoir Waste’, accessible at: <https://www.westerncape.gov.za/eadp/sites/eadp.westerncape.gov.za/files/atoms/files/Abattoir>, as feathers, blood, fat, etc.

³²⁹ *Ibid*, Category 1.

³³⁰ S 19(c) of the CTA allows the Minister to make regulations regarding “the submission of pollution prevention plans by taxpayers.” The CTA requires companies to submit pollution prevention plans if their CO₂-eq emissions exceed 0.1 Megatonnes in a reporting year.

PAIA Request: Air Quality

We requested records under ss 12, 21, 27, 29, 31, and 38 of the NEM:AQA and other legislation, insofar as they are applicable. Specifically, we requested records relating to Phase 2 Selected Stakeholder's, and their suppliers', air pollution prevention plans, emission inventories, air quality monitoring data, and the use of pollution control equipment.

National Water Act ("NWA")³³¹

The NWA governs water use and water pollution prevention, which is crucial for all role players in the Egg Supply Chain however it is more relevant to certain role players in the Egg Supply Chain, due to the specific activities they undertake, among other factors. Given that agriculture as the largest consumer of freshwater worldwide,³³² and egg production is water-intensive, it is imperative that the Egg Industry's water usage, pollution, contamination, etc. is mitigated and regulated.³³³ Furthermore, the NWA provides a Duty of Care in respect of water pollution,³³⁴ and provides for Water Use Licences ("WULs"),³³⁵ which are required for abstracting water from any source (natural or municipal) for farm activities like cleaning and irrigation.³³⁶ Layer Hen farming's water usage may necessitate a WUL, and their potential for groundwater contamination may trigger the Duty of Care.³³⁷

³³¹ The National Water Act 36 of 1998 ("NWA"), accessible at: https://www.gov.za/sites/default/files/gcis_document/201409/a36-98.pdf.

³³² World Bank Blogs <https://blogs.worldbank.org/en/opendata/chart-globally-70-freshwater-used-agriculture>. (accessed on 14 August 2024).

³³³ *Supra* note 231.

³³⁴ S 19(1) of NWA 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".

³³⁵ S 21 of the NWA specifies the types of water uses that require authorisation, including activities that may impede or alter the flow of watercourses. Additionally, s 27 outlines the considerations that must be considered when issuing a water use licence ("WUL") emphasising the need for a motivational report that assesses various socio-economic and environmental factors related to the proposed water use.

³³⁶ An example of a water use licence application for a livestock farm is accessible at: https://cdn-web-content.srk.com/upload/user/image/552583_Kamiebees_Technical_Report_for_WULA_Vers_20200217_FINAL_C_OMBINED20210831121944935.pdf (accessed on 14 August 2024).

³³⁷ S 21(g) of NWA. *Supra* note 33 at page 153, "Layer Hen farming generates contaminants that are 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 s 21 and a water use licence ("WUL") is necessary. 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 s 22(1) of NWA).

Water Usage

Preserving water is essential for upholding the right to a healthy environment, as it intersects with human health, ecosystem health, economic stability, social equity, and food security.³³⁸ According to the FAO, it takes approximately 135 litres of water to produce a single egg.³³⁹

PAIA Request: Water Usage

We requested records relating to ss 19, 21, and 22 of the NWA, and any other applicable legislation, in respect of the Phase 2 Selected Stakeholders, and/or their suppliers' WULs, annual water usage, the percentage of water used in egg production and other aspects of the Egg Supply Chain, water use policies, and water pollution prevention plans for the Phase 2 Period.

National Energy Act ("NEA")³⁴⁰

The NEA promotes sustainable energy practices and efficiency across agricultural operations, including the Egg Supply Chain. Furthermore, s 6 mandates the development of an Integrated Energy Plan ("IEP"), which may in the future help Corporations align their operations with national energy strategies.³⁴¹

Energy Usage

Animal agriculture is a significant energy consumer,³⁴² and the ongoing energy crisis in SA has led to the deaths of millions of chickens.³⁴³ Our PAIA requests emphasised the need for transparency in energy usage and GHG emissions within the Egg Industry, highlighting agriculture's substantial environmental impact as a major contributor to global GHG emissions.³⁴⁴ Given South Africa's reliance on coal and the

³³⁸ Parkes, M.W. and Horwitz, P (2009) Water, ecology and health: ecosystems as settings for promoting health and sustainability. *Health promotion international*, 24(1), pp.94-102., accessible at: <https://academic.oup.com/heapro/article/24/1/94/678296>.

³³⁹ FAO <https://x.com/FAO/status/1638506307207692288> (accessed on 14 August 2024).

³⁴⁰ The National Energy Act 34 of 2008 ("NEA"), accessible at: https://www.gov.za/sites/default/files/gcis_document/201409/316381263.pdf.

³⁴¹ Section 6 of the National Energy Act came into operation on 1 April 2024 and an IEP is under development currently.

³⁴² Frorip, J et al (2012) Energy consumption in animal production-case farm study. *Agron. Res*, 10(1), pp.39-48, accessible at: https://www.researchgate.net/publication/256521473_Energy_consumption_in_animal_production_-_Case_farm_study.

³⁴³ Bhorat, Z (2024) Disautomated Realities in South Africa: Loadshedding, Poultry Death, and the Promises of Failure. *International journal of communication (Online)*, 18, pp.748-755, accessible at: https://go.gale.com/ps/i.do?id=GALE%7CA782226491&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=19328036&p=LitRC&sw=w&userGroupName=nysl_me_sfphs&aty=ip.

³⁴⁴ Lynch, J et al (2021) Agriculture's contribution to climate change and role in mitigation is distinct from predominantly fossil CO2-emitting sectors. *Frontiers in sustainable food systems*, 4, p.518039, accessible at:

crisis-driven shutdown of animal facilities,³⁴⁵ which also poses food safety concerns, the Egg Industry's reliance on energy for heating, cooling, lighting, and processing is critical.³⁴⁶

PAIA Request: Energy Usage

We requested records related to the Phase 2 Selected Stakeholders and their suppliers. This request aimed to protect the environmental right and address broader rights considerations, including transparency and accountability. Despite the absence of legal obligations, we sought information on the industry's reliance on renewable energy, renewable energy policies, GHG emissions prevention plans, and mechanisms to mitigate load shedding, as applicable.

Carbon Tax Act ("CTA")³⁴⁷

The CTA recognises six main GHGs that are emitted from industrial activities.³⁴⁸ It imposes taxes on local activities that release significant amounts of GHGs, which trap heat in the Earth's atmosphere and lead to global warming. The CTA aims to explicitly put a price on the negative externalities of GHG emissions and climate change, correcting a market failure and providing a price signal to promote changes in the behaviour of producers and consumers towards low carbon, energy-efficient technologies.³⁴⁹ It is worth noting that the CTA currently only regulates Scope 1³⁵⁰ emissions and does

https://www.frontiersin.org/journals/sustainable-food/systems/articles/10.3389/fsufs.2020.518039/full?trk=public_post_comment-text.

³⁴⁵ Mogodi, B (2024) Electricity loadshedding and its implications on Animal Welfare in research animal facilities in South Africa. *Animal Technology & Welfare*, 23(1), accessible at: <https://openurl.ebsco.com/EPDB%3Agcd%3A3%3A28340179/detailv2?sid=ebsco%3Aplink%3Ascholar&cid=ebsco%3Agcd%3A177172641&crl=c>.

³⁴⁶ WWF http://awsassets.wwf.org.za/downloads/wwf006_ffl_report_low_res.pdf (accessed on 14 August 2024).

³⁴⁷ The Carbon Tax Act 15 of 2009 ("CTA"), accessible at: https://www.gov.za/sites/default/files/gcis_document/201905/4248323-5act15of2019carbontaxact.pdf

³⁴⁸ *Ibid.* The six main GHGs: described in the CTA are: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF₆).

³⁴⁹ *Ibid* and The South African Institute of Taxation <https://www.thesait.org.za/news/498153/The-Carbon-Tax-Act-Explained.htm> (accessed on 14 August 2024).

³⁵⁰ See GHG Protocol <https://ghgprotocol.org/sites/default/files/2022-12/FAQ.pdf> (accessed on 14 August 2024), and Datatracks <https://www.datatracks.com/za/blog/guide-to-scope-1-2-and-3-emissions-in-esg-reporting/#> (accessed 14 August 2024). Scope 1 emissions are direct greenhouse gas emissions that originate from sources owned or controlled by a company, including combustion in boilers and furnaces, emissions from company vehicles, and fugitive emissions from leaks. Examples include on-site fuel combustion (e.g., natural gas boilers), emissions from delivery trucks, and leaks from refrigerants.

not yet cover Scope 2³⁵¹ or Scope 3³⁵² emissions. As such, this legislation is limited in applicability to the Egg Supply Chain.

Climate Change Act (“CCA”)³⁵³

The CCA only recently received presidential assent on 18 July 2024, which postdates our PAIA requests. Accordingly, although not explicitly mentioned in our PAIA request, the CCA bears significant relevance to the Egg Industry, particularly concerning GHG emissions and sustainability practices.³⁵⁴ For instance, it empowers the government to introduce various plans and programmes aimed at advancing a low-carbon, climate resilient economy in the country. The government is also empowered to introduce carbon budgets for polluters, which could in the future compel role players in the Egg Supply Chain to reduce their carbon footprint.

EXAMPLES OF POTENTIAL LEGAL ENVIRONMENTAL DUTIES OF CORPORATIONS IN THE EGG SUPPLY CHAIN

Corporations involved in the Egg Supply Chain may have legal obligations arising from Environmental Legislation, regulations, standards or otherwise. These responsibilities encompass a range of regulations and best practices aimed at fostering sustainable (and ethical operations). Below are selected key legal duties, which may apply to role players:

Duty 1: Compliance with Environmental Legislation

Stakeholders operating within the Egg Supply Chain must adhere to relevant obligations under the abovementioned environmental laws. Depending on where in the supply chain a particular stakeholder is, and the specific activities which they undertake, this will determine which particular obligations such stakeholder needs to comply with. This includes obligations provided for in NEMA, the SEMAs, and other legislation or regulations, which relate directly to Layer Hen farming and egg production. Compliance entails obtaining necessary licenses and authorisations as stipulated by legislation and regulations, ensuring that operations do not negatively impact the environment. Compliance with legislation applicable to the Egg Supply Chain is a reasonable measure in the fulfilment of the

³⁵¹ *Ibid.* Scope 2 emissions refer to indirect GHG emissions that result from the generation of purchased electricity, steam, heating, and cooling consumed by a reporting entity. These emissions occur at the facility where the energy is produced but are attributed to the company that purchases the energy for its operations.

³⁵² *Ibid.* Scope 3 emissions encompass all other indirect emissions not included in Scope 2 that occur in the value chain of the reporting company. This includes emissions from activities such as business travel, waste disposal, and supply chain operations.

³⁵³ The Climate Change Act 22 of 2024 (“CCA”), accessible at https://www.gov.za/sites/default/files/gcis_document/202407/50966climatechangeact222024.pdf.

³⁵⁴ Our PAIA request includes records that relate to Chapter 4: National Adaptation to Impacts of Climate Change: ss 19-23; and Chapter 5: Greenhouse Gas Emissions and Removals: ss 24-29 of the CCA.

environmental right, and helps to fulfil the obligation on everyone, including Corporations, stated in s 24 of the Constitution to take reasonable measures to prevent pollution and ecological degradation.³⁵⁵

PAIA Request: (Non-)Compliance with Environmental Legislation

We requested records related to legal compliance to obtain insight on the Phase 2 Selected Stakeholders', and their suppliers', understanding of their legal obligations in terms of Environmental Legislation. We requested reports, licences, permits, warnings, citations, notices, directives (ss 24F, 24G, 28, 30, 49A, 49B of NEMA), and similar enforcement and compliance records (such as compliance with environmental management plans), both internal and external, specifically in relation to compliance and/or non-compliance with Environmental Legislation (including any amendments, rules, lists, notices, regulations, etc. in terms thereof).

Charges Laid, and Judgments and Orders

Non-compliance with environmental legislation and enforcement measures by Corporations is recorded in charges, judgements and orders. These records of adverse findings against Corporations and/or their suppliers are indicative of the non-fulfilment of its obligation in terms of the environmental right.

PAIA Request: Charges Laid, and Judgments and Orders

We requested any and all records of charges, judgments and/or orders that have been handed down, including in criminal and civil proceedings in which a Corporation was cited as a party relating to the legislation listed by any relevant authority.

Duty 2: General Duty of Care

Under NEMA, Corporations are mandated to take reasonable steps to prevent, minimise, or rectify significant environmental damage.³⁵⁶ This general Duty of Care applies to all parties potentially causing environmental harm, including those in the Egg Industry, emphasising the need for proactive measures to safeguard ecological integrity.³⁵⁷ The Duty of Care applies across the Egg Supply Chain, from breeders and farmers to retailers and restaurants. Stakeholders such as retailers and restaurants should implement specific measures including Responsible Sourcing, transparent labelling, waste management, and

³⁵⁵ Reports, licenses, permits, warnings, citations, notices, and directives are dealt with in s 24F, 24G, 28, 30, 49A, 49B of NEMA.

³⁵⁶ S 28 of NEMA. The NWA also provides a Duty of Care in respect of water pollution.

³⁵⁷ S 28(1) of NEMA 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”. This applies to all role-players in the Egg Supply Chain, not just farm owners.

community engagement, ensuring a comprehensive approach that promotes ecological integrity and consumer awareness.

● Duty 3: Conduct Compliance Audits

Regular environmental compliance audits are essential for ensuring that operations within the Egg Industry meet legal requirements and environmental standards and are undertaken in conformity with conditions of relevant licences and authorisations. If done correctly, these audits help identify areas for improvement and ensure adherence to both local and international regulations / standards.³⁵⁸

● Duty 4: Consider Animal Well-being

The National Environmental Management Laws Amendment Act (“**NEMLAA**”) requires that animal well-being be considered in the management, conservation and sustainable use thereof, within the framework of the NEMA.³⁵⁹

🔍 Battery Cage Farming in the Egg Industry

86% of the approximately 27 million Layer Hens in SA live in Battery Cages.³⁶⁰ Battery Cages are widely considered to be cruel because they confine birds in extremely small spaces, unable to express natural behaviours, and lead to health issues and stress.³⁶¹ These cramped conditions are detrimental to the welfare and well-being of the hens and have prompted bans and/or phase-outs in many countries and jurisdictions around the world.³⁶² As has been discussed above, our courts have confirmed that the environmental right encompasses the protection of animals.³⁶³ Therefore, the use of Battery Cages is an environmental concern.

³⁵⁸ According to Envass <https://www.envass.co.za/environmental-compliance-auditing-legislative-setting/> (accessed on 14 August 2024), “Legislative requirements for environmental compliance auditing in SA stems from the NEMA...Environmental Compliance audits require the assessment of operations and activities undertaken against their operating licences. Often these require operations to maintain mitigation and pollution prevention measures which must be checked and reported on a regular basis”. See also *supra* note 295.

³⁵⁹ The National Environmental Management Laws Amendment Act 2 of 2022 (“**NEMLAA**”), accessible at: <https://www.gov.za/documents/acts/national-environmental-management-laws-amendment-act-2-2022-english-afrikaans-24-jun>. NEMLAA, which came into force in June 2023, introduces a definition of animal “well-being”[#] which 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”.

³⁶⁰ *Supra* note 21.

³⁶¹ Shields, S. and Duncan, I.J., 2009. A comparison of the welfare of hens in battery cages and alternative systems, accessible at: https://www.wellbeingintlstudiesrepository.org/hsus_reps_impacts_on_animals/18/.

³⁶² The Humane League <https://thehumaneleague.org/article/battery-cages> (accessed on 14 August 2024).

³⁶³ *Supra* note 207.

PAIA Request: Battery Cage Farming in the Egg Industry

We requested records related to Phase 2 Selected Stakeholders and/or each of their suppliers' justification for the use of Battery Cages in egg production, such as recommendations or scientific studies including, but not limited to a report published by the National Agricultural Marketing Council ("NAMC") commissioned by the South African Poultry Association ("SAPA") which will be discussed in more detail in Section IV below; and records relating to costing done by the Phase 2 Selected Stakeholders and/or each of their suppliers to transition to cage-free egg farming systems.

*****Note:** Duties 5 to 9 listed below do not necessarily arise from environmental law, but nevertheless are of value in enhancing transparency and accountability in the Egg Industry, specifically as they relate to the environment and environmental impacts.*

Duty 5: Maintain Good ESG Practice

To maintain Good ESG Practices, Corporations should implement policies and/or pollution prevention programmes for air quality,³⁶⁴ waste management,³⁶⁵ water use,³⁶⁶ and GHG emissions,³⁶⁷ biodiversity protection,³⁶⁸ etc. It is also beneficial, though not mandatory, for Corporations to monitor environmental indicators, collect ESG data and create visibility around ESG performance.³⁶⁹ Promoting transparency and accountability contributes to a healthier, more informed, and responsible Egg Industry

PAIA Request: ESG Policies

We requested records relating to the Phase 2 Selected Stakeholders and/or their suppliers' ESG policies, plans, programmes, among other policies.

³⁶⁴ National Pollution Prevention Plans Regulations published under Government Notice 712, in *Government Gazette* No. 40996 of 21 July 2017, in terms of s 53 (a), (o) and (p) read with s 29 (3) of the NEM:AQA, accessible at: https://www.gov.za/sites/default/files/gcis_document/202010/43827gen580.pdf.

³⁶⁵ Sustainable Agriculture in SA https://siza.co.za/wp-content/uploads/SIZA-Waste-Management-Guideline_eBook_Final.pdf. (accessed on 14 August 2024). Corporations should develop and implement plans and policies for handling various farm waste streams like manure, bedding, egg waste, waste from antibiotics, etc. This includes proper disposal of chemicals to prevent pollution

³⁶⁶ For an example of a water use management plan, see <https://enviroafrica.co.za/wp-content/uploads/2023/09/Appendix-O-Stormwater-Management-Plan.pdf> (accessed on 14 August 2024).

³⁶⁷ ESI Africa <https://www.esi-africa.com/southern-africa/all-about-south-africas-pollution-prevention-plans-and-carbon-tax/> (accessed on 14 August 2024).

³⁶⁸ For example, see BirdLife Africa <https://www.birdlife.org.za/what-we-do/policy-and-advocacy/> (accessed on 14 August 2024).

³⁶⁹ Dilligent <https://www.diligent.com/resources/blog/esg-best-practices> (accessed on 14 August 2024).

● Duty 6: ESG Reporting

In SA, ESG reporting is currently required for certain companies listed on the Johannesburg Stock Exchange (“**JSE**”), which mandates the disclosure of ESG risks and opportunities.³⁷⁰ SA is phasing in mandatory ESG reporting, led by the Companies and Intellectual Properties Commission (“**CIPC**”), with voluntary reporting beginning in late 2023 and becoming compulsory for public and state-owned companies by 2025.³⁷¹ SA Corporations, including those operating in the Egg Supply Chain, are urged to prepare for imminent mandatory ESG reporting regulations, driven by local and international standards, including those from the JSE, International Sustainability Standards Board (“**ISSB**”), as well as the US Securities and Exchange Commission (“**SEC**”), as well as increasing market demands for transparency on sustainability issues.³⁷² Additionally, financial institutions under the supervision of the SA Reserve Bank (“**SARB**”) must enhance their climate risk disclosures, with a formal ESG disclosure framework expected to be implemented soon, reflecting a growing trend towards mandatory reporting across various sectors.³⁷³

● Duty 7: Reporting on Environmental Issues

Transparency is vital in the Egg Supply Chain. Corporations should regularly monitor environmental indicators like air and water quality, waste generation, and biodiversity, and report on these findings in compliance with environmental laws listed above, which will also serve to promote Corporate Accountability.³⁷⁴ Many licenses and authorisations provided for in environmental law require Corporations to disclose relevant information to the public. For example, Corporations with EAs under the 2014 EIA Regulations³⁷⁵ must disclose various licensing information on their websites, at operational sites, and upon request, ensuring accountability for environmental impacts and enabling community monitoring.³⁷⁶ This is a legally binding requirement included in the NEMA framework. Non-compliance is a criminal offence in terms of s 49A(1)(c) of NEMA and can attract a fine of up to

³⁷⁰ Johannesburg Stock Exchange (“JSE”) <https://www.jse.co.za/our-business/sustainability/jse-sustainability-and-climate-disclosure-guidance> (accessed on 14 August 2024).

³⁷¹ XBRL <https://www.xbrl.org/news/south-africas-esg-reporting-revolution> (accessed on 14 August 2024); Master Data Management <https://blog.masterdata.co.za/2024/04/09/demystifying-esg-south-africas-growing-focus-on-sustainability-reporting/> (accessed on 14 August 2024); Companies and Intellectual Properties Commission (“CIPC”) <https://www.cipc.co.za/?p=20495> (accessed on 14 August 2024).

³⁷² Greenstone <https://www.greenstoneplus.com/blog/esg-reporting-in-south-africa-preparing-for-regulation> (accessed on 14 August 2024).

³⁷³ *Ibid* and South African Reserve Bank.

<https://www.resbank.co.za/content/dam/sarb/publications/working-papers/2024/transition-and-systemic-risk-in-the-south-african-banking-sector-assessment-and-macroprudential-options.pdf> (accessed on 14 August 2024).

³⁷⁴ *Supra* note 52. Corporations listed on the JSE are required to produce environmental reports: *supra* note 370 As of 2025, State owned companies and public companies are required to file ESG reports to the CIPC: *supra* note 371.

³⁷⁵ NEMA EIA Regulations published under Government Notice R982 in *Government Gazette* 38282 dated 4 December 2014, accessible at: <https://cer.org.za/wp-content/uploads/2010/03/EIA-Regulations-2014.pdf>.

³⁷⁶ *Ibid* and CER <https://www.cer.org.za/news/industry-compelled-to-disclose-environmental-licences-and-reports> (accessed on 14 August 2024).

R10 million or imprisonment for a period of up to 10 years.³⁷⁷ Even in the absence of legal obligations to do so, reporting on environmental issues is a key to environmental Corporate Accountability and good practice.

Duty 8: Training and Awareness Programmes

Corporations are legally required to provide training and awareness programs for employees regarding environmental laws and best practices.³⁷⁸ This ensures that all staff are informed about their roles in maintaining compliance and promoting sustainability within the Corporation. This is particularly pertinent in the Egg Industry, given its environmental impacts as outlined in this Supplementary Report.

Duty 9: Industry-Specific Regulations

Certain industries have additional regulations that require training on environmental compliance. For instance, the Egg Supply Chain in SA is governed by agricultural sector regulations, food safety regulations, environmental regulations, animal welfare regulations, among others.³⁷⁹

POTENTIAL CONSEQUENCES FOR NON-COMPLIANCE WITH ENVIRONMENTAL LAW

Non-compliance with environmental legislation can result in a range of serious consequences, including but not limited to:

Criminal Offences

Serious breaches or deliberate non-compliance can lead to criminal charges, fines, or imprisonment. For example, failure to fulfil the Duty of Care envisaged in NEMA constitutes an offence under NEMA, with potential penalties including fines of up to R10 million or imprisonment for up to 10 years upon conviction.³⁸⁰ Furthermore, it is a criminal offence to commence or continue a Listed Activity without an EA.³⁸¹ The NEM:AQA also provides that failure to prevent offensive odours, common in Layer Hen

³⁷⁷ *Ibid.*

³⁷⁸ S 2(4)(a) of NEMA emphasises the need for environmental education and awareness, stating that all individuals and institutions should be informed about their environmental rights and responsibilities. S 8 of the Occupational Health and Safety Act 85 of 1993, accessible at: https://www.gov.za/sites/default/files/gcis_document/201409/act85of1993.pdf outlines the employer's duty to provide a safe working environment, which includes ensuring that employees are informed about health and safety regulations, including those related to environmental impacts.

³⁷⁹ The Egg Supply Chain in SA is governed by several industry-specific regulations, including (but not limited to) the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947 ("FFFARSRA"), accessible at: <https://www.gov.za/documents/fertilizers-farm-feeds-seeds-and-remedies-act-28-may-2015-1101>, which sets standards for animal welfare and feed quality; the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972, accessible at: https://www.gov.za/sites/default/files/gcis_document/201504/act-54-1972.pdf, which ensures food safety; the NEM:WA, which regulates waste disposal; and the APA (*supra* note 10), which mandates humane treatment of Laying Hens. Compliance with these regulations is essential for maintaining ethical and sustainable practices within the industry.

³⁸⁰ S 49A(1) read with s 49B(1) of NEMA.

³⁸¹ S 49(1)(a) of NEMA.

farms and other animal agriculture industries, constitutes an offence, punishable by fines or imprisonment.³⁸²

● Civil Liability

Entities responsible for environmental harm due to non-compliance may face court action from affected parties. This may occur by way of interdictory relief and damages claims.

● Reputational Damage

If Corporations participate in harmful environmental activities or are non-compliant with environmental law, it may result in negative publicity which causes damage to a Corporation's reputation, and as a result, a loss of trust among stakeholders, customers, and other relevant parties.³⁸³ This could lead to loss of support, and even boycotts of Corporations and their products. For example, in *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* ("***Sustaining the Wild Coast***") a non-profit organisation and local communities sought an interdict against the Minister of Mineral Resources and Energy to halt oil giant, Shell, from conducting seismic surveys off the coast of SA – which holds negative implications for the environment, arguing (among others) that the Minister granted an offshore oil and gas exploration right without sufficient public participation.³⁸⁴ Members of the public boycotted Shell, and refused to support its business operations. This in part, led to Shell announcing that it would be leaving the country. Another term for non-support by consumers is "Social License to Operate".

● Community Disputes

Affected community members may file complaints or pursue litigation. *Sustaining the Wild Coast*³⁸⁵ is an example of this.

● Licence / Permit Revocation

Permits and licenses can be revoked for non-compliance with environmental legislation or regulations.³⁸⁶

³⁸² S 51 read with s 35(2) of NEM:AQA).

³⁸³ YouVerify <https://youverify.co/blog/impact-of-non-compliance-understanding-the-risks-and-consequences> (accessed on 14 August 2024).

³⁸⁴ See for example, *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* (3491/2021) [2022] ZAECKMHC 55; 2022 (6) SA 589 (ECMk) (1 September 2022), accessible at: <https://www.saflii.org/za/cases/ZAECKMHC/2022/55.html>.

³⁸⁵ *Ibid.*

³⁸⁶ Bowmans <https://bowmanslaw.com/wp-content/uploads/2020/06/GUIDE-SA-Environmental-Digital-2020.05.26.pdf> (accessed on 14 August 2024), "Virtually all environmental legislation which requires permits, licences or authorisations is subject to provisions providing for their withdrawal, suspension or cancellation for a failure to comply with the conditions imposed, or with the applicable legislation".

● Business / Operation / Project Delays

Non-compliance with EA/ EIA/ licence requirements and/or other environmental law requirements can delay or prevent approval of farming projects or expansions, which can be costly and detrimental to project planning.³⁸⁷

● Market Access Loss

Non-compliance with environmental legislation and regulations can restrict market access or hinder sales to environmentally conscious consumers.³⁸⁸

● Retrospective Application

S 24G of NEMA provides that Corporations engaging in Listed Activities without an EA face significant consequences, including legal actions, fines, and order to halt operations. S 24G provides a pathway to regularise such activities but involves stringent requirements, including environmental impact assessments and remedial actions. By ensuring compliance with NEMA and the SEMAs, businesses can avoid severe penalties, protect the environment, and contribute to sustainable development. This comprehensive approach also helps in mitigating personal liability risks for directors and ensuring corporate accountability.³⁸⁹

● Corporate Role player's Liability: Piercing the Corporate Veil

In the context of environmental law, '*piercing the corporate veil*' is a legal concept whereby the limited liability of a Corporation may be set aside, and corporate stakeholders (such as directors or shareholders) can be held *personally* liable for the Corporation's actions.³⁹⁰ S 34(7) of NEMA holds directors personally liable for certain environmental offences if, for example, they failed to prevent such offences through reasonable steps. This provision acts as a deterrent against negligent or deliberate non-compliance with environmental regulations, ensuring that those in positions of power within corporations cannot escape liability by merely citing their corporate status.³⁹¹ By piercing the corporate veil, NEMA strengthens the enforcement of environmental laws and promotes greater accountability and responsibility among corporate leadership.³⁹² Notably, examples of offences for which directors may be held personally liable, include animal crimes as contemplated in section 2 of the Animals Protection Act (which is listed in Schedule 3 of NEMA).

³⁸⁷ *Supra* note 213.

³⁸⁸ V Comply <https://www.v-comply.com/blog/impact-of-non-compliance-on-organizations/> (accessed on 14 August 2024).

³⁸⁹ Kohn, L (2012) The anomaly that is s 24G of NEMA: an impediment to sustainable development. *SAJELP*, 19(1), pp.1-26, accessible at: https://www.laurenkohn.co.za/wp-content/uploads/2015/12/The_anomaly_that_is_section_24G_of_NEMA.pdf.

³⁹⁰ Serr Synergy <https://serr.co.za/piercing-the-corporate-veil-under-companies-act-71-of-2008> (accessed on 14 August 2024).

³⁹¹ *Ibid.*

³⁹² *Ibid.*

● Vicarious Liability

Vicarious liability is a legal doctrine under which a party can be held responsible for the actions or omissions of another person.³⁹³ This is often utilised in the context of employers being held responsible for the actions of employees when acting in the course of their employment. In the context of NEMA, vicarious liability implies that employers, including corporate entities, can be held liable for environmental offences committed by their employees or agents during the course of their employment.³⁹⁴ This means that if an employee engages in activities that cause environmental harm, the employer can be held accountable, even if the employer did not directly participate in or authorise the wrongful acts, thereby reinforcing the overarching goals of NEMA to protect and manage the environment responsibly.³⁹⁵

By adhering to environmental legislation and regulations, and complying with their duties and obligations, stakeholders in the Egg Supply Chain can mitigate legal, financial, and reputational risks. This applies across the entire supply chain, even if less directly in the case of stakeholders that are not involved in farming and manufacture of eggs and egg-related products.

JURISPRUDENTIAL EXAMPLES AND DEVELOPMENTS

A growing body of jurisprudence in SA and foreign jurisdictions demonstrates the use of litigation to address environmental issues related to animal agriculture and other harmful sectors. These cases highlight the duty to consider environmental and animal welfare concerns in government decision-making and the potential for courts to enforce these obligations.

South African Jurisprudence: Selected Examples of Case Law

Several South African cases illustrate the courts' increasing willingness to consider environmental and animal welfare impacts in decisions related to animal agriculture and wildlife management. These are included in brief below:

- In ***South African Farm Assured Meat Group CC and Others v Langeberg Municipality and Others***,³⁹⁶ the court upheld a municipality's decision to limit the expansion of an abattoir and compost facility due to potential negative environmental impacts. This decision aligns with

³⁹³ Forbes Advisor <https://www.forbes.com/advisor/legal/personal-injury/vicarious-liability/> (accessed on 14 August 2024).

³⁹⁴ S 34(5) of NEMA.

³⁹⁵ Milton, J (1999) Sharpening the dog's teeth: of NEMA and criminal proceedings. *South African Journal of Environmental Law and Policy*, 6(1), pp.53-60, accessible at: https://journals.co.za/doi/pdf/10.10520/AJA10231765_8, "Section 34 of NEMA contains provisions which extend the principle of vicarious liability to the range of statutes identified in schedule 3 of the Act".

³⁹⁶ *South African Farm Assured Meat Group CC and Others v Langeberg Municipality and Others* (15865/2021) [2023] ZAWCHC 165 (13 July 2023), accessible at: <https://www.saflii.org/za/cases/ZAWCHC/2023/165.html>.

broader trends advocating for integrated environmental policies that consider public health, animal welfare, and climate impacts in agricultural decision-making.

- In *Endangered Wildlife Trust v Minister of Agriculture, Land Reform and Rural Development and Others*³⁹⁷ the High Court set aside the Minister’s decision to define certain wild and game species as “animals” under amended regulations of the Animal Improvement Act (“AIA”). This would have led to genetic manipulation of these species for agricultural purposes, potentially violating the constitutional right to environmental protection and jeopardising SA’s biodiversity. This case illustrates the court’s consideration of environmental impacts in animal agriculture decision-making.
- In *NSPCA v Minister of Environmental Affairs and Others*,³⁹⁸ the court ruled that the Minister’s failed to consider animal welfare and other relevant factors when setting annual export quotas for lion bone and other products derived from captive breeding operations rendered her decision unconstitutional and invalid. The court’s decision confirmed the broader implications for environmental and animal welfare considerations in policy-making. The court noted that the ruling was significant for both current and future generations in how society interacts with wildlife and the environment, reinforcing the idea that the welfare of animals must be a fundamental consideration in decision-making pertaining to the environment and that, even in the absence of a clear legislative mandate, governmental entities have responsibilities to consider animal welfare.
- *Trustees for the time being of the Humane Society International - Africa Trust and Others v Minister of Forestry, Fisheries and the Environment and Another*³⁹⁹ challenged the Minister’s decision to set hunting and export quotas for leopard, elephant, and black rhinoceros’ trophies. The court granted an interdict against the quotas. This judgment illustrates the importance of considering animal welfare and environmental impacts in policy-making principles that could potentially be extended to agricultural practices and their effects on both domesticated and wild animals.

³⁹⁷ *Endangered Wildlife Trust v Minister of Agriculture, Land Reform and Rural Development and Others* [2023] ZAGPPHC 163; 1138/2022 (3 March 2023), accessible at: <https://www.saflii.org/AGPPHC/2023/163.html>. Animal Improvement Act 62 of 1998, accessible at: <https://www.cer.org.za/virtual-library/legislation/animal-improvement-act-62-of-1998>.

³⁹⁸ *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* (86515/2017) [2019] ZAGPPHC 337; 2020 (1) SA 249 (GP) (6 August 2019), accessible at: <https://www.saflii.org/za/cases/ZAGPPHC/2019/337.html>.

³⁹⁹ *Trustees for the time being of the Humane Society International - Africa Trust and Others v Minister of Forestry, Fisheries and the Environment and Another* (6939/2022) [2022] ZAWCHC 55; [2022] 3 All SA 616 (WCC) (21 April 2022), accessible at: <https://www.saflii.org/za/cases/ZAWCHC/2022/55.html>.

Foreign Jurisprudence: Selected Examples of Case Law

Several cases from other jurisdictions demonstrate similar trends in animal agriculture and environmental litigation, which are included in brief below:

- In the United States of America (“**U.S.**”) case, *United States v Sinskey*,⁴⁰⁰ a meat-packing plant faced criminal violations of the Clean Water Act after doubling its hog production, overwhelming its wastewater treatment capacity. The court ruled that the plant’s decision to increase production directly led to environmental violations, establishing a precedent for holding agricultural operations criminally liable for environmental harm.⁴⁰¹
- The UK Supreme Court in *Finch v Surrey County Council*⁴⁰² ruled that local councils must consider both direct and indirect GHG emissions in planning decisions. This landmark ruling potentially extends to intensive livestock farms, requiring consideration of their full environmental impact, including upstream and downstream emissions.⁴⁰³
- *Food & Water Watch v Environmental Protection Agency*,⁴⁰⁴ an ongoing U.S. case, seeks to hold the Environmental Protection Agency (“**EPA**”) accountable for inadequate regulation of factory farm pollution under the Clean Water Act. The case stems from a 2017 petition urging the EPA to strengthen its regulations, and the subsequent lawsuit challenges the agency’s inaction, potentially setting a precedent for more stringent regulation of agricultural pollution.⁴⁰⁵
- In *Smith v Fonterra Co-operative Group*,⁴⁰⁶ the New Zealand Supreme Court allowed a novel climate change tort claim to proceed to trial. The case involved a Māori elder alleging that major companies, including dairy production companies, are liable for common law torts based on their GHG emissions, including public nuisance, negligence, and a novel climate duty.⁴⁰⁷ This groundbreaking decision directly implicates the dairy industry, a significant contributor to New Zealand’s emissions and a major source of methane and nitrous oxide globally, potentially exposing animal agriculture corporations to substantial legal risk for their carbon footprint if

⁴⁰⁰ *United States v Sinskey* 119 F.3d 712 (8th Cir. 1997), accessible at: <https://caselaw.findlaw.com/court/us-8th-circuit/1089674.html>.

⁴⁰¹ *Ibid.*

⁴⁰² *R (Finch) v Surrey County Council* [2024] UKSC 20, accessible at: <https://www.supremecourt.uk/cases/docs/uksc-2022-0064-judgment.pdf>.

⁴⁰³ Sustain <https://www.sustainweb.org/blogs/jul24-supreme-court-finch-planning/> (accessed on 14 August 2024).

⁴⁰⁴ *Food & Water Watch v Environmental Protection Agency*, No. 20-71554 (9th Cir. 2021), accessible at: <https://www.foodandwaterwatch.org/wp-content/uploads/2022/10/epa-cafo-2022.pdf>.

⁴⁰⁵ Farm Aid <https://www.farmaid.org/issues/> (accessed on 14 August 2024).

⁴⁰⁶ *Smith v Fonterra Co-operative Group* [2024] NZSC 5, accessible at: <https://www.courtsofnz.govt.nz/assets/cases/2024/2024-NZSC-5.pdf>.

⁴⁰⁷ *Ibid.*

successful.⁴⁰⁸ The case could potentially set an international precedent to embolden climate change litigation worldwide, holding corporations accountable for their role in driving global warming.⁴⁰⁹

- The ongoing U.S. case of *Rural Empowerment Association for Community Help v EPA* challenges the EPA’s exemption of most factory farms from hazardous material release reporting requirements under the Emergency Planning and Community Right-to-Know Act.⁴¹⁰ This case could have significant implications for transparency and community safety around large-scale animal farming operations.

These rulings confirm that it is not possible to address issues related to animal agriculture without also taking into account the environmental impacts and consequences. Consequently, transparency and disclosure are vital components of Good ESG Practices, ensuring that both the environment and animal welfare are prioritised and treated with the respect they deserve.

In relation to environmental governance more generally, courts are beginning to hold corporations responsible for a lack of transparency. In the 2024 case of *Foundation to Promote the Fossil Free Movement v Royal Airline NV* (“KLM”), the District Court of Amsterdam found that KLM had engaged in false and misleading advertising in its “Fly Responsibly” and “CO2ZERO” campaigns. Such rulings could be extended to similar advertising by the animal agriculture industry given its significant carbon footprint.⁴¹¹

⁴⁰⁸ Greenpeace <https://www.greenpeace.org/aotearoa/press-release/> (accessed on 14 August 2024).

⁴⁰⁹ Franks & Oglivie <https://www.franksoglivie.co.nz/news/smith-v-fonterra-co-operative-group-ltd-2024-nzsc-5> (accessed on 14 August 2024).

⁴¹⁰ Initial judgment: *Rural Empowerment Association for Community Help v. EPA*, No. 18-cv-02260 (D.D.C.). According to Animal Legal Defense <https://aldf.org/case/> (accessed on 14 August 2024), the case is awaiting the defendant’s status report.

⁴¹¹ *Foundation to Promote the Fossil Free Movement v Royal Airline NV*, Amsterdam District Court case no. C/13/719848 / HA ZA 22-524, accessible at: <https://www.clientearth.org/media/cx4po41h/klm-judgment-20-march-2024.pdf>.

KNOW YOUR ENVIRONMENTAL RIGHTS!



What is the environmental right?

- Everyone has the right to an environment not harmful to their health or wellbeing¹
- Includes the right to have the environment protected
- Is connected to animal welfare² (including layer hen welfare)



Why is the environmental right important?

Other rights (arguably any of the other rights contained in the Bill of Rights) such as the right to, life, dignity, equality, culture, water, food, housing, education, as well as children's rights³ cannot be enjoyed without a safe, clean and healthy environment⁴



Environmental Rights can empower us to

- Protect our natural resources
- Defend the interests of animals
- Address environmental inequality
- Ensure vulnerable communities & beings have equal access to a clean environment
- Challenge environmental harm legally
- Participate in environmental decision-making⁵



Know your Rights! Hold corporations and government accountable to protect your environmental rights!

¹ Section 24 of the Constitution of the Republic of South Africa, 1996.

² National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another [2016] ZACC 46; and S v Lemthongthai [2014] ZASCA 131; 2015 (1) SACR 353 (SCA).

³ Murcott: <https://journals.co.za/doi/full/10.2989/CCR.2023.0007>.

⁴ UNEP: <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/>.

⁵ Through legislation such as the National Environmental Management Act 107 of 1998.

PART D: LAYING IT ON THE LINE

[THE NEED FOR] ENVIRONMENTAL TRANSPARENCY IN THE EGG SUPPLY CHAIN

In 2015, the Centre for Environmental Rights produced a report (“**CER Report**”) which assessed 20 SA companies with significant environmental impacts (unrelated to the Egg Supply Chain) and found serious breaches, indicating inadequate disclosure of non-compliance to shareholders and misrepresentation of compliance levels.⁴¹² The CER Report revealed significant shortcomings in SA’s environmental compliance monitoring and enforcement systems, including difficulties in monitoring authorisations, slow compliance inspections, inadequate penalties for violations, budget constraints, and a culture of engagement between companies and regulators that undermines enforcement efforts.⁴¹³ These deficiencies hinder effective enforcement and erode public trust in the regulatory framework.

Adopting Good ESG Practices, including Internal Policies that relate to environmental impact mitigation is equally essential for Corporations in the Egg Supply Chain to achieve Corporate Accountability.⁴¹⁴ Transparency requires Corporations to disclose information about their environmental impacts through public reporting.⁴¹⁵ However, environmental reporting is not effectively or consistently required or implemented in SA.⁴¹⁶

ENVIRONMENTAL REPORTING IN SA

Government

At a national level, the DFFE is primarily responsible for managing, protecting, and conserving SA’s environment and natural resources.⁴¹⁷ The DFFE reports on these obligations and any contraventions through its annual National Environmental Compliance and Enforcement Reports (“**NECER**”).⁴¹⁸

⁴¹² *Supra* note 174.

⁴¹³ *Ibid.*

⁴¹⁴ *Supra* note 209, “this accountability is “linked to the pursuit of social justice and is given constitutional recognition through the horizontal application of [human] rights”. See also Lingaro <https://lingarogroup.com/blog/sustainability-and-esg-reporting-best-practices> (accessed on 14 August 2024).

⁴¹⁵ *Supra* note 144 above. The SCA held that the public has a right to be informed of the humane or inhumane treatment of animals by Corporations as they have the freedom to decide which commercial enterprise they support and which they do not. That freedom of choice can only be exercised if activities undertaken by the Corporates are laid bare for the public..

⁴¹⁶ *Supra* note 5.

⁴¹⁷ See DFFE <https://www.dffe.gov.za/> (accessed on 14 August 2024) and s 24 of the Constitution.

⁴¹⁸ The DFFE releases other reports that are made available for public comment as well. However, the reporting is not always accurate. For example, in May 2024, the DFFE released the United Nations Framework Convention on Climate Change, 1992: Draft 9th National Greenhouse Gas Inventory Report for the Republic of SA, published in *Government Gazette* No. 4772 on 2 May 2024, (“GHG Report”), accessible at: https://www.dffe.gov.za/sites/default/files/legislations/unfccc_greenhousegasinventoryreport9_g50607gon4772.pdf for

NECERs cater to various stakeholders, including private, public, and community-based institutions, as well as Corporations in the Egg Supply Chain.⁴¹⁹ The reports provide an overview of the environmental compliance and enforcement sector's efforts to uphold s 24 of the Constitution; detail specific activities for community-based and non-governmental organisations; compare performance across authorities over financial years; and highlight the consequences of violating environmental laws to deter offenders.⁴²⁰

NECERs are limited in covering environmental impact and animal welfare for farmed animals, including Layer Hens.⁴²¹ They primarily focus on wildlife crimes and pollution, neglecting animal welfare despite it being part of the DFFE's mandate.⁴²² While NECER plays a pivotal role in environmental governance, enhancing its scope and transparency is essential to comprehensively address all facets of environmental and animal welfare issues in SA. Expanding NECER reports to include animal well-being and welfare data for Layer Hen farms, SA could be a significant step towards addressing the environmental impact of the Egg Industry.

Environmental transparency is greatly enhanced by the creation of mandatory information management systems in environmental legislation, for example the National Waste Information System, the South African Waste Information System,⁴²³ established in terms of s 60 of NEM:WA. This system empowers government to require mandatory reporting of data by recording it on the system, which it has done via regulation, for certain categories of waste management activity.⁴²⁴ Another example is the National Integrated Water Information System⁴²⁵ established in terms of s 139 of the NWA, which requires the reporting of water use authorisations and water quality data.⁴²⁶ However, accessing licenses and other critical data from these and other information systems is often hampered by technical issues, incomplete

public comment. The GHG Report remains limited in respect of comprehensive agriculture-related data, such as from poultry farms, as some data was only included from 2022. Therefore, the statistics on animal agriculture emissions may not be completely accurate.:

⁴¹⁹ DFFE <https://www.dffe.gov.za/sites/default/files/reports/necer2019report.pdf> (accessed on 14 August 2024).

⁴²⁰ According to the DFFE "2022/23 National environmental compliance and enforcement report shows a significant increase in the reporting of environmental crimes by South Africans", DFFE <https://www.dffe.gov.za/mediareleases/necer> (accessed on 14 August 2024).

⁴²¹ DFFE <https://www.dffe.gov.za/sites/default/files/reports/research/legal/necer2022.23.pdf> (accessed on 14 August 2024). The report fails to address efforts related to land farmed animals, their welfare, and the impact of intensive farming practices on the environment.

⁴²² *Ibid.* The 2022/2023 NECER specifically reports on compliance and enforcement related to industrial pollution, biodiversity, protected areas, oceans, and coastal areas. The Prosecution of Environmental Offences section records matters related to sewage, hazardous waste dumping, abalone-related convictions, and biodiversity convictions related to illegal poaching, export of endangered plant species, alien and invasive species, and illegal reptile trade.

⁴²³ South African Waste Information System <https://sawic.environment.gov.za/> (accessed on 14 August 2024).

⁴²⁴ National Waste Information Regulations, published under Government Notice 625, in *Government Gazette* 35583, 13 August 2012, accessible at: <https://www.gov.za/documents/national-environmental-management-waste-act-regulations-national-waste-information>.

⁴²⁵ National Integrated Water Information System <https://www.dws.gov.za/niwis2/> (accessed on 14 August 2024).

⁴²⁶ Regulations Regarding the Procedural Requirements for Water Use Licence Applications and Appeals, published under Government Notice 267 in *Government Gazette* No. 40713 on 24 March 2017, accessible at: https://www.gov.za/sites/default/files/gcis_document/201703/40713rg10701gon267.pdf.

information, and non-functional portals.⁴²⁷ These challenges limit transparency and make it difficult for stakeholders to effectively use and/or access the systems for compliance and environmental oversight.

Companies Act: Private and Public Companies

In SA, there are various company types but most relevant for purposes of our analysis are private and public companies (the latter may be listed on stock exchanges, or unlisted). The main difference between public and private companies is that private companies (“**Pty Ltd**”) have shares held privately and cannot offer them to the public, while public companies (“**Ltd**”) can sell shares on stock exchanges, allowing for broader capital access and subjecting them to stricter regulatory disclosure requirements.⁴²⁸ Both public and private companies are required to adhere to certain environmental disclosure obligations under the Companies Act and associated regulations, although there are more onerous requirements in some cases for public companies, and even more so for listed companies. Requirements that may be applicable to both include the duty to disclose environmental impact information in annual financial statements, and to maintain a securities register that reflects beneficial ownership.⁴²⁹ While the latter is not directly an environmental disclosure requirement, it contributes to overall Corporate Accountability, which can have indirect environmental implications.

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Certain companies are required to have a Social and Ethics Committee, which must monitor activities related to social, economic, and environmental impacts.⁴³² This committee plays a critical role in

⁴²⁷ For a discussion on the failure of e-information systems in South Africa and other countries see, Nyansiro, J.B et al (2021). E-government information systems (IS) project failure in developing countries: Lessons from the literature. *The African Journal of Information and Communication*, 28, pp.1-29, accessible at: https://www.scielo.org.za/scielo.php?pid=S2077-72132021000200006&script=sci_arttext.

⁴²⁸ Department of Education <https://msmonline.co.za/wp-content/uploads/2021/03/Chapter-14-business-studies-grade-forms-of-ownership.pdf> (accessed on 14 August 2024).

⁴²⁹ Ss 33(1), 50, and 56(7)(a) of the Companies Act.

⁴³⁰ Supra note 428

⁴³¹ Ss 33(1), 50, and 56(7)(a) of the Companies Act.

⁴³² S 74 of the Companies Act.

ensuring that companies consider environmental issues in their operations and decision-making processes, thereby reinforcing the importance of corporate responsibility towards sustainable practices and stakeholder interests.

S 72(4) of the Companies Act provides that the Minister of Trade, Industry and Competition may, by regulation, prescribe a category of companies that must each have a Social and Ethics Committee.⁴³³ The Companies Act Regulations confirm that this includes every State-owned company; Listed Company; and company that has a public interest score of more than 500 in any two of the preceding five years.⁴³⁴ The committee is concerned with a company's responsibility in areas dealing with social, commercial and environmental matters, and it must consider environmental issues as part of its mandate.⁴³⁵

PAIA Request: Social and Ethics Committee

We requested records relating to the Phase 2 Selected Stakeholder's, and/or their suppliers, committee's terms of reference, minutes for the Phase 2 Period and any reports and related supporting documentation for the Phase 2 Period. Phase 2 Selected Stakeholders were invited to indicate if this request did not apply to them.

Listed Companies

*JSE Limited Listing Requirements ("JSE Listing Requirements")*⁴³⁶

A company that is listed on the JSE and may offer its shares to the general public is a **"Listed Company"**.⁴³⁷ A Listed Company must meet specific criteria outlined in the JSE Listing Requirements in order to be listed/ maintain its listing. These requirements govern new applications, Corporate actions, and ongoing obligations, emphasising public interest.⁴³⁸ However, they lack provisions for enhanced ESG disclosures, despite the Centre for Environmental Rights ("**CER**") advocating for better transparency on corporate environmental compliance.⁴³⁹ The CER argued for stricter obligations on environmental and social impacts, highlighting the risks to shareholders and stakeholders when Corporations neglect these responsibilities. They called for stronger disclosure requirements and board

⁴³³ The Companies Act 71 of 2008 ("Companies Act"), accessible at: <https://www.onlinemoi.co.za/companies-act-2008-act-no-71-of-2008>

⁴³⁴ Regulation 43 of the Companies Act Regulations published in *Government Gazette* No. 34239, GNR.351 on 26 April 2011, accessible at: <https://www.onlinemoi.co.za/Regulation?regulation=43>. Regulation 43(2)(a) lists exceptions for when companies are not required to appoint a Social and Ethics Committee.

⁴³⁵ *Ibid.*

⁴³⁶ JSE <https://www.jse.co.za/sites/default/files/media/documents/2019-04/JSE%20Listings%20Requirements.pdf> (accessed on 14 August 2024).

⁴³⁷ JSE <https://www.jse.co.za/> (accessed on 14 August 2024).

⁴³⁸ *Supra* note 436.

⁴³⁹ Centre for Environmental Rights https://cer.org.za/wp-content/uploads/2018/10/CER-comments_JSE-Consultation-Paper_22-October-2018.pdf (accessed on 14 August 2024).

oversight to boost investor confidence.⁴⁴⁰ A number of the Phase 2 Selected Stakeholders are Listed Companies and therefore have an obligation to adhere to the JSE Listing Requirements while also addressing environmental and social impacts in their disclosures.

ESG Reporting

In 2022, the JSE introduced voluntary “Sustainability Disclosure Guidance” to enhance ESG reporting among Listed Companies.⁴⁴¹ However, its non-mandatory nature raises concerns about inconsistent and incomplete sustainability disclosures, potentially leading to gaps in accountability and transparency.⁴⁴² Additional challenges include subjective assessments of materiality, integration with existing standards, and resource limitations for smaller companies.⁴⁴³ These issues may undermine the effectiveness of the guidelines in promoting robust sustainability reporting among Listed Companies.

State-Owned and Listed Companies

The Companies and Intellectual Property Commission (“CIPC”) oversees the registration of companies, cooperatives, and intellectual property rights in SA. It has established a framework for State-owned (an entity that undertakes commercial activities on behalf of the government)⁴⁴⁴ and Listed Companies to voluntarily submit ESG reports.⁴⁴⁵ Starting from the financial year 2025-26, these companies will be mandated to file their ESG reports with the CIPC.⁴⁴⁶ This initiative aims to enhance transparency, allowing shareholders, investors, customers, employees, regulatory authorities, and the public to evaluate companies’ sustainability practices.⁴⁴⁷ Furthermore, it is expected to improve risk management by identifying and addressing ESG-related risks while prioritising sustainable

⁴⁴⁰ *Ibid.*

⁴⁴¹ *Supra* note 370. The JSE requires Listed Companies to report annually, on an “apply and explain” basis, the extent to which they have complied with King IV principles, which include environmental reporting. See also ICGL: <https://group.jse.co.za/governance/king-iv-principles> (accessed on 14 August 2024).

⁴⁴² Hariram, V (2023) *Evaluation of the JSE’s environmental reporting requirements of South African listed companies* (Doctoral dissertation, Faculty of Science, University of the Witwatersrand, Johannesburg), accessible at: <https://wiredspace.wits.ac.za/server/api/core/bitstreams/998613ad-f5d3-4bba-9e3d-85ae793d544c/content>.

⁴⁴³ Webber Wentzel <https://www.webberwentzel.com/News/Documents/2022/summary-of-sustainability-climate-disclosure-standards-guidelines.pdf> (accessed on 14 August 2024).

⁴⁴⁴ Corporate Finance Institute <https://corporatefinanceinstitute.com/resources/career/state-owned-enterprise-soe/> (accessed on 14 August 2024). According to the CIPC https://www.cipc.co.za/?page_id=2178#:~:text=A%20state%20Downed%20company%20is,company%20owned%20by%20a%20municipality (accessed on 14 August 2024), “A state-owned company is either a company defined as a “state-owned enterprise” in the Public Finance Management Act 1 of 1999 (PFMA) or a company owned by a municipality. A state-owned company is either a company defined as a “state-owned enterprise” in the Public Finance Management Act 1 of 1999 (PFMA) or a company owned by a municipality.”

⁴⁴⁵ *Supra* note 371.

⁴⁴⁶ Data Tracks <https://www.datatracks.com/za/blog/south-africas-roadmap-to-esg-reporting-preparedness-in-2024/> (accessed on 14 August 2024).

⁴⁴⁷ *Supra* note 371.

investments.⁴⁴⁸ It would be valuable for all profit companies, such as stakeholders in the Egg Supply Chain, to be mandated to submit public ESG reports in the future.

Annual and Sustainability Reports

Annual and sustainability reports provide stakeholders, including the public, with information about a Corporation's financial performance, environmental and social impact, and governance practices.⁴⁴⁹ These reports are typically published by publicly traded companies and serve as a means of communicating the company's activities and progress to shareholders, investors, and the general public.

PAIA Request: Annual and Sustainability Reports

We requested annual and sustainability reports from Phase 2 Selected Stakeholders.

SOFTER LAW AND STANDARDS – INDUSTRY AND INTERNAL POLICIES

In addition to the legal requirements in terms of environmental law, and/or corporate law as discussed above, softer laws and standards exist which do not necessarily link to law but do link to impacts on the environment more broadly, all of which are governed by the environmental right. These may exist in the form of commitments, industry related standards or rules, or internal policies.

Internal Policies

If it is engaged in best practice, a company's internal policies⁴⁵⁰ contain measures promoting good animal welfare, specifically related to Layer Hens and chicks as well as broader environmental and sustainability measures, as required by the environmental right. A Corporation's compliance with environmental and sustainability measures can also be measured against its internal policies.

PAIA Request: Internal Policies

We requested records for Internal Policies relating to animal welfare and environmental matters from the Phase 2 Selected Stakeholders and/or their suppliers.

⁴⁴⁸ Lythouse <https://www.lythouse.com/blog/esg-risk-management-identifying-assessing-and-mitigating-esg-risks> (accessed on 14 August 2024).

⁴⁴⁹ PWC <https://www.pwc.com/sk/en/environmental-social-and-corporate-governance-esg/esg-reporting.html> (accessed on 14 August 2024).

⁴⁵⁰ See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

Environmental or Sustainability Commitments

Environmental and sustainability commitments may guide Corporations toward sustainable practices, pollution reduction, and ecosystem protection.⁴⁵¹ These commitments are crucial for ensuring a healthier environment for all, including animals.⁴⁵²

PAIA Request: Environmental or Sustainability Commitments

We requested records related to the Phase 2 Selected Stakeholder's, and/or their suppliers', sustainability commitments, net zero (carbon emission reduction and removal) goals, renewable energy use, water conservation efforts, and any other relevant commitments based on our Project's objectives.

Environmental Membership Records

Industry bodies and/or associations may serve as an incentive or aid Corporations in maintaining compliance with environmental laws and regulations, fostering responsible Corporate behaviour, and contributing to a more sustainable and environmentally-conscious business landscape.

PAIA Request: Environmental Membership Records

We requested records relating to any or all membership (present and past) with environmental bodies and/ or associations, including correspondence or documentation confirming, refusing, suspending, terminating, or otherwise relating to any membership of specific associations, and other environmental organisations or associations that may be relevant to our Project.

Compliance with Association Standards and Requirements and Certification

Compliance with Association Standards and Requirements and Certification

We requested records evidencing (non-)compliance with standards, requirements, codes of practice, certification schemes, etc. of relevant Egg Industry associations, which in turn demonstrate the Phase 2 Selected Stakeholder's, and/or its suppliers', (non-)compliance with the environmental right.

⁴⁵¹ International Institute for Sustainable Development <https://sdg.iisd.org/commentary/guest-articles/> (accessed on 14 August 2024).

⁴⁵² Global Animal Law <https://www.globalanimallaw.org/blog/> (accessed on 14 August 2024).

Egg Production and Supply Chain

Best practice entails a commitment to Responsible Sourcing and/or sustainable sourcing and/or cage-free egg production or supply (as applicable).⁴⁵³ Such sourcing and/or production or supply aids in the promotion, fulfilment and protection of the environmental right. Accessing records related to the treatment of chickens in the Egg Supply Chain could reveal practices such as high stocking densities, extensive cage use, and poor nutrition, which may indicate environmental harm through increased GHG emissions and resource depletion, thereby failing to uphold Responsible Sourcing and sustainable production commitments.⁴⁵⁴

PAIA Request: Egg Production and Supply Chain

We requested access to records that demonstrated the treatment of chickens affected by Phase 2 Selected Stakeholders, and/or their suppliers' role in the Egg Supply Chain. These records included: the annual number of chickens housed or processed, the annual egg production figures, nutritional information for chickens laying eggs, details on cage usage and types, stocking densities for laying chickens, and the number of chickens and chicks culled during production.

⁴⁵³ Kellanova <https://betterdayspromise.kellanova.com/responsible-sourcing> (accessed on 14 August 2024).

⁴⁵⁴ Reef Resilience Network <https://reefresilience.org/management-strategies/aquaculture/environmental-impacts-and-benefits/disease-and-species-health/> (accessed on 14 August 2024).

THE GOLDEN EGG

GOOD ESG PRACTICES



What is ESG?

- Short for “Environmental, Social, and Governance”¹
- Framework for managing sustainability risks and opportunities
- Supports good environmental practices, including net zero and carbon neutrality goals²



Good ESG Practices

- Reducing environmental impact (including harms to animals)
- Being truly socially responsible
- Ensuring ethical governance
- Being transparent through implementing accurate reporting and compliance monitoring



Benefits of ESG

- Companies effectively implementing and communicating their ESG initiatives are more likely to gain consumer trust, loyalty and market share³



ESG Accountability

Achieved by transparency through:

- **Reporting:** Usually found in annual and sustainability reports containing a corporates' ESG initiatives and performance
- **Disclosures:** Responsibility of corporates to be transparent regarding ESG performances⁴
- **Information sharing:** Disclosing ESG initiatives and progress in respect thereof to the public and shareholders
- **South African context:**
 - JSE-listed companies report annually on an “apply and explain” basis⁵
 - Currently: voluntary reporting to the Companies and Intellectual Properties Commission (CIPC)⁶
 - Will become mandatory for public and state-owned companies by 2025⁷

¹ Investopedia: <https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp>.

² Corporate Finance Institute: <https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/>.

³ TechTarget: <https://www.techtarget.com/whatis/feature/5-ESG-benefits-for-businesses>.

⁴ Medium, Anandv: https://medium.com/@anandv_62921/accountability-and-esg-e65ca97e6c75.

⁵ International Comparative Legal Guides: <https://iclg.com/practice-areas/environmental-social-and-governance-law/south-africa>.

⁶ XBRL: <https://www.xbrl.org/news/south-africas-esg-reporting-revolution>; and Master Data Management:

<https://blog.masterdata.co.za/2024/04/09/demystifying-esg-south-africas-growing-focus-on-sustainability/reporting/>.

⁷ Ibid.

PART E: LAYING IT AT STAKEHOLDERS' DOORS

ENHANCING (ENVIRONMENTAL) CORPORATE ACCOUNTABILITY IN THE EGG SUPPLY CHAIN: LESSONS FROM ELSEWHERE IN THE WORLD

Corporations in the global egg industry are increasingly recognising the significance of Corporate Accountability as a critical element for success.⁴⁵⁵ Retailers around the world are setting ethical supply chain targets and are expecting their suppliers to comply, which places pressure on producers to align with sustainability goals.⁴⁵⁶

Accordingly, accountability extends beyond individual Corporations to include their supply chain, and suppliers,⁴⁵⁷ as apparent from the fact that Corporations are increasingly held responsible for the actions of their suppliers.⁴⁵⁸ This necessitates that businesses actively monitor and improve their supply chain practices to align with public expectations and ethical standards.⁴⁵⁹

As will be discussed further in the Consumer Pillar below, consumers are demanding ethical supply chains and products – which solidifies the need for enhanced disclosure in the animal agriculture sector.

Aligning Reporting Practices with Best International Practice Standards

Aligning SA's reporting practices with international standards could significantly improve accountability within the Egg Supply Chain and promote Good ESG Practices. In 2024, a global push for enhanced sustainability reporting is driving impactful regulations in foreign jurisdictions.⁴⁶⁰ Key initiatives include the UK's Sustainability Disclosure Requirements (“SDR”)⁴⁶¹ and the European Union (“EU”)’s Sustainable Finance Disclosure Regulation (“SFDR”),⁴⁶² aimed at standardising

⁴⁵⁵ Gray Group International <https://www.graygroupintl.com/blog/corporate-accountability> (accessed on 14 August 2024).

⁴⁵⁶ Santosh, G <https://www.linkedin.com/pulse/sustainability-takes-center-stage-how-retailers-responding-santosh-g-belgc/> (accessed on 14 August 2024).

⁴⁵⁷ Marianne and Marcus Wallenberg Foundation <https://mmw.wallenberg.org/index.php/en/corporate-accountability-global-supply-chains> (accessed on 14 August 2024).

⁴⁵⁸ Goebel, P et al (2012) The influence of ethical culture on supplier selection in the context of sustainable sourcing. *International Journal of Production Economics*, 140(1), pp.7-17, accessible at: <https://www.sciencedirect.com/science/article/abs/pii/S0925527312000783>.

⁴⁵⁹ Esan, O et al (2024) Supply chain integrating sustainability and ethics: Strategies for modern supply chain management. *World Journal of Advanced Research and Reviews*, 22(1), pp.1930-1953, accessible at: https://www.researchgate.net/publication/380352802_Supply_chain_integrating_sustainability_and_ethics_Strategies_for_modern_supply_chain_management

⁴⁶⁰ Jordanova, L <https://www.linkedin.com/feed/update/urn:li:activity:7148260343373299712/> (accessed on 14 August 2024).

⁴⁶¹ Sweep <https://www.sweep.net/library/how-to-prepare-for-the-uk-sdr> (accessed on 14 August 2024).

⁴⁶² Robeco <https://www.robeco.com/en-za/glossary/sustainable-investing/sustainable-finance-disclosure-regulation#> (accessed on 14 August 2024).

sustainability information and encouraging investment in sustainable products. Other significant regulations include the EU Taxonomy for Sustainable Activities (“**CSRD**”),⁴⁶³ the Corporate Sustainability Reporting Directive (“**CSDDD**”),⁴⁶⁴ and the German Supply Chain Due Diligence Act (“**LkSG**”),⁴⁶⁵ which contribute to a collective effort to steer industries towards more sustainable practices globally.

● Mandating Environmental Reporting and Auditing

Intensive livestock farming systems are major contributors to climate change and cause significant environmental pollution. Mandating environmental reporting and implementing specific regulations to mitigate environmental harm in the Egg Supply Chain would significantly improve its environmental footprint. Regular audits of egg producers and suppliers should be conducted to ensure compliance with ethical standards and sustainability practices, as third-party audits can enhance credibility and transparency.⁴⁶⁶ Animal welfare inspections should be part and parcel of these environmental audits. Furthermore, as proposed by in the recent Animal Law Project⁴⁶⁷ ‘*Manifesto for Transforming Animal Protection in South Africa: A Constitutional Imperative*’ (“**ALP Manifesto**”),⁴⁶⁸ new mechanisms and powers are needed to ensure greater animal protections, including summary abatement, inspection access, seizure and impoundment with “bond or forfeit” provisions, referral for prosecution, administrative penalties, legal standing for animal representation, limitation of adverse costs, case monitoring, animal advocates in court, and the right to private prosecution.⁴⁶⁹

● Enhancing Animal Welfare Standards

Enhanced environmental consciousness can significantly impact animal treatment. Stakeholders in the Egg Industry are encouraged to adopt higher animal welfare standards and ensure these practices are

⁴⁶³ Publyon https://publyon.com/eu-taxonomy-for-sustainable-activities-a-complete-guide/?switch_language=en (accessed on 14 August 2024).

⁴⁶⁴ KPMG <https://kpmg.com/xx/en/home/insights/2023/02/the-eu-corporate-sustainability-due-diligence-directive.html> (accessed on 14 August 2024).

⁴⁶⁵ Norton Rose Fullbright <https://www.nortonrosefulbright.com/en/knowledge/publications/ff7c1d04/the-german-supply-chain-act#:~:text=The%20Supply%20Chain%20Act%20imposes,human%20rights%20or%20environmental%20violations> (accessed on 14 August 2024).

⁴⁶⁶ Patil, V et al (2022) Supplier sustainability: A comprehensive review and future research directions. *Sustainable Manufacturing and Service Economics*, 1, p.100003, accessible at: <https://www.sciencedirect.com/science/article/pii/S2667344422000032>

⁴⁶⁷ The Animal Law Project is a joint collaborative project, initiated by the Animal Law Reform South Africa (“ALRSA”) and the Humane Society International/Africa (“HSI/Africa”) and originally The South African Institute for Advanced Constitutional, Public, Human Rights and International Law (“SAIFAC”) (a centre of the University of Johannesburg).

⁴⁶⁸ Wilson A.P. and Gerrans A, *A Manifesto for Transforming Animal Protection in South Africa: A Constitutional Imperative, Draft 1*, Animal Law Project, 20 June 2024, accessible at: [Animal-Law-Project-Manifesto-2024.pdf \(animallawproject.org.za\)](https://animallawproject.org.za).

⁴⁶⁹ Animal Law Project <https://animallawproject.org.za/wp-content/uploads/2024/07/Animal-Law-Project-Manifesto-2024.pdf> (accessed on 14 August 2024), Recommendation 9 at page 39.

communicated clearly to consumers and role players within their supply chains. This aligns with the recognition of animals as part of the constitutional environmental right.⁴⁷⁰

● Promoting Sustainable Practices and Stakeholder Engagement

Investment in sustainable farming practices, such as improved feed efficiency and waste management, can reduce the environmental footprint of egg production and supply.⁴⁷¹ Actively involving stakeholders, including consumers, in discussions about sustainability and ethical practices fosters a more transparent and accountable Egg Supply Chain.⁴⁷²

● Animal Welfare and ESG Reporting

Animal welfare should be included as a concrete obligation in sustainability reporting by Corporations.⁴⁷³ Many African countries, including SA, have consumer protection policies that are disconnected from sustainability concerns.⁴⁷⁴ Developing an integrated policy approach that bridges the gap between consumer protection and environmental/sustainability concerns is essential. This includes making the links between environmental rights and consumer protection laws explicit and empowering civil society groups to participate in supply chain governance.⁴⁷⁵

● Education Initiatives on 'Alternatives' including Plant-Based Protein

Educational initiatives which inform consumers about alternatives can help reduce the potential harms and impacts of animal agriculture, including egg production.⁴⁷⁶

● Just Transition in Agriculture

The CCA aims to achieve a '*just transition*' to a low-carbon, climate-resilient economy.⁴⁷⁷ Transitioning to low-carbon production methods in agriculture requires moving away from intensive animal agriculture, which has a significant carbon footprint.⁴⁷⁸ While efforts are underway in sectors like coal

⁴⁷⁰ *Supra* note 21.

⁴⁷¹ Egg Farmers of Canada <https://www.eggfarmers.ca/2021/09/sustainability-series-innovations-in-sustainable-egg-farming/> (accessed on 14 August 2024).

⁴⁷² Gurzawska, A (2020) Towards responsible and sustainable supply chains–innovation, multi-stakeholder approach and governance. *Philosophy of Management*, 19(3), pp.267-295, accessible at: <https://link.springer.com/article/10.1007/s40926-019-00114-z>

⁴⁷³ *Supra* note 53.

⁴⁷⁴ *Ibid.*

⁴⁷⁵ *Ibid.*

⁴⁷⁶ Rondoni, A et al (2022) Plant-based eggs: Views of industry practitioners and experts. *Journal of International Food & Agribusiness Marketing*, 34(5), pp.564-587, accessible at: <https://www.tandfonline.com/doi/full/10.1080/08974438.2021.1915222#abstract>. See also *supra* note 503, and *supra* note 469.

⁴⁷⁷ The CTA.

⁴⁷⁸ Blattner, C., 2020. Just transition for agriculture? A critical step in tackling climate change. *Journal of Agriculture, Food Systems, and Community Development*, 9(3), pp.53-58, accessible at: <https://www.foodsystemsjournal.org/index.php/fsj/article/view/796/782>. According to the GHG Report (*supra* note 418) and Draft Sectoral Emissions Target Report (2025-2030) ("SETs Report"), accessible at:

and mining, the animal agriculture sector, including the Egg Industry, is often overlooked,⁴⁷⁹ even though agriculture is identified as an area for transition in the country's Just Transition Framework.⁴⁸⁰ A broader systemic transition is needed to address the urgency highlighted by the global scientific body that informs climate policy worldwide, the Intergovernmental Panel on Climate Change (“IPCC”) for transitioning to low-carbon production methods in agriculture.⁴⁸¹ Corporations in the Egg Industry should be held accountable for their energy consumption and mandated to disclose this information, aiding consumers in understanding how agricultural systems affect all forms of life. In this context, regulatory frameworks like the CCA are crucial, as they set the groundwork for accountability in energy use and environmental impact.⁴⁸²

By implementing these recommendations, the Egg Supply Chain can enhance Corporate Accountability, improve sustainability practices, and better align with global climate change mitigation goals.

https://www.dffe.gov.za/sites/default/files/legislations/draft_sectoralemissionstargets2024_g50571gon4763.pdf,

agriculture emissions, which includes animal agriculture, in 2022 accounted for 12% (GHG Inventory Report) and 11% (SETs Report) (excluding Land Use, Land-use Change and Forestry (“LULUCF”)) and 7% (incl. LULUCF) of total emissions for SA. It was also reported that 68% of agriculture sector emissions were from enteric fermentation (fermentation that takes place in the digestive systems of ruminant animals such as cattle, buffalo, sheep, goats, etc.); and 8% of emissions were from manure management. The SETs Report further notes that by shifting towards renewable energy sources, the agriculture sector will significantly reduce its carbon emissions, which would promote “conservation agriculture”.

⁴⁷⁹ *Ibid.*

⁴⁸⁰ Climate Commission <https://www.climatecommission.org.za/just-transition-framework> (accessed on 24 August 2024).

⁴⁸¹ *Ibid* and Intergovernmental Panel on Climate Change (“IPCC”). (2019). Climate change and land: Summary for policymakers, accessible at: https://www.ipcc.ch/site/assets/uploads/2019/08/4.-SPM_Approved_Microsite_FINAL.pdf.

⁴⁸² For example, the Climate Change Act intends to introduce carbon budgets for major GHG emitters and require the submission of mitigation plans, addressing related matters to support these objectives.

CONSUMER PILLAR

RUNNING FOWL: EGG-NORING BUYER'S RIGHTS & CORPORATE OBLIGATIONS



SECTION II:

SUPPLEMENTARY CONSUMER PILLAR:

RUNNING FOWL: “Egg-Noring” Buyer’s Rights & Corporate Obligations

PART A: LAYING THE FOUNDATIONS

A CORPORATE DILEMMA

Corporations tend to prioritise making profits over other responsibilities, which has been described as a “*pathological pursuit of power*”.⁴⁸³ While pursuing profits are inevitably part of a Corporation’s purpose, and in the interests of certain of their stakeholders, such as shareholders (to which they are accountable), such an approach can impact various other stakeholders’ interests, including their consumers, and can lead to exploitative practices that take advantage of them.⁴⁸⁴ In order to counteract these practices, it is crucial for consumers to be educated about, and understand the true impact of the products they consume.⁴⁸⁵ Whether these be ethical-, animal-, environmental-, or health-related, informed consumers can make more conscious and responsible decisions.⁴⁸⁶ Consumers in turn, can also put pressure on Corporations to undertake more sustainable and ethical practices, which could drive significant change in society.⁴⁸⁷ The types of activities and manner in which a Corporation conducts them can have far-reaching implications on more than their bottom line. With great power, comes great responsibility, and it is critical that Corporations understand the responsibilities they have to all relevant stakeholders.

THE POWER OF INFORMED CONSUMERS

In Phase 1, in the context of animal welfare, we highlighted certain Cruel Practices occurring within the Egg Industry such as the use of Battery Cages; the maceration (shredding) of baby male Chicks whilst alive; de-toeing; debeaking; and the killing of Layer Hens that are regarded as “unproductive.”⁴⁸⁸

⁴⁸³ Bakan, J (2012) *The corporation: The pathological pursuit of profit and power*. Hachette UK, accessible at: <https://books.google.co.za/books?hl=en&lr=&id=B2ueBAAAQBAJ&oi=fnd&pg=PT6&dq=Corporations+prioritise+profit+margins+over+consumer+protection&ots#v=onepage&q&f=false>.

⁴⁸⁴ *Ibid.*

⁴⁸⁵ Hartmann, C et al (2021) Measuring consumers’ knowledge of the environmental impact of foods. *Appetite*, 167, p.105622, accessible at: <https://www.sciencedirect.com/science/article/pii/S0195666321005298>.

⁴⁸⁶ Hampton, J.O et al (2021) Animal harms and food production: Informing ethical choices. *Animals*, 11(5), p.1225, accessible at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8146968/>.

⁴⁸⁷ Infomineo <https://infomineo.com/fmcg/consumer-trends-and-the-demand-for-sustainable-products/> (accessed on 14 August 2024).

⁴⁸⁸ SAPA <https://www.sapoultry.co.za/wp-content/uploads/2022/06/2022-SAPA-COP.pdf> (accessed on 14 August 2024). For an in-depth discussion on the animal welfare implications of the Egg Industry, see *supra* note 33.

As will be further elaborated on in this Pillar, research shows that consumers regard animal well-being and environmental sustainability as key considerations when purchasing food products.⁴⁸⁹ Yet, Corporations generally fail to adequately disclose and report on practices and harms relating to these issues, and some may even spread misinformation through the labelling, advertising and marketing of products.⁴⁹⁰ This can include (mis)information relating to methods of production to the subjective feelings of animals (e.g. claims of *happiness*). As mentioned above, for purposes of this Supplementary Report, we refer to deceptive practices by Corporations, such as Greenwashing, Humane-washing, Health-washing, and Blue-washing, collectively as ‘Corporate Hypocrisy’. Corporate Hypocrisy may prevent consumers from knowing certain truths about the products they purchase, including eggs. Accordingly, it is imperative that Corporations making claims about their products, through statements, labelling, advertising, and marketing, are clear, transparent, and truthful.⁴⁹¹ This means that claims should not be exaggerated and/or misleading to consumers.⁴⁹² In parallel, Corporations should be required to disclose certain information in the public domain about their practices and the impacts of their business, particularly where these impact fundamental rights.

Consumer Protection has been selected as a Research Pillar for this Supplementary Report because transparency is viewed as vital in an open democracy, including for freedom of choice and empowered decision making. Public sentiment is reflected in laws and court decisions that address ethical practices in the food industry, highlighting the importance of accountability and consumer values.

By requesting records and information from Corporations, including in relation to their Consumer Awareness Statements about animal welfare or the environment, together with other information requested which speak to the validity of these claims, we can begin to interrogate whether they are being transparent and accountable to their stakeholders, including consumers and members of the public.

In this Part A, we introduce selected rights of consumers and duties and responsibilities of corporations towards consumers and define Corporate Hypocrisy. In Part B, we consider a few key questions, research and examples relating to consumer awareness and concern on issues such as animal and environmental protection and health. We further explore Corporate Hypocrisy and its elements for purposes of this Supplementary Report including Greenwashing, Humane-washing, Blue-washing and Health-washing. In Part C, we explore selected governance in respect of consumer protection including laws, bodies, codes and standards as well as cases of relevance in SA and foreign jurisdictions. In Part D, we provide an example of where consumer rights are impacted by a non-publicly available study relating to the South African Egg Industry and why this study is important. In Part E we provide selected measures to enhance consumer rights, which are expanded on further in Section IV. Throughout these

⁴⁸⁹ *Supra* note 2, and Insites Consulting <https://www.insites-consulting.com/blog/sustainability-in-south-africa/> (accessed on 14 August 2024).

⁴⁹⁰ Fong, J et al (2023) Debunking misinformation about consumer products: Effects on beliefs and purchase behavior. *Journal of Marketing Research*, p.00222437221147088, accessible at: https://www.ftc.gov/system/files/documents/public_events/1588356/fongguorao_updated.pdf.

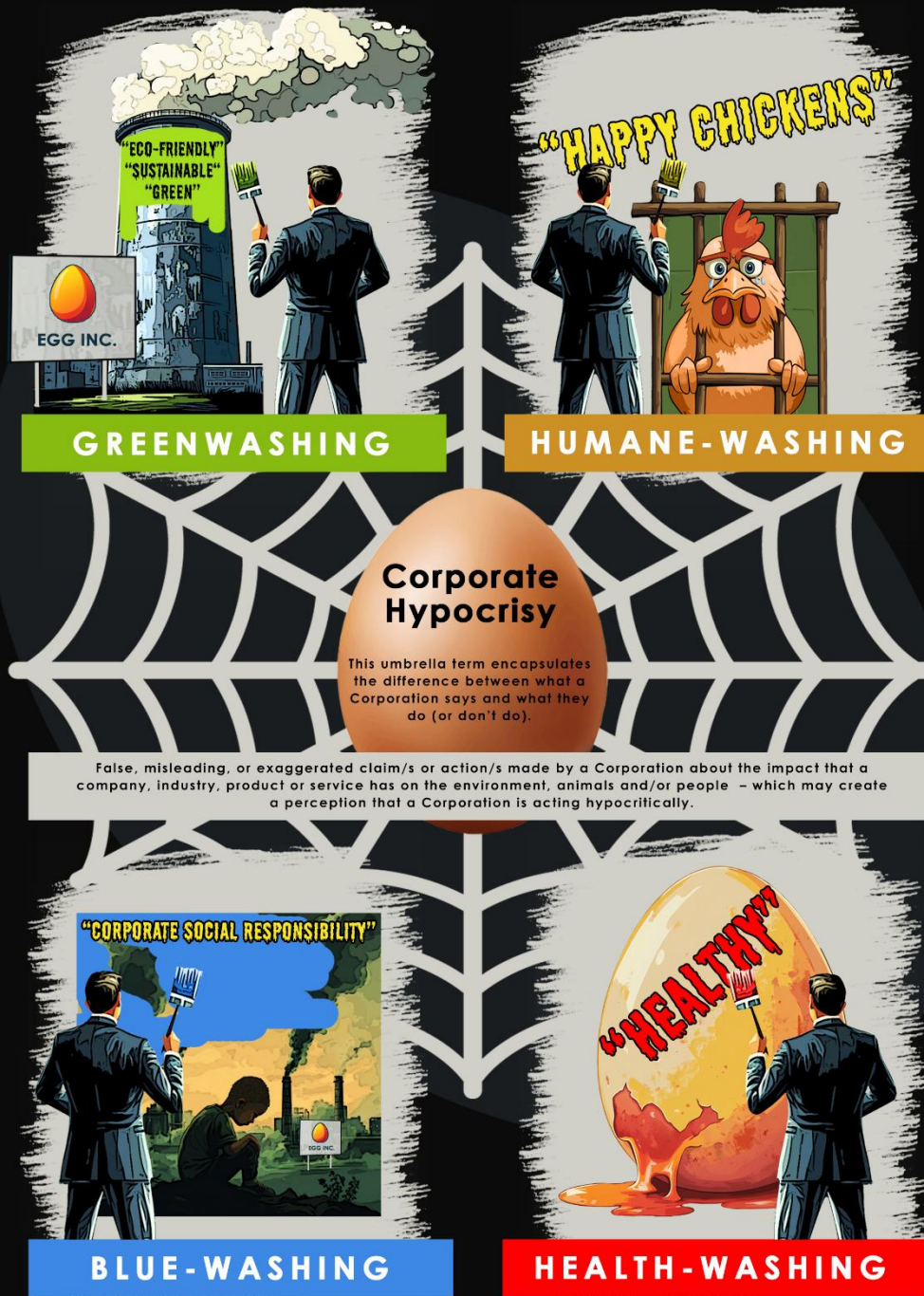
⁴⁹¹ Claspo <https://claspo.io/blog/transparency-in-advertising-the-importance-of-being-honest-and-clear-in-marketing-communications/> (accessed on 14 August 2024).

⁴⁹² *Supra* note 33.

Parts, we include in blocks, specific PAIA requests ALRSA made in Phase 2 to Selected Stakeholders which correspond to the issues highlighted. We do this to provide a foundation for understanding our requests and how they relate to the matters included in this Supplementary Report (some of which were also included in the Initial Report).

CORPORATE HYPOCRISY

WEAVING A WEB OF DECEIT



The Intersection of Consumer Protection and Other Issues in the Egg Supply Chain

Consumer protection in the Egg Supply Chain is a critical focus of this Supplementary Report, as it directly impacts the health and safety of consumers, the treatment of animals, the integrity of the environment, and fundamental rights, influencing their food choices. Consumer protection accordingly intersects with other key Research Pillars identified in the Initial Report including Animal Welfare, Environment, Food Safety & Health, Social Issues & Rights, and Corporate & Business practices. Strong Consumer Protection Measures are essential within the Egg Supply Chain to ensure that consumers receive safe, high-quality products, while fostering transparency and accountability amongst relevant stakeholders.



Graphic Representation of linkages between the Consumer Pillar as a secondary focus of this Supplementary Report and other Research Pillars selected for our Initial Report.

THE ROLE OF CONSUMER RIGHTS IN SAFEGUARDING AGAINST CORPORATE HYPOCRISY

Consumers have legal rights in terms of the products and services they purchase (and even less directly in terms of products and services marketed to them). These rights stem from the Constitution and various pieces of legislation, most notably, the CPA. In parallel, there are corresponding and additional duties on Corporations,⁴⁹³ failure to comply with which can lead to harms, liabilities and risks, and legal

⁴⁹³ Regulations Regarding the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of SA published in Government Gazette No. 43108 of Notice R.345 on 20 March 2020 ("**Egg Labelling Regulations**"), accessible at https://www.gov.za/sites/default/files/gcis_document/202003/43108rg11055gon345.pdf, and the CPA, among others. There are arguably also ethical or moral obligations towards their consumers which are often overlooked.

action, among other issues⁴⁹⁴ From a consumer perspective, breaching duties goes beyond purely financial risks and harms, as it can impact on their health, quality of life, safety, well-being and rights.

Consumer Rights in the CPA

Some of the specific rights contained in the CPA, include:⁴⁹⁵

- CONSUMER RIGHT 1: Right to Equality in the Consumer Market and Protection Against Discriminatory Marketing Practices.
- CONSUMER RIGHT 2: Right to Privacy.
- CONSUMER RIGHT 3: Right to Choose.
- CONSUMER RIGHT 4: Right to Disclosure of Information.
- CONSUMER RIGHT 5: Right to Fair and Responsible Marketing.
- CONSUMER RIGHT 6: Right to Fair and Honest Dealings.
- CONSUMER RIGHT 7: Right to Fair, Just and Reasonable Terms and Conditions.
- CONSUMER RIGHT 8: Right to Fair Value, Good Quality and Safety.
- CONSUMER RIGHT 9: Right to Accountability from Suppliers.

⁴⁹⁴ Oxbridge Academy: <https://www.oxbridgeacademy.edu.za/blog/consumer-protection-act-matter/s>.

⁴⁹⁵ Government of South Africa: https://www.gov.za/sites/default/files/gcis_document/201409/321864670.pdf.

CONSUMER PROTECTION IN SOUTH AFRICA:

UNDERSTANDING YOUR BASKET OF RIGHTS

In South Africa, consumers have protected rights, including those in the Constitution as well as the Consumer Protection Act (CPA).¹



The CPA, and our courts,² affirm that as a consumer you should be able to make informed decisions about the products you buy, including in relation to the treatment of animals.



"The public has a right to be informed of the humane or inhumane treatment of animals... Members of the public have the freedom to decide which commercial enterprise they support and which they do not. That freedom of choice can only be exercised if activities happening...are laid bare for the public."³



These rights act as a measure of protection to you, the consumer, from harmful and misleading practices.

¹ Consumer Protection Act 68 of 2008.

² *Bool Smuts and Another v Herman Botha* (887/20) [2022] ZASCA 3 (10 January 2022).

³ *Ibid* at para 25.

Consumer Rights and the Constitution

While the Bill of Rights does not contain a specific right entitled *consumer* protection, there are various constitutional rights that may be applicable to consumers in the context of the marketplace, including:

- **s 9 - RIGHT TO EQUALITY:** supports the consumer's right to equality in the marketplace, which is relevant to the uneven impacts and inequalities of poor food quality experienced along factors including but not limited to race, class, gender, and others.
- **s 10 - RIGHT TO HUMAN DIGNITY:** demands that consumers be treated with respect and fairness in their transactions. By safeguarding consumers from exploitation, deception, and unsafe products, the law upholds their dignity, recognising their inherent worth and right to make informed decisions in the marketplace.
- **s 14 – RIGHT TO PRIVACY:** protects the right to privacy, which is relevant to consumer rights concerning personal information and data protection, among others.
- **s 16 – RIGHT TO FREEDOM OF EXPRESSION:** includes the right to receive or impart information, which is crucial for consumers to make informed choices.
- **s 27 – RIGHT TO HEALTH CARE, FOOD, WATER AND SOCIAL SECURITY:** includes the right to have access to adequate food and water, which relates to consumer rights in terms of product safety and quality.
- **s 32 – RIGHT TO ACCESS TO INFORMATION:** enables consumers to make informed decisions, thereby enhancing their ability to exercise other consumer rights effectively, such as the right to fair value, good quality and safety.

These and other rights collectively support a framework that promotes fair treatment, safety, and informed choices for consumers in SA, reinforcing the rights outlined in the CPA, and other legislation, standards and codes.

DUTIES AND RESPONSIBILITIES OF CORPORATIONS TOWARDS CONSUMERS: CORPORATE ACCOUNTABILITY

Corporations must recognise, respect and in some cases promote consumer rights, as regulated by government laws and policies, industry norms and standards, and internal policies. Due to the various stakeholders to which they are accountable – for example—internal stakeholders such as investors, shareholders, directors, employees, among others as well as external stakeholders including consumers, (and arguably animals, and the environment)—they are responsible for balancing stakeholder interests and ensuring their practices do not exploit or harm consumers.⁴⁹⁶

⁴⁹⁶ You Matter <https://youmatter.world/en/category-society/consumers-expectations-transparent-companies-social-environment/> (accessed on 14 August 2024).

Corporate Accountability is vital for consumer protection, driving ethical practices and maintaining high standards of product safety and quality through rigorous control and ethical sourcing.⁴⁹⁷ Transparency in labelling, advertising and marketing is also essential - Corporations must avoid misleading claims and provide clear, accurate information.

By fostering a culture of CSR, Corporations can build trust and loyalty among consumers.⁴⁹⁸ Corporate Accountability extends beyond legal compliance, demanding a commitment to acting in consumers' best interests and supporting a fairer, more sustainable economy.⁴⁹⁹

Obstacles to Corporate Accountability: Corporate Hypocrisy

The lack of adequate information, regulation and enforcement relating to the vast potential harms and impacts of animal agriculture industry may be exploited by Corporations when labelling, marketing, and advertising animal sourced foods to consumers or making statements about their operations and activities. Common forms of this exploitation include Greenwashing; and Humane-washing, Health-washing and/or Blue-washing. These harmful tactics which may employed by corporations serve to keep consumers in the dark about realities to ensure continued support.

Further information will be provided in respect of these practices in Part B of this pillar, below. Each of these terms can be defined different, but for purposes of this Supplementary Report:



Greenwashing may be defined as:

“[t]he making of false, misleading, or exaggerated claim/s about the impact that a company, industry, product or service has on the environment. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, marketing or other product-related communications - including in media, annual reports, or otherwise. Greenwashing is often used as an umbrella term to include other forms of problematic practices.”



Humane-washing may be defined as:

“[t]he making of false, misleading or exaggerated claim/s about the treatment of animals or the conditions in which they are born, raised, transported, or killed, creating the impression that animals are treated with compassion or in an ethical manner. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.”

⁴⁹⁷ 99percentcampaign <https://99percentcampaign.org/corporate-accountability-holding-big-business-responsible/> (accessed on 14 August 2024).

⁴⁹⁸ Azmat, F (2013) Corporate social responsibility, customer trust, and loyalty—perspectives from a developing country. *Thunderbird International Business Review*, 55(3), pp.253-270, accessible at: <https://onlinelibrary.wiley.com/doi/abs/10.1002/tie.21542>.

⁴⁹⁹ 99percentcampaign <https://99percentcampaign.org/corporate-accountability-holding-big-business-responsible/> (accessed on 14 August 2024).

- **Health-washing** may be defined as:
“[t]he making of false, misleading or exaggerated claim/s about the impact that a company, industry, product or service has on consumer or public health. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.”
- **Blue-washing** may be defined as
“[t]he making of false, misleading, or exaggerated claim/s about Corporate Social Responsibility (CSR), or the impact that a company, industry, product or service has, particularly as these relate to society, communities, human rights and international obligations. These practices can create a deceptive impression of ethical and responsible conduct. Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.”

To encapsulate these forms of washing and problematic practices, ALRSA defines **Corporate Hypocrisy** for purposes of this Supplementary Report as:

“False, misleading, or exaggerated claim/s or action/s made by a Corporation about the impact that a company, industry, product or service has on the environment, animals and/or people – which may create a perception that a Corporation is acting hypocritically. For purposes of this Supplementary Report, it encompasses practices such as Greenwashing, Humane-washing, Blue-washing and Health-washing.”

Based on the above, a focal point of Phase 2 of our Project was requesting information from the Phase 2 Selected Stakeholders relating to their animal, environmental and consumer practices. Our comprehensive PAIA requests, included asking for detailed records on Relevant Legislation, Consumer Awareness Statements, and other applicable records.

PART B: LAYING DOWN THE FACTS

CONSUMER AND CORPORATE PERSPECTIVES

We recognise that there are various other perspectives and stakeholders at play in any context, but for purposes of our exploration of consumer protection in the Egg Industry, in this Part B and Part C below, issues will be considered from two perspectives: the consumer and the Corporation. Part C will explore how certain of these issues are addressed and regulated within current governance framework, including law, standards, soft law instruments, and relevant bodies.



From a consumer perspective: Consumers can only make informed choices when they have access to accurate, reliable, complete, reliable, relevant, timely and understandable information. They can only

demand better when they understand the potential implications (including harms) of stakeholders' products and actions (including business operations and activities). To become more aware of their choices and their impacts, consumers can conduct their own research, however, information is not always readily accessible, and consumers might not always know what to look for. Additionally, even when information is available, it can be challenging to understand or even misleading, or false. Therefore, the responsibility and onus should not only (or even mostly) lie or be with consumers but should rather with those supplying goods or services. This principle is reflected in consumer protection regulations in SA and globally.

The above raise practical issues and questions that warrant further exploration, from a *consumer* perspective:

1. **Are consumers aware of the potential impacts of their choices (on animals, the environment, and their own rights including health)?**
2. **Do consumers care about animal welfare, environmental and health-related issues?**
3. **Do consumers care about transparency and accountability?**



From a corporate perspective: Corporations, which hold immense power and influence in society, must be responsible and accountable for the products and services they provide. Accountability involves transparency about the impact of their products and activities on stakeholders, such as consumers, including aspects related to constitutional rights (such as the right to a healthy environment). Other aspects of consumer concern are also important including the treatment of animals, environmental harm and health considerations. Corporations should adhere to various standards: which can be in the form of law (legal standards), industry standards, internal standards and otherwise.

These obligations raise practical issues and questions that warrant further exploration, from a *corporate* perspective:

1. **Are Corporations transparent about the impact of their products (activities and operations) on animals, the environment, consumers and their rights (including health)?**
2. **Why should Corporations care about consumer opinion and awareness?**
3. **What actions could (and should) be undertaken by Corporations to appease these concerns?**

These questions are difficult to answer, and are based on numerous objective and subjective criteria, with many variables. However, as with all analyses, it is important to start somewhere, and this section begins to answer some of these as it relates to the Egg Industry in SA in particular, drawing on foreign examples and other sectors, for illustrative purposes.

To better understand these matters, we will draw on empirical evidence including surveys, examples from publications including newspapers, websites, reporting, surveys, petitions and protests conducted by advocacy groups and the SA public.



CONSUMER PERSPECTIVE



? Consumer Question 1: Are consumers aware of the potential impacts of their choices (on animals, the environment, and their own rights including health)?

Corporations, their supply chains and the impacts of their activities on consumer decision making are increasingly coming under the microscope on both a global and national level.⁵⁰⁰ Consumers are gradually becoming aware of their purchasing power and the impact of the choices their purchases is making on the environment and the lives of animals. For example, according to Statista in 2021, globally, 42% of online consumers are purchasing products that are eco-friendly and sustainable, with countries such as Vietnam (72%), India (69%), the Philippines (60%), and China (60%) leading the way.⁵⁰¹

It has been reported that the population of SA will increase from 59 million in 2020 to 66 million in 2030 and 80 million in 2080.⁵⁰² While there is a critical need to feed this growing population, rather than embracing potentially less harmful, small-scale and regenerative farming approaches, intensive practices are steadily being pursued. In the context of animal agriculture in particular, industrialised practices are increasing and becoming commonplace. Intensive agriculture is commonly being proved to have harmful and even devastating effects on animals, humans, and the environment, warranting alternative, more justifiable approaches.⁵⁰³

But is this move away from more traditional and extensive animal farming towards more intensive and industrialised systems something that the average consumers know about? Do consumers' perception of animal agriculture and common practices therein match the realities?

In a recent public survey conducted by ALRSA relating to food systems, specifically public awareness and perspectives on animal protection-related issues, of 519 participants distributed across the country who were representative of the South African population (the “**ALRSA Study**”)⁵⁰⁴, it was apparent that there is a disconnect between consumer understanding of animal food production systems and animals'

⁵⁰⁰ Naidoo M and Gasparatos A (2023) *Consumer worldviews and perspectives on environmental sustainability initiatives in the South African supermarket sector*, accessible at <https://www.sciencedirect.com/science/article/pii/S0959652623016542>.

⁵⁰¹ Statista <https://www.statista.com/statistics/1285023/sustainable-online-shopping-by-country/> (accessed on 14 August 2024).

⁵⁰² United Nations: <https://www.un.org/en/global-issues/population> (accessed on 14 August 2024).

⁵⁰³ Animal Law Reform South Africa (2022) White Paper: Sowing the Seeds of Change: Towards a More Just and Inclusive Food System in SA. Makonese, Makanatsa*, Muchadeyi, Farai*, and Wilson, Amy P*, accessible at <https://www.animallawreform.org/wp-content/uploads/2022/10/White-Paper-Food-Systems.pdf>.

⁵⁰⁴ M. Makonese*, F. Muchadeyi*, and A.P. Wilson*, *Working Paper: Barriers to the Transformation of South Africa's Food System: Can the Law be a Lever for Change?*, Animal Law Reform South Africa, 2022, accessible at: <http://www.animallawreform.org/wp-content/uploads/2022/07/Working-Paper-Food-Systems.pdf>

lived realities, as well as a lack of understanding of the health and environmental consequences of consuming certain animal products.

Table 7: Consumer understanding and perception of the animal farming practices in South Africa.⁵⁰⁵ **NOTE: **Highlights** and **bold underline** have been added for emphasis, not included in original table*

Perception on Sector	True	False
1. To produce milk, cows need to have been recently pregnant and given birth to a calf	293 (56.5%)	226 (43.5%)
2. Companies can only say their products are “humane” if they follow certain legal standards	471 (<u>90.8%</u>)	48 (9.2%)
3. In the egg industry, male baby chickens are often killed because they do not produce eggs	215 (41.4%)	304 (58.6%)
4. Dairy is healthy and good for you	471 (90.8%)	48 (9.2%)
5. Veal comes from baby cows which are not older than 18 weeks old	317 (61.1%)	202 (38.9%)
6. Most animals farmed in South Africa are free range	263 (50.7%)	256 (49.3%)
7. Animals in farms are given antibiotics to keep them from getting sick	436 (84.0%)	83 (16.0%)
8. Humans can get infected with diseases from eating products from animals that were infected with such disease	458 (88.2%)	61 (11.8%)
9. The World Health Organization has linked the consumption of processed meats to cancer	355 (68.4%)	164 (31.6%)
10. It is illegal to mutilate farmed animals without anesthetic	365 (<u>70.3%</u>)	154 (29.7%)
11. There are proper welfare standards in place to protect animals farmed for food in South Africa	409 (<u>78.8%</u>)	110 (21.2%)
12. Animals used for food are stunned, or rendered unconscious before they are killed to ensure they do not suffer any pain	337 (64.9%)	182 (35.1%)
13. Most animals used for food in South Africa are pasture raised	367 (70.7%)	152 (29.3%)
14. Majority of the eggs consumed in South Africa are from chickens raised in cages	421 (81.1%)	98 (18.9%)
15. Animal agriculture is responsible for 15%-20% of greenhouse gas emissions	362 (69.7%)	157 (30.3%)
16. Wild animals are often killed to protect farmed animals	310 (59.7%)	209 (40.3%)
17. Cows are dehorned (remove horns) to make it easier to handle and transport them and to avoid them harming each other	325 (62.6%)	194 (37.4%)
18. Laying hens (chickens) are debeaked so that they do not harm other hens	289 (<u>55.7%</u>)	230 (44.3%)

⁵⁰⁵ *Ibid.*

According to the Working Paper in which the ALRSA Study was published: *“Three hundred and twenty-seven (63%) of participants indicated that they are familiar with animal farming practices. Two hundred and eighty-one (56.1%) considered that animals in South Africa that are used for food live happy lives, whilst 303 (58.4%) believed that these animals are humanely treated and 478 (92.1%) that there should be laws and standards that regulate how animals on farms are treated. Three hundred and sixty-five (70.3%) believed that adequate laws and standards regulating how animals should be treated existed in South Africa. 305 (58.8%) of the participants have heard of the term ‘factory farming’, 413 (79.6%) believed farmed animals such as cows, pigs, goats, sheep, and chickens can suffer.”*

The above study illustrates that even when consumer *think* they are aware of certain aspects of food production systems, this may not *actually* be the case in reality. For example:

- X nearly 91% of participating consumers thought that companies can only say their products are “humane” if they follow certain legal standards – which is not the case, as there are no legal standards relating to the use of the word**
- X nearly 79% of consumers thought that there were proper welfare standards in place to protect animals farmed for food in South Africa– which is not the case, as there are virtually no legally binding positive standards for animals utilised in animal agriculture.**

Despite the above indications of non-awareness relating to animal welfare issues, consumers are increasingly displaying at least some type of awareness / willingness with regard to considering the impact of their food on the environment.⁵⁰⁶ A poll conducted by YourView on 787 SA consumers to describe their current sustainable shopping habits confirmed that 23% of participants avoid products containing harmful chemicals or pollutants, 14% prioritise products certified as organic or sustainable by reputable organisations, 11% support brands displaying transparency and ethical supply chains, while only 4% of consumers do not consider sustainability as affecting their purchasing choices.⁵⁰⁷ Further, according to Statista, SA reported that 48% of online shoppers purchase products it regards as eco-friendly and sustainable.⁵⁰⁸

It is evident that “sustainability” and environmental “friendliness” as concepts play an increasingly significant role in the purchasing decisions of many SA consumers. However, the reality of determining whether products *are in fact* what they claim to be from an environmental perspective is another question altogether. Regardless, if Corporations know that these issues are important to consumers, and that in some cases consumers are willing to pay more for better, more ethical or more sustainable products, this provides incentives either to do better, or at the very least, *claim* or *appear* to do better for their consumers. The latter is problematic as it can lead to Corporate Hypocrisy.

⁵⁰⁶ Dive Brief, 2020 *Consumer awareness of food’s environmental impact is slowly growing*, accessible at <https://www.fooddive.com/news/kearney-report-food-environmental-impacts-consumers/622354/>.

⁵⁰⁷ KLA <https://kla.co.za/blogs/how-south-african-consumers-can-make-sustainable-choices/#> (accessed on 14 August 2024).

⁵⁰⁸ Statista <https://www.statista.com/statistics/1285023/sustainable-online-shopping-by-country/> (accessed on 14 August 2024).

Increasingly, research in other parts of the world reveals issues and the harms associated with animal agriculture, particularly the Layer Hen industry on animals, the environment and humans. For instance, in the US, 300 million male chicks are killed annually.⁵⁰⁹ The global average water footprint to produce 1 kilogram of chicken would take 4,325 litres of water, with India recording the consumption of over 3.9 million metric tons of poultry in the year of 2019.⁵¹⁰ In aiming to spreading awareness advocacy groups lead the way, through campaigning and education drives. In countries such as Cambodia, Lao PDR, Myanmar and Vietnam, specialised consumer education and awareness campaigns on food safety standards are undertaken, with particular emphasis of environmental impacts on food production and spreading awareness and research on consumer understanding of their role in the overall food system.⁵¹¹

Despite these and other measures undertaken by advocacy groups, the animal agriculture industry (in many cases, assisted by the media) may spread disinformation to maintain and increase the consumption of animal-derived products. Tactics include the denial of facts related to climate and health impacts of meat and dairy; derailing studies and debates regarding these impacts; delaying decision making and action for a transition towards more sustainable practices; and deflects criticism and attention of the public;⁵¹² and use of misleading labelling and marketing campaigns. For example, a recent study found that that animal agriculture is systematically underreported in climate media coverage.⁵¹³

More research is needed on these issues within the South African context to determine whether similar practices are occurring.

? Consumer Question 2: Do consumers care about animal welfare, environmental and health-related issues?

Along with increased *awareness*, it is important to understand whether there is also increased *care or concern* for animal, environmental and/or health-related issues. Two key studies and other actions are drawn on as examples to explore this question.

Example: NSF Study

According to a recent study conducted on consumers in SA by the National Sanitation Foundation (“NSF Study”), consumers are increasingly calling for animal well-being transparency and compliance from food companies.⁵¹⁴ In the NSF Study, over a thousand participants were surveyed across the country, which participants spanned all age groups and genders.⁵¹⁵

⁵⁰⁹ Sentient Media <https://sentientmedia.org/egg-industry/> (accessed on 14 August 2024).

⁵¹⁰ World Animal Protection <https://www.worldanimalprotection.org.in/latest/blogs/environmental-costs-animal-farming-strain-our-resources/> (accessed on 14 August 2024).

⁵¹¹ Asean https://www.asean-agrifood.org/wp-content/uploads/2021/06/02_Consumer-Education-and-Awareness-Campaigning-Guidelines.pdf (accessed on 14 August 2024).

⁵¹² Faunalytics <https://faunalytics.org/disinformation-from-the-animal-agriculture-industry/#> (accessed on 14 August 2024).

⁵¹³ Sentient Media <https://sentientmedia.org/climate-media-analysis/> (accessed on 14 August 2024).

⁵¹⁴ *Supra* note 2.

⁵¹⁵ It is however unclear whether all classes of society were approached in the conducting of this research.

The NSF Study found that **84%** of participants deem animal wellness as either “very important” or “extremely important” when selecting animal derived products including egg and/or egg related products.⁵¹⁶ The study further found that **87%** of participants consider it vital for Corporations to be consistent and compliant with animal well-being throughout both their own and their suppliers’ respective roles in the animal agriculture industry.⁵¹⁷ Consumers even expressed a willingness to pay a higher price for products that have been certified for animal well-being, with a reported **76%** of participants agreeing, and only **7%** stating that they would be unwilling to pay a higher price for products.⁵¹⁸

The findings of the NSF Study are significant in that they revealed not only are the majority of participating consumers swayed to support a Corporation that displays better animal welfare considerations, but these consumers are also willing to pay more for products they deem to be adherent to animal welfare standards. This then begs the question whether consumers are aware of animal welfare and sustainability practices. The NSF Study finding that only 3 in every 10 participants said they were “very” or “extremely” informed on SA animal welfare standards. This lack of knowledge leads to the potential for consumers being misled by statements or claims that could amount to Corporate Hypocrisy.

Example: ALRSA Study

In the aforementioned ALRSA Study, 358 (**69%**) of the participants indicated that they would, where possible, try and purchase products labelled as free-range and 386 (**74.4%**) were willing to pay more for foods where animal welfare is prioritised. These statistics illustrate that consumers *do* care more about higher welfare and more ethical products, and in some cases would pay more for same.

It is notable that consumers should not *have* to pay more for better foods, including those with higher welfare, as this arguably continues to perpetuate inequity in food systems and an implication that financial means should dictate the quality of food one is entitled to. It is submitted that all persons should have access to safe, healthy and high welfare foods as part of the right to food in the Constitution.

Public response to animal welfare and environmental impact concerns and impacts

Prior to becoming a democracy, people in SA were silenced by the government.⁵¹⁹ The country’s post-apartheid constitutional dispensation recognises and embraces the right to freedom of expression, which allows members of the public to make their voices heard.⁵²⁰ In addition, the right to protest is protected in the Constitution,⁵²¹ as well as other legislation.⁵²²

⁵¹⁶ *Supra* note 487.

⁵¹⁷ *Ibid.*

⁵¹⁸ *Ibid.*

⁵¹⁹ *Ibid.*

⁵²⁰ S16 of the Constitution states that (1) Everyone has the right to freedom of expression, which includes— (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom and freedom of scientific research.

⁵²¹ S 17 of the Constitution.

⁵²² See for instance the Regulation of Gatherings Act 205 of 1993 and its associated regulations, accessible at: <https://www.gov.za/documents/regulation-gatherings-act> (accessed on 14 August 2024)..

People in SA use various forms of protests to highlight issues, including in-person protests, through online and written media and other channels, the signing of petitions, and other avenues where people can advocate publicly for issues of importance to them.

While there are many issues, for purposes of this Pillar, we focus on issues related to animal welfare,⁵²³ the environment,⁵²⁴ consumer protection⁵²⁵ and transparency with reference to aspects of food safety and health,⁵²⁶ social issues and rights.⁵²⁷

Selected Animal Welfare and Protection Related Matters

There are regular in-person protests in SA relating to the McLaren Circus, the only travelling animal circus in the country.⁵²⁸ In the online space, one petition has over 50,000 signatures calling for the circus to be banned.⁵²⁹ Notably, these protests and other forms of public pressure, specifically relating to the treatment of animals have resulted in inspections including by the National Council of Societies for the Prevention of Cruelty to Animals (“NSPCA”) and individual Societies for the Prevention of Cruelty to Animals (“SPCA”). During one inspection, the Cape of Good Hope SPCA⁵³⁰ found McLaren Circus to be in violation of the Animals Protection Act⁵³¹ for issues including inadequate space for a lioness, dental concerns with French Poodles, and environmental enrichment deficiencies for big cats.⁵³²

Additionally, protests in relation to the live export of animals are becoming an increasingly common occurrence in SA. For instance, in February 2024, a ship travelling from Iran to Brazil transporting 19 000 live cattle, had to make an emergency stop at the Cape Town Harbour in SA. A smell permeated throughout the city and caused school and university students, among other members of society, to be sent home.⁵³³ Upon inspection of the ship by the NSPCA, some animals were found dead among the living and a number of them had to be euthanised. Animals were living in faeces and horrific

⁵²³ This includes, among others, live export of animals for food. See for instance, the Stop Live Export SA Protest in Cape Town on 16 April 2024. We Can Change: <https://www.wecanchange.co.za/post/stop-live-export-sa-slesa-live-animal-export-protest-cape-town-tuesday-16-april-16h00> (accessed on 14 August 2024).

⁵²⁴ A prominent continued protest is the demand for systemic change for social and climate justice. See more information at GreenPeace <https://www.greenpeace.org/africa/en/blog/55334/south-african-activists-demand-systemic-change-for-social-and-climate-justice/> (accessed on 14 August 2024).

⁵²⁵ Aljazeera <https://www.aljazeera.com/news/2022/8/24/south-african-unions-go-on-protests-over-high-cost-of-living> (accessed on 14 August 2024).

⁵²⁶ *Supra* note 49.

⁵²⁷ *Supra* note 498.

⁵²⁸ Facebook <https://www.facebook.com/bananimaltradingsa/photos/-pop-up-circus-protest-mclaren-circus-the-only-traveling-animal-circus-in-south-/3765338663478040/> (accessed on 14 August 2024).

⁵²⁹ Change.org <https://www.change.org/p/international-animal-rescue-shut-down-mclaren-circus> (accessed on 14 August 2024).

⁵³⁰ SPCA <https://capespca.co.za/> (accessed on 14 August 2024).

⁵³¹ *Supra* note 10.

⁵³² SPCA <https://capespca.co.za/inspectorate-news/mclaren-circus-issued-with-a-warning/> (accessed on 14 August 2024).

⁵³³ AP News <https://apnews.com/article/south-africa-cape-town-ship-smell-cattle> (accessed on 14 August 2024).

conditions.⁵³⁴ In response there were protests, which were reported on throughout the world.⁵³⁵ This incident made consumers more aware of animal welfare, food safety, and harm prevalent in the food industry and was also reported on in media outlets locally.⁵³⁶

Images representing selected protests on animal issues in South Africa: live export and animals used in circuses



Source: Stop Live Export SA⁵³⁷



Source: Ban Animal Trading⁵³⁸

SA consumers are involved in calls for the banning of using animals in cosmetic testing, with petitions available online to call for the ban on animal testing.⁵³⁹ An estimated 115 million animals are used in laboratory experiments worldwide, with an estimated 100 000 animals being used for testing in SA.⁵⁴⁰ Due to public pressure placed on government and the work conducted by advocacy groups in this regard, a private member's bill was introduced on two separate occasions into parliament targeted at criminalising cosmetic testing on animals.⁵⁴¹ Despite not yet becoming law, this is indicative of the effects of consumers being aware and applying pressure to causes related to animal cruelty in the country.

⁵³⁴ NSPCA <https://nspca.co.za/the-big-stink-leaves-cape-town-but-suffering-continues/> (accessed on 14 August 2024).

⁵³⁵ Middle East Vegan Society <https://middleeastvegansociety.org/blog/cape-towns-protest-against-live-animal-export-following-the-docking-of-the-livestock-carrier-ship-al-kuwait> (accessed on 14 August 2024).

⁵³⁶ Daily Maverick <https://www.dailymaverick.co.za/article/2024-02-20-inside-the-stinking-ship-at-cape-town-harbour-carrying-19000-cattle-to-the-middle-east/> (accessed on 14 August 2024).

⁵³⁷ Stop Live Export SA <https://stopliveexport.co.za/join-the-movement/> (accessed on 14 August 2024).

⁵³⁸ Ban Animal Trading: <https://www.facebook.com/bananimaltradingsa/photos/-pop-up-circus-protest-mclaren-circus-the-only-traveling-animal-circus-in-south-/3765338663478040/> (accessed on 14 August 2024).

⁵³⁹ Change.org <https://www.change.org/p/1000000-ban-the-use-of-animals-for-cosmetic-testing-in-south-africa> (accessed on 14 August 2024).

⁵⁴⁰ Beauty Without Cruelty <https://bwcsa.co.za/animal-testing-aka-vivisection/> (accessed on 14 August 2024).

⁵⁴¹ Parliament https://www.parliament.gov.za/storage/app/media/Bills/2021/B1_2021_Animals_Protection_Amendment_Bill/B1_2021_Animals_Protection_Amendment_Bill.pdf (accessed on 14 August 2024).

There are dozens of other petitions online relating to animal protection related matters in SA, including one which has garnered over 288,000 signatures.⁵⁴² While petitions may not be a completely accurate measure to garner support for an issue, they show public interest in and support for a matter. This support is particularly important where there is insufficient empirical evidence for such matters, as in the case of SA.

Selected Environmental (*and Animal*) Related Actions

In 2022, people in SA took to the streets to protest against Shell, a global group of energy and petrochemical companies, after it announced that it would start searching for oil and gas reserves off SA's eastern coast.⁵⁴³ Affected communities were concerned about their rights, civil society groups were concerned about the effect that seismic surveys have on aquatic environments and animals, including whales, and many South Africans decided to boycott Shell. Animal and environmental concerns featured prominently in calls to halt Shell's activities. These public actions, coupled with the work of various public interest organisations, and lawyers, led to South African courts revoking Shell's exploration rights to conduct seismic survey blasting in the area.⁵⁴⁴ The court placed the interests of local communities above those of a large corporation. Shell later admitted that the public boycotting influenced their decision to consider withdrawing from the country.⁵⁴⁵



Source: Greenpeace⁵⁴⁶



Source: Gallo Images / Brenton Geach⁵⁴⁷

⁵⁴² Change.Org <https://www.change.org/p/sick-acts-of-animal-cruelty-in-south-africa-calling-on-the-government-to-stand-up-and-implement-change> (accessed on 14 August 2024).

⁵⁴³ Euro News <https://www.euronews.com/green/2022/09/02/victory-for-the-planet-south-african-court-revokes-shells-oil-and-gas-exploration-rights> (accessed on 14 August 2024).

⁵⁴⁴ Greenpeace <https://www.greenpeace.org/international/story/55572/south-africa-celebrates-court-win-to-stop-shell-oil-exploration/> (accessed on 14 August 2024). *Supra* note 384.

⁵⁴⁵ African Activist <https://africanactivist.msu.edu/recordFiles/210-849-26567/bshell3opt.pdf/> (accessed on 14 August 2024).

⁵⁴⁶ *Supra* note 544.

⁵⁴⁷ Sourced from the Daily Maverick <https://www.dailymaverick.co.za/article/2024-05-19-wild-coast-seismic-tests-sa-protests-support-case-against-shell/> (accessed on 14 August 2024).

Other examples include the Amadiba Crisis Committee, established to fight mining titanium by the villagers of Xolobeni in Pondoland.⁵⁴⁸ The affected communities live in fear that their sacred ancestral land will be exploited by large mining Corporations. One such instance was taken to the High Court in 2018, and it was confirmed that “*mining developments can only take place with the full and informed consent of the Xolobeni community. If consent is not obtained, no mining may happen unless the state expropriates the land*” - a major win for the small community whose voices are typically ignored.⁵⁴⁹

? Consumer Question 3: Do consumers care about transparency and accountability?

In addition to concerns around animal and environmental protection, accountability and transparency are key components of SA’s constitutional dispensation. This is apparent through the Constitution itself, which includes the right to access to information as contained in s 32 as well as the enabling legislation of PAIA. Transparency is additionally included in various other provisions of the Constitution and throughout different laws.

The importance of transparency in the context of governing the environment has been reflected in further detail in the Environmental Pillar, as well as in the Initial Report. Transparency as it relates to consumer rights is contained in various legislation as well as how it has been adjudicated on by the courts, is expanded on in Part C of this Pillar. The Initial Report further expanded on transparency and accountability relating to companies in the Corporate and Business Pillar, and explored selected provisions of the Companies Act, and other corporate law elements.

The inclusion of these provisions in law, policies and judicial pronouncements serves as an important marker that SA and its people place high value on transparency and accountability – whether this relates to government or the private sector, including corporations. The inclusion of the private sector is evidenced through the horizontal application of the Constitution.

Further, SA courts have adjudicated on various matters relating to holding corporations accountable for the disclosure of information to the public, including: the right to access of information in the protection of a right,⁵⁵⁰ the burden of justification for refusals by corporations in refusing access to records;⁵⁵¹ and

⁵⁴⁸ Just Associates <https://justassociates.org/all-resources/women-defending-land-and-life-the-story-of-amadiba-crisis-committee-southern-africa/> (accessed on 14 August 2024); Ground Up <https://groundup.org.za/article/xolobeni-where-discovery-rare-minerals-has-led-violence/> (accessed on 14 August 2024).

⁵⁴⁹ *Ibid* and *Baleni and Others v Minister of Mineral Resources and Others* (73768/2016) [2018] ZAGPPHC 829; [2019] 1 All SA 358 (GP); 2019 (2) SA 453 (GP) (22 November 2018), accessible at: <https://www.saflii.org/za/cases/ZAGPPHC/2018/829.html>.

⁵⁵⁰ *Fortuin v Cobra Promotions CC* (1658/09) [2010] ZAECPHC 40; 2010 (5) SA 288 (ECP); [2011] 2 All SA 225 (ECP) (17 June 2010), accessible at: <https://www.saflii.org/za/cases/ZAECPHC/2010/40.html>.

⁵⁵¹ *BHP Billiton PLC Inc and Another v De Lange and Others* (189/2012) [2013] ZASCA 11; 2013 (3) SA 571 (SCA); [2013] 2 All SA 523 (SCA) (15 March 2013), accessible at: <https://www.saflii.org/za/cases/ZASCA/2013/11.html>.

their obligations to remain transparent in respect of matters related to disclosure of information regarding the environment.⁵⁵²

As will be detailed further in Part E of this Consumer Pillar, in the context of the Egg Industry, there is a particular concern around non-transparency of one study by the National Agricultural and Marketing Council of South Africa (“**NAMC**”) relating to the economic feasibility of transitioning to cage free systems in the country. A recent petition has been signed by close to **4,000** members of the public requesting its release.⁵⁵³



CORPORATE PERSPECTIVE



Corporate Question 1: Are corporations transparent about the impact of their products (activities and operations) on animals, the environment, consumers and their rights (including health)?

Corporate Hypocrisy in its various forms (and not necessarily referred to by that name) is, and should be, a growing concern for consumers, governments and advocacy groups. The importance of coherence between the statements made by corporations and their actions is coming under continued scrutiny.⁵⁵⁴ This is evident from the rise of consumer protection laws and policies, both domestically and internationally as well as the rise of litigation in respect of the forms of problematic practices, such as ‘washing’ undertaken by corporations. For instance, litigation in respect of legal liability for greenwashing by corporations are growing in regularity around the globe.⁵⁵⁵ A report entitled “*Global Trends in Climate Change Litigation: 2024 Snapshot*”, highlighted that about 230 climate-aligned lawsuits have been initiated against corporations since 2015, with more than two thirds being filed since 2020.⁵⁵⁶

What are examples of bad corporate practices / non-transparency?

As aforementioned, many consumers care: about issues such as protecting animals, the environment, their health or social interests, and might even be willing to pay more for or support Corporations in advance of these aims. However, they lack sufficient information, knowledge and understanding about the realities of these issues and what better, (more) ethical, (more) sustainable, (more) healthy or (more) responsible practices or standards look like in reality. Alternatively, consumers might not care about these issues, but still lack awareness.

⁵⁵² *Minister of Environmental Affairs and Another v ArcelorMittal South Africa Limited* (Case no 342/2019) [2020] ZASCA 40 (17 April 2020) <https://cer.org.za/wp-content/uploads/2020/04/Minister-of-Environment-v-AMSA-2020.pdf>.

⁵⁵³ FOUR PAWS <https://help.four-paws.org/en/egg-industry-laws-being-influenced-secret-report> (accessed on 14 August 2024).

⁵⁵⁴ Universidad Nacional de Misiones <https://www.redalyc.org/journal/3579/357967638010/html/> (accessed on 14 August 2024).

⁵⁵⁵ Grantham Research Institute <https://www.lse.ac.uk/granthaminstitute/news/climate-litigation-against-companies-is-on-the-rise-report-finds/> (14 August 2024).

⁵⁵⁶ *Ibid.*

These conditions can create a perfect environment for Corporate Hypocrisy to thrive and opportunities for consumers to be potentially misled by business operations, activities, products or services.

As discussed above, Corporate Hypocrisy comprises the various forms of washing namely Blue-washing, Green-washing, Humane-washing and Health-washing. The below sections will provide further context into these forms of washing and their impacts, as they potentially relate to the Egg Industry.

BLUE-WASHING AND (CORPORATE) SOCIAL RESPONSIBILITY

At its core, Blue-washing is about misdirecting consumers with false, misleading or exaggerated claims by Corporations about their CSR as it relates to society, communities and human rights. The common tactic employed by these Corporations is emphasising or exaggerating their commitment to the United Nations Global Compact (“**UNGC**”)⁵⁵⁷ and the Sustainable Development Goals (“**SDGs**”).⁵⁵⁸

The UNGC is the world’s largest corporate sustainability initiative and provides 10 key principles for businesses to incorporate into their strategies, policies and procedures to ensure their actions are aligned with best sustainability measures.⁵⁵⁹ Among these principles, the UNGC, in terms of its environment principles states that “*businesses should support a precautionary approach to environmental challenges*”; “*undertake initiatives to promote greater environmental responsibility*”; and “*encourage the development and diffusion of environmentally friendly technologies*.”⁵⁶⁰ While admirable, these principles remain vague, voluntary, and without specific and clear targets or measures in respect of corporate actions and undertakings. As a result, Corporations may reference this report, stating their alignment with the UNGC and fail to provide specific measures to consumers as to their actions in the achievement of these goals.

The second international measure corporations often refer to is the Sustainable Development Goals (“**SDGs**”). The SDGs are a set of 17 interconnected objectives aimed at the promotion of environmental, social and economic aspects of sustainable development for the well-being of both humans and the planet.⁵⁶¹ What is known as the “environmental cluster” comprises of the sustainable management of water resources,⁵⁶² climate change,⁵⁶³ the conservation and sustainable use of marine resources,⁵⁶⁴ and biodiversity⁵⁶⁵ and would underpin corporate activities in relation to the environment. These SDGs however suffer the same shortcomings as the UNGC in that they are voluntary, with limited clear measures of achievement by Corporations. As such, Corporations may cite this document without

⁵⁵⁷ The United Nations Global Compact <https://unglobalcompact.org/> (accessed on 14 August 2024).

⁵⁵⁸ The Sustainable Development Goals <https://sdgs.un.org/goals> (14 August 2024).

⁵⁵⁹ Hill, J., 2020. *Environmental, Social, and Governance (ESG) investing: A balanced analysis of the theory and practice of a sustainable portfolio*. Academic Press., accessible at: <https://www.sciencedirect.com/topics/economics-econometrics-and-finance/united-nations-global-compact>.

⁵⁶⁰ The UNGC mission and principles, accessible at <https://unglobalcompact.org/what-is-gc/mission/principles>.

⁵⁶¹ Science Direct, the Sustainable Development Goals (“SDGs”), accessible at <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/sustainable-development-goals>.

⁵⁶² SDG 6.

⁵⁶³ SDG 13.

⁵⁶⁴ SDG 14.

⁵⁶⁵ SDG 15.

actually undertaking any meaningful measures to protect the environment or people, which could lead to consumer uncertainty and confusion as to the sustainability of the products they are purchasing.

Additional forms of Blue-Washing could include the making other broad claims relating to the promotion of human rights, social justice and even community initiatives. This a form of misdirection – where it can appear as though a Corporation is doing good while conducting problematic activities and having harmful impacts (even on the same people or groups they are purporting to help).

BLUE-WASHING

UNMASKING THE FACADE OF CORPORATE SOCIAL RESPONSIBILITY



What is Blue-washing?

The making of false, misleading, or exaggerated claim/s about Corporate Social Responsibility (CSR), or the impact that a company, industry, product or service has, particularly as these relate to society, communities, human rights and international obligations.

These practices can create a deceptive impression of ethical and responsible conduct.

Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.

Common Blue-washing Phrases

- "Responsibly sourced"
- "Ethical"
- "Socially responsible"
- "Fair trade"
- "Adheres to international standards"
- "Human rights"
- "Community-focused"



How to Spot Blue-washing

- Vague social responsibility claims
- Absence of verifiable impact data
- Selective disclosure of positive actions
- Use of buzzwords without substantive policies
- Overemphasis on CSR membership¹
- Unsubstantiated References to United Nations, including UN Global
- Compact & Sustainable Development Goals



Harmful Effects on Consumers

- Deceptive portrayal of social responsibility
- Decreases trust in CSR initiatives
- Overshadows authentic CSR initiatives
- Leads to misguided consumer purchasing decisions
- Promotes unethical business practices²

¹ Campaign Asia: <https://www.campaignasia.com/article/ethics-or-charade-the-troubling-truth-of-bluewashing/484603>.

² Al Surf: <https://www.linkedin.com/pulse/blue-washing-slippery-slope-corporate-domination-dr-mohammed-al-surf>.

GREENWASHING AND ENVIRONMENTAL-RELATED CLAIMS

At its core, Greenwashing is about the misdirection by companies to appear to be more sustainable than they actually are.⁵⁶⁶ Common tactics considered Greenwashing include words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.⁵⁶⁷ A common example of Greenwashing found throughout various Corporations, particularly popular fast food restaurants and outlets, is opting for the removals of plastic straws in favour of “strawless lids” which have been found to contain more plastic than the previous plastic straws.⁵⁶⁸

Corporations may also use terms which confuse consumers, by providing seemingly positive attributes about their actions or products. Examples could include “*regenerative grazing*”, “*grass-fed beef*”, which are terms used by Corporations that claim that cows raised for beef are an important part of nature and essential for sustainable ecosystems,⁵⁶⁹ however due to the number of and intensity of production, it has detrimental impacts to the surrounding environment and ecosystems. The use of chicken production as a “*low carbon*” form of animal derived food production in comparison to other forms of animals is another instance which may be deceptive, due to the environmental impacts of the egg and poultry industry. In comparison, there are other forms of foods which are lower in comparison and have other benefits, including alleviating animal welfare concerns.⁵⁷⁰

Without adequate checks and balances, Greenwashing through labelling, use of vague terms and imagery, consumers can be misled to believing that their purchases are not only less environmentally harmful, but might even contribute positively towards the environment and sustainability.⁵⁷¹ It further has a significant impact on the marketplace, and dilutes the ability of corporations truly undertaking sustainable production and/or sourcing practices to get recognition and market share from consumers that align with their values and Responsible Sourcing.⁵⁷²

There is a global shift against Greenwashing. According to a report on the 2022 United Nations Climate Change Conference or Conference of the Parties of the United Nations Framework Convention on Climate Change (“**COP27**”), the United Nations (“**UN**”) Secretary-General stated that “*we must have zero tolerance for net-zero greenwashing*”.⁵⁷³ The UN Integrity Matters: Net Zero Commitments by

⁵⁶⁶ According to <https://www.u4.no/blog/greenwashing-a-form-of-corruption>, Greenwashing “can be a form of corruption or a form of fraud. It damages trust, and undermines public confidence in climate action”.

⁵⁶⁷ Plan A <https://plana.earth/glossary/greenwashing> (accessed on 14 August 2024) and the CPA.

⁵⁶⁸ Surge Activism <https://www.surgeactivism.org/humanewashing> (accessed on 14 August 2024).

⁵⁶⁹ Animal Justice <https://animaljustice.ca/blog/greenwashing> (accessed on 14 August 2024).

⁵⁷⁰ *Ibid.*

⁵⁷¹ A Greener World <https://agreenerworld.org/a-greener-world/beware-greenwashing/> (accessed on 14 August 2024).

⁵⁷² Responsible Sourcing by Corporations involves sourcing materials, products, and/or services from suppliers that have measures in place, such as Internal Policies which they are compliant with, to ensure the ethical treatment of animals and minimise environmental impacts. Rebel pastures <https://rebelpastures.com/blogs/from-the-pasture/greenwashing-an-in-depth-look-into-the-deception-of-big-ag> (accessed on 14 August 2024).

⁵⁷³ United Nations <https://www.un.org/en/delegate/%E2%80%98zero-tolerance-greenwashing%E2%80%99-guterres-says-report-launch> (accessed on 14 August 2024).

Businesses, Financial Institutions, Cities and Regions report provides a roadmap to bring integrity to net-zero commitments across all industries, including the Egg Industry.⁵⁷⁴ Furthermore, courts across the world are increasingly ruling against Corporations making misleading statements that could be construed as Greenwashing.⁵⁷⁵

Any Corporations, including those operating within the Egg Industry ought to ensure environmental and sustainability claims are clear, accurate, and supported by objective scientifically based evidence and accurate public statements aligned therewith.⁵⁷⁶ Through shedding light on these measures and the environmental impacts of production of animal derived products, including eggs, consumers will be empowered to make informed choices regarding the purchasing of eggs. Consumers are encouraged to support producers and/suppliers that have a proven track record of adherence to sustainability with high levels of transparency into their practices.⁵⁷⁷

⁵⁷⁴ UN https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf (accessed on 14 August 2024).

⁵⁷⁵ Loyens Loeff <https://www.loyensloeff.com/insights/news-events/news/breaking-court-judgment-in-first-dutch-greenwashing-class-action--marketing-claims-klm-are-considered-to-be-misleading/> (accessed on 14 August 2024).

⁵⁷⁶ Norton Rose Fullbright <https://www.nortonrosefulbright.com/en-za/knowledge/publications/e87c69e7/greenwashing-disputes-on-the-rise> (accessed on 14 August 2024).

⁵⁷⁷ *Supra* note 572.

GREENWASHING

SCRUBBING AWAY ENVIRONMENTAL LIES



What is Greenwashing?

The making of false, misleading, or exaggerated claim/s about the impact that a company, industry, product or service has on the environment.

This is often used as an umbrella term to encompass other forms of 'washing' and other problematic practices.

Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, marketing or other product-related communications - including in media, annual reports, or otherwise.



Common Greenwashing Terms



How to spot Greenwashing

- Unsupported environmental claims
- Vague or ambiguous terms
- Overuse of green (language or colour) in marketing
- Claims inconsistent with company actions
- Unverified eco-certifications
- Complex, unfamiliar ingredient lists²
- Pictures & imagery showing environment, life, cleanliness



Harmful Effects on Consumers

- Misleads consumers, public & other stakeholders
- Delays or undermines global sustainability efforts
- Violates consumer and stakeholder trust
- Skews consumer choices
- Distorts understanding of sustainability
- Affects health & safety³

¹ Adapted definition from ALRSA's Supplementary Report "Scrambling for the Truth: Eggsploring Corporate Hypocrisy and Non-Transparency: Environmental and Consumer Rights in the Egg Industry in South Africa" (2024). Available at: www.eggssouthafrica.org.

² Greenly Institute: <https://greenly.earth/en-us/resources/greenwashing-infographic>.

³ Skel: <https://askelsustainabilitysolutions.com/7-negative-effects-greenwashing-has-on-consumers/>.

HEALTH-WASHING AND HEALTH RELATED CLAIMS

Eggs are often marketed as a healthy protein source with high nutritional value.⁵⁷⁸ This is a marketing tool to encourage consumers to purchase these products while making claims about their impacts on human health. However, such claims are to be contrasted with scientific findings to the contrary, including studies confirming the detrimental impacts of high egg consumption.⁵⁷⁹

The Physician's Committee for Responsible Medicine has compiled various studies illustrating some of the not-so-positive health implications for consuming eggs, including increasing the risk of heart disease, diabetes and cancer.⁵⁸⁰ Specifically, dietary cholesterol in eggs has been linked to a 19% elevation in cardiovascular problems and a potential 68% increase in diabetes risk.⁵⁸¹ Moreover, research indicates that consuming egg yolks accelerates atherosclerosis in a manner comparable to smoking cigarettes.⁵⁸² A 2020 study in SA highlighted significant health concerns associated with egg consumption, revealing the prevalence of Salmonella, Escherichia coli, antimicrobial residues, and antimicrobial-resistant bacteria.⁵⁸³ Layer Hens also face numerous health issues when subjected to intensive farming practices, such as Egg Drop Syndrome,⁵⁸⁴ Caged Layer Fatigue,⁵⁸⁵ and Fatty Liver Syndrome,⁵⁸⁶ and many others which are further aggravated by the routine use of antibiotics in food-producing animals, contributing to the emergence of antibiotic-resistant bacteria.⁵⁸⁷

Health-related claims and feeding programs, particularly in the context of vulnerable groups in society should be met with additional examination, including in relation to children and people living in poverty. Both of these groups have a lower ability to exercise their freedom of choice, for different reasons.

In our Initial Report, we reported that in January 2023, Hy-Line International, together with Hy-Line SA, approached Dr Blessman (of Blessman International),⁵⁸⁸ to cooperate with his feeding program with

⁵⁷⁸ *Supra* note 33 at page 164-165.

⁵⁷⁹ *Supra* note 33 at page 164-165, and Prevention.com <https://www.prevention.com/food-nutrition/healthy-eating/a20435574/study-claims-eggs-are-as-unhealthy-as-smoking/> (accessed on 14 August 2024).

⁵⁸⁰ Physicians Committee for Responsible Medicine <https://www.pcrm.org/good-nutrition/nutrition-information/health-concerns-with-eggs> (accessed on 14 August 2024).

⁵⁸¹ *Ibid.*

⁵⁸² Goldberg, S et al (2014) Egg consumption and carotid atherosclerosis in the Northern Manhattan study. *Atherosclerosis*, 235(2), pp.273-280, accessible at: <https://www.sciencedaily.com/releases/2012/08/120813155640.htm>.

⁵⁸³ Adesiyun, A.A et al (2020). Food safety risk posed to consumers of table eggs from layer farms in Gauteng Province, South Africa: Prevalence of Salmonella species and Escherichia coli, antimicrobial residues, and antimicrobial resistant bacteria. *Journal of Food Safety*, 40(3), p.e12783, accessible at: <https://onlinelibrary.wiley.com/doi/abs/10.1111/jfs.12783>.

⁵⁸⁴ Poultry World <https://www.poultryworld.net/topic/egg-drop-syndrome-eds-76/#> (accessed on 14 August 2024).

⁵⁸⁵ Veterinaria Digital <https://www.veterinariadigital.com/en/articulos/cage-fatigue-syndrome-the-importance-of-prevention/> (accessed on 14 August 2024).

⁵⁸⁶ Roy's Farm <https://www.roysfarm.com/common-diseases-in-laying-hens/> (accessed on 14 August 2024).

⁵⁸⁷ *Supra* note 12.

⁵⁸⁸ Blessman International is an organisation that is focused on an organisation which focuses on several issues including feeding children, accessible at <https://www.googleadservices.com/pagead/>.

the purpose to add “an-egg-a-day” to the feeding program to “*further enhance his efforts by enhancing the nutritional content of the meals*”.⁵⁸⁹ This means that beneficiaries of the program, who receive daily meals consisting of a basic grain and vegetable-based diet, would now receive eggs too.

The “Eggs are Magic” campaign mentioned on the SAPA website and in the Industry Component in Section II of our Initial Report was reported to be directed at school children and their mothers, and features a through-the-line mix combining activations and industrial theatre, competitions, mobile media, radio and giveaways, all of which are designed to showcase the versatility of eggs.⁵⁹⁰

While we do not claim the abovementioned examples to be Health-washing, they are included to illustrate how initiatives include messaging that eggs are healthy, or nutritional, and how eggs are provided and/or marketed to those that might have limited access to information regarding the potential negative impacts of egg consumption and limited freedom of choice.

Health-related claims should be carefully considered, particularly where products produced are linked with diseases. The listeriosis outbreak in SA, which was the world’s largest ever outbreak of food-borne disease listeria, with a death toll of 204 people⁵⁹¹ resulted in safety recalls and class action lawsuits.⁵⁹²

⁵⁸⁹ Poultry Producer <https://www.poultryproducer.com/hy-line-launches-partnership-to-provide-egg-protein-to-malnourished-african-children/> (accessed on 14 August 2024). *Supra* note 33 at page 179.

⁵⁹⁰ Bizcommunity <https://www.bizcommunity.com/Article/196/179/61647.html> (accessed on 14 August 2024).

⁵⁹¹ Yahoo <https://uk.news.yahoo.com/death-toll-listeria-outbreak-south> (accessed on 14 August 2024).

⁵⁹² Gumede N 2024 *A critical analysis of compensation claims based on injuries caused by food contamination/food poisoning: A case study of the Listeriosis outbreak in SA*, accessible at <https://www.researchgate.net/publication/377297170>.

HEALTH-WASHING

DIAGNOSING DECEIT BY CORPORATIONS AROUND WELLBEING

What is Health-washing?

The making of false, misleading or exaggerated claim/s about the impact that a company, industry, product or service has on consumer or public health.¹

Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise.

Common Health-washing Terms/ Phrases

- “Healthy”
- “Good for you”
- “Clean”
- “Safe”
- “Unprocessed”
- “Goodness”
- “Heart healthy”
- “Health”
- “Fresh”

And even the misuse of legally defined terms such as
Natural | Organic



How to Spot Health-washing²

- Exaggerated health benefit claims
- Omission or downplaying of negative health impacts
- Vague / unsubstantiated health-focused terms
- Misuse of legally defined terms / slightly altered terms

¹ Adapted definition from ALRSA's Supplementary Report "Scrambling for the Truth: Eggsploring Corporate Hypocrisy and Non-Transparency: Environmental and Consumer Rights in the Egg Industry in South Africa" (2024). Available at: www.eggssouthafrica.org.

² Health Desk: <https://health-desk.org/articles/what-is-health-washing-and-what-does-the-label-real-food-mean-to-consumers>.

HUMANE-WASHING AND ANIMAL-RELATED CLAIMS

Humane-washing is a significant concern particularly as it relates to animal use industries. In the context of animal agriculture, and the Egg Industry in particular, it may result in Cruel Practices – such as Battery Cages and the culling of male Chicks (among others). Corporations with misleading labelling, advertisement and marketing campaigns emphasising the “*humane*” and/or “*natural*” conditions of animals in their supply chains may endure suffering and harm behind closed doors.⁵⁹³

Consumers are becoming increasingly aware of the realities of their products, including the treatment of animals due to exposés (through undercover investigations, documentaries, reports, research, publications, news articles, social and other forms of media). Growing awareness often comes with demands to do better in terms of animal welfare. In animal agriculture specifically, businesses are facing growing public pressure to change their business practices with enhanced considerations of animals.⁵⁹⁴

Corporations are gradually appreciating animal protection as a concern of their consumers: in some instances making genuine efforts to improve practices, and in others, rather incorporating messaging and claims to create the impression that they are in fact conducting their business activities in a humane manner.⁵⁹⁵ Examples of this include depictions of farmed animals, including Layer Hens in open pastures and freely grazing, while in reality, many of these Layer Hens are in caged confinement, or confusing messaging.

Corporations may opt to use vague and broad terms such as “*humane*”, “*kind*” or “*kinder*”, “*natural*”, “*responsibly raised*” or “*humanely raised*”, “*happy animals*”, “*high welfare*”, “*ethical*”. Such terms often have no legal meaning or required standards that need to met in order to use them, but still elicit positive reactions from consumers when they see or hear them.

Corporations may also make vague statements such as “*we have high / the highest animal welfare standards*” or “*animal welfare is the most important thing on our farm*” or “*we care about our animals*”, which are not measurable against objective standards,⁵⁹⁶ but similarly elicit positive reactions.

Humane certification allows producers and Corporations to potentially promote the illusion of animal well-being while hiding the continued suffering of animals.⁵⁹⁷ It further leads to consumer confusion and uncertainty.

Other examples may include certifications from / membership with entities that condone Cruel Practices,⁵⁹⁸ including in their standards.

⁵⁹³ *Supra* note 538.

⁵⁹⁴ Green Matters <https://www.greenmatters.com/big-impact/humane-washing> (accessed on 14 August 2024).

⁵⁹⁵ *Ibid.*

⁵⁹⁶ *Supra* note 538.

⁵⁹⁷ *Supra* note 556.

⁵⁹⁸ Faunalytics <https://faunalytics.org/the-case-against-humane-food-labels/> (accessed on 14 August 2024).

The use of these depictions, terms, statements, or certifications have the potential to mislead consumers into believing the eggs they purchase do not harm the Layer Hens who are forced to produce these products.⁵⁹⁹

86% of all hens utilised for eggs in South Africa, are raised in Battery Cages.

Certain stakeholders (Selected Stakeholders and Phase 2 Selected Stakeholders) confirmed that they sell eggs and egg products from Layer Hens who are kept in Battery Cages and subjected to Cruel Practices such as the culling of day-old male chicks, de-toeing, and de-beaking.

According to regulations, in South Africa, egg containers “*may*” indicate the production methods used, such as whether the eggs come from Layer Hens housed in “cages,” “barns,” or are “free-range”.⁶⁰⁰ Such labelling aims to enhance consumer awareness and empower informed purchasing decisions. **However, because the labelling of production methods is not mandatory, consumers are not aware how their products are produced. Moreover, even if an egg seller elects to disclose the egg production method on egg labels, the terms “cage”, “barn” and “free-range” may still be confusing or misleading for consumers who are unfamiliar with their specific definitions and requirements.** For example, even when eggs are labelled as “free-range,” Layer Hens may be kept indoors for a maximum continuous period of 24 weeks during a year during Avian Flu outbreaks.⁶⁰¹ “Cage-free hens” may also be kept indoors.

To empower consumers to make ethical and informed choices, it is essential that they have access to accurate and mandatory information about production methods, associated practices, animal welfare standards, and the true meanings of various terms. In the recommendations section of this report (Section IV), we propose making the labelling of production methods compulsory to enhance consumer rights and transparency. Additionally, we call for greater clarity regarding the terminology used in egg labelling to ensure that consumers fully understand what these terms mean.⁶⁰²

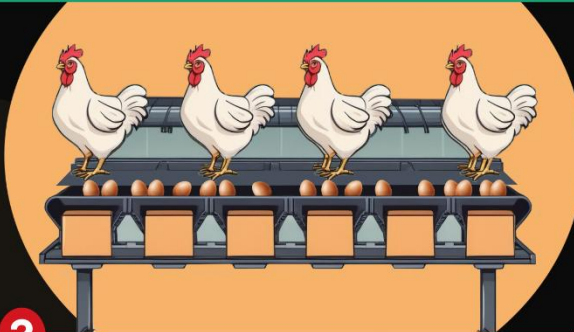
⁵⁹⁹ Green Matters <https://www.greenmatters.com/big-impact/humane-washing> (accessed on 14 August 2024).

⁶⁰⁰ *Supra* note 493.

⁶⁰¹ *Ibid.*

HUMANE-WASHING

ANIMAL AGRICULTURE'S DIRTY LITTLE SECRET



What is Humane-washing?

The making of false, misleading or exaggerated claim/s about the treatment of animals or the conditions in which they are born, raised, transported, or killed, creating the (false) impression that animals are treated with compassion or in an ethical manner¹

Can appear as words, illustrations, logos, or any visual expression on packaging, in advertising, or other product-related communications - including in media, annual reports, or otherwise



Common Humane-Washing Terms

"humane" | "kind or kinder" | "natural" | "responsibly" / "naturally or humanely or responsibly or raised" | "happy animals" | "high / higher welfare" | "ethical" | "care" | "stress free" | "humanely treated"



How to Spot Humane-washing

- Vague animal treatment claims
- Unspecified animal welfare priorities
- Idealised animal imagery on packaging/advertising/ statements²



Harmful Effects on Consumers

- Misleads purchasing decisions
- Misrepresents welfare standards
- Obscures genuine certifications
- Hinders genuine welfare progress
- Violates consumer trust³

¹ Adapted definition from ALRSA's Supplementary Report "Scrambling for the Truth: Eggsploring Corporate Hypocrisy and Non-Transparency: Environmental and Consumer Rights in the Egg Industry in South Africa" (2024). Available at: www.eggssouthafrica.org.

² New Roots Institute: <https://www.newrootsinstitute.org/articles/what-is-humane-washing-is-certified-humane-legit>.

³ Farm Forward: <https://www.farmforward.com/publications/humanewashings-effect-on-consumers/>.

Corporate Question 2: Why should Corporations care about consumer opinion and awareness?

Corporations owe obligations to their consumers and are bound by constitutional and legislative provisions which regulate their activities. Outside of legal duties and responsibilities, consumer perception plays a significant role in Corporations' reputation, impacting their market share, profitability, financial success and sustainability.

Corporations may undertake misleading activities in the form of Corporate Hypocrisy to draw and keep consumers purchasing their products or services, however, such activities present a significant business risk that may implicate their triple bottom line.⁶⁰³

There is an increase in court litigation in respect of Corporate Hypocrisy being undertaken across the world. According to the Sabin Center's Climate Change Litigation Databases, 210 cases have been brought to courts across the world in respect of climate change against corporations.⁶⁰⁴ This includes jurisdictions such as Germany,⁶⁰⁵ France,⁶⁰⁶ Netherlands,⁶⁰⁷ and the UK.⁶⁰⁸ The US further has increasing litigation in respect of Corporations and actions undertaken harming animals and the environment by advocacy groups.⁶⁰⁹ These and other matters are indicative of the necessity of Corporations to make statements that are aligned with their actions and are indicative of the true sustainability practices of these corporations.

In addition to litigation, Corporations which are exposed for bad practices can lose consumer support. A prominent example is the "the Blackfish Effect". A documentary was released in 2013 providing insight into killer whale entertainment, particularly at SeaWorld, displaying cruel practices towards these animals resulting in their suffering. As a result of this documentary, SeaWorlds stocks significantly declined, and

⁶⁰³ The triple bottom line theory refers to conventional business success metrics to include an organisations social well-being, environmental health and a just economy. It is often referred to as the "Triple P's: People, planet and Prosperity. More information on the triple bottom line is accessible at <https://uwex.wisconsin.edu/stories-news/triple-bottom-line/>.

⁶⁰⁴ These exclude matters arising in the United States. Grantham Institute <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2024-snapshot/> (accessed on 14 August 2024).

⁶⁰⁵ Sabin Centre for Climate Change Law <https://climatecasechart.com/non-us-case/higher-regional-court-of-frankfurt-am-mains-decision-on-climate-neutral-claims-regarding-detergents/> (accessed on 14 August 2024); Sabin Centre for Climate Change Law <https://climatecasechart.com/non-us-case/deutsche-umwelthilfe-v-netto-marken-discount-stiftung-co-kg/> (accessed on 14 August 2024); and Sabin Centre for Climate Change Law <https://climatecasechart.com/non-us-case/deutsche-umwelthilfe-v-hellofresh-deutschland/> (accessed on 14 August 2024), among others.

⁶⁰⁶ Sabin Centre for Climate Change Law <https://climatecasechart.com/non-us-case/bloom-and-others-v-totalenergies/> (accessed on 14 August 2024).

⁶⁰⁷ Sabin Centre for Climate Change Law <https://climatecasechart.com/non-us-case/milieudefensie-v-ing-bank/> (accessed on 14 August 2024).

⁶⁰⁸ Sabin Centre for Climate Change Law <https://climatecasechart.com/non-us-case/asa-ruling-on-lufthansa-complaint-no2-in-2023/>, <https://climatecasechart.com/non-us-case/asa-ruling-on-air-france-klm/> (accessed on 14 August 2024), Sabin Centre for Climate Change Law <https://climatecasechart.com/non-us-case/asa-ruling-on-charles-tyrwhitt-shirts-ltd/> (accessed on 14 August 2024).

⁶⁰⁹ Animal Law Conference <https://www.animallawconference.org/wp-content/uploads/2023/11/christine-ball-blakely-presentation-alc23.pdf> (accessed on 14 August 2024).

the Corporation has seen a major drop in attendance.⁶¹⁰ This ultimately led to policy decisions of the Corporation to end its captive whale breeding program and drove legislative reform across the world for aquatic mammals in captivity.

The misuse of claims can lead to harsher regulations on Corporations in their dealings with consumers and the public at large. For instance, in the US, the Animal Legal Defence Fund (“**ALDF**”) submitted its comments to the US Department of Agriculture’s Food Safety and Inspection Service in support of a petition to prohibit the use of “*climate-friendly*” claims or similar such claims on beef products.⁶¹¹ Additionally, it required that laws would be enacted that would, in theory, compel corporations to act more diligently in their dealings as they relate to the environment.⁶¹²

Corporate Question 3: What actions could (and should) be undertaken by Corporations to appease these concerns?

Corporations can address these concerns in various ways, tangible recommendations are provided for in further detail in Section IV. First and foremost, Corporations, including those in the Egg Industry, should adopt a transparent approach to their business activities and operations, and the impacts thereof. This is due to the potential impact on fundamental rights, and in recognition that the activities which they undertake are a matter of public interest.

The courts have been instrumental in confirming the influence of public interest with regard to transparency in issues of animal protection, with increasing emphasis placed on animal welfare, environmental protection and corporate transparency and accountability. In *Smuts and Another v Botha*,⁶¹³ the judgment handed down by the Supreme Court of Appeal (“**SCA**”) is a benchmark case for consumer protection as it relates to animal welfare. This matter related to a farmer who trapped animals (including baboons) in cages and fed them poison on his private farm. Cyclists taking part in a competition that crossed through part of the farm came across the animals and took pictures. The cyclists, with the support of animal activists, took to social media to put the farmer on blast for committing cruelty to animals. A legal dispute arose where the farm owner and activists clashed over allegations of defamatory statements and invasion of privacy. The SCA ruled that the farm owner had made his personal information public by posting it on social media voluntarily. Consequently, the court found the farm owner’s case against the activists to be weak. Moreover, the court criticised the farm owner’s treatment of non-human animals and regarded his actions as “vile”. Importantly, the court underscored consumers’ right to be informed about business owners’ ethical practices towards animals when making purchasing decisions, marking a significant development in animal law adjudication. This case cemented that consumers have an interest in animal welfare and should be made aware of corporate practices.

⁶¹⁰ My Green World <https://www.mygreenworld.org/blog/the-blackfish-effect> (accessed on 14 August 2024).

⁶¹¹ ALDF <https://aldf.org/case/urging-fsis-to-ban-use-of-climate-friendly-claims-on-beef-products/> (accessed on 14 August 2024).

⁶¹² See for instance, the Growing Climate Solutions Act, accessible at <https://washingtonmonthly.com/2023/06/19/greenwashing-big-ag/>.

⁶¹³ *Supra* note 144.

In the context of requesting a Corporation to provide access to information about its environmental harms and risks to community members, the SCA has further confirmed in *ArcelorMittal SA* that:

“Corporations operating within our borders, whether local or international, must be left in no doubt that in relation to the environment...there is no room for secrecy and that constitutional values will be enforced”.⁶¹⁴

These and other cases are evidence of a growing trend towards transparency by Corporations in respect of animal, environmental and consumer protection and as intertwined concepts.

Corporate Accountability and Transparency⁶¹⁵ are powerful concepts for consumers to understand as they have the power to influence how food is produced, and the overall sustainability of food supply chains.⁶¹⁶ Transparency in the form of positive disclosures made voluntarily illustrate an attitude of openness. In the absence of mandatory legal standards of disclosure and reporting, Corporations may choose to provide data to assist stakeholders with better understanding their operations. Going a step further, they can initiate awareness and education programs to ensure information is understood. Outside of making disclosures, when Corporations receive requests for information, either through formal legal requests like PAIA, and other correspondence, responding in a positive manner promotes a culture of integrity. Internally, they can ensure that stakeholders feel safe to highlight problematic practices through implementing whistleblower protection programs.

Corporations have responsibilities to not employ tactics that amount to as Corporate Hypocrisy, and should avoid and refrain from making claims and statements which might lose consumer trust. Corporations are required to act with honesty and specificity and further substantiate their claims with concrete, and expert led evidence.⁶¹⁷ Furthermore, Corporations are required to take immediate action on their sustainability goals and provide a well laid out plan in the achievement of these sustainability goals.⁶¹⁸ This should further be in alignment with messaging and marketing efforts of these Corporations.

To govern the forms of washing discussed above and other harmful consumer practices, SA has introduced consumer protection laws, as further discussed in Part C below.

⁶¹⁴ *Supra* note 211. For a case summary as it relates to our Project, see *supra* note 33 at page 64.

⁶¹⁵ Serr <https://serr.co.za/the-importance-of-transparency-and-accountability-as-per-the-companies-act> (accessed on 14 August 2024). More cases related to the various forms of washing accessible at Grantham Research Institute <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2024-snapshot/> (accessed on 14 August 2024).

⁶¹⁶ Egels-Zandén, N and Sörum, N “Supply Chain Transparency as a Consumer or Corporate Tool: The Case of Nudie Jeans C” (2015) accessible at: https://www.researchgate.net/publication/276342494_Supply_Chain_Transparency_as_a_Consumer_or_Corporate_Tool_The_Case_of_Nudie_Jeans_Co.

⁶¹⁷ *Ibid.*

⁶¹⁸ According to <https://www.pwc.co.za/en/assets/pdf/sustainable-development-goals-south-africa-focus.pdf>, people in SA with businesses should “align their corporate social responsibility initiatives towards ensuring that the [Sustainable Development Goals] goals are achieved”.

PART C: LAYING DOWN THE LAW

Various laws, standards, and policies govern and promote consumer rights and protections in SA. In the context of the Egg Industry, these include the CPA, the Agricultural Products Standards Act (“**APSA**”);⁶¹⁹ and its Regulations related to the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of SA (“**Egg Labelling Regulations**”);⁶²⁰ the Marketing of Agricultural Products Act (“**MAPA**”);⁶²¹ and Codes of the Advertising Regulatory Board.⁶²² For purposes of this Supplementary Report, we briefly discuss the legislation and regulations related to consumer protection, with a particular focus on how these intersect with Corporate Hypocrisy, and transparency and accountability issues. Some legislation discussed under this Pillar falls under the mandate of the Department of Trade, Industry and Competition (“**DTIC**”), while other legislation is implemented by Department of Agriculture, Land Reform and Rural Development (“**DALRRD**”).

In addition to the abovementioned South African laws exist international and foreign law frameworks which influence SA law, dedicated bodies to advancing consumer rights soft law standards.

OVERVIEW OF CONSUMER PROTECTION LAW IN SOUTH AFRICA

In the Initial Report, we briefly introduced selected legislation and policies as they relate to consumer protection, with a particular focus on animal welfare. In this Supplementary Report, our analysis focuses on environmental aspects, with some inclusion on animal and health-related aspects.

Strengths of Consumer Protection Law in SA

South African law contains some robust protections for consumers, including in the CPA, which includes the establishment of a comprehensive legal framework that promotes fair and responsible business practices.⁶²³ The CPA empowers consumers by recognising fundamental rights such as the right to equality, privacy, and fair treatment in the marketplace.⁶²⁴ Consumer protection laws also aim to protect vulnerable groups, such as low-income consumers and those with limited literacy, by ensuring

⁶¹⁹ Agricultural Products Standards Act 119 of 1990 (“APSA”) <https://www.gov.za/documents/agricultural-product-standards-act-6-mar-2015-1127>.

⁶²⁰ *Supra* note 493.

⁶²¹ Marketing of Agricultural Products Act 47 of 1996 (“MAPA”), accessible at <https://www.gov.za/documents/marketing-amendment-act>.

⁶²² Advertising Regulatory Board (“ARB”) <https://www.arb.org.za/phone/codes.html> (accessed on 14 August 2024).

⁶²³ Banking Association of SA <https://www.banking.org.za/consumer-information/consumer-information-legislation/consumer-protection-act/> (accessed on 14 August 2024).

⁶²⁴ Ss 8 and 11 of the CPA.

access to goods and services and providing mechanisms for dispute resolution and redress.⁶²⁵ Furthermore, consumer protection law encourages transparency and accountability from suppliers, which fosters consumer confidence and promotes responsible consumer behaviour.⁶²⁶

Weaknesses of Consumer Protection Law in SA

There are notable weaknesses in the implementation and effectiveness of consumer protection laws in SA. One significant challenge is the limited awareness and understanding of consumer rights among the general population, particularly vulnerable groups.⁶²⁷ This lack of knowledge can hinder consumers from effectively exercising their rights or seeking redress when faced with unfair practices.⁶²⁸ Additionally, enforcement of the CPA can be inconsistent, with the NCC facing resource constraints that limit its ability to monitor compliance and address violations adequately.⁶²⁹ Moreover, while the CPA aims to reduce disadvantages for vulnerable consumers, its reliance on information disclosure alone may not empower all consumers, especially those who may not fully comprehend the information provided.

CONSUMER PROTECTION LAWS APPLICABLE TO THE EGG INDUSTRY

Consumer protection law governs the Egg Supply Chain's impacts on consumer rights and interests. Our PAIA requests sought various records related to these laws. Responses received from Phase 2 Selected Stakeholders helped shape our Supplementary Rating Criteria and Indicators. In this section, we examine relevant legislation to understand the rationale for their inclusion in our PAIA requests.

CPA

The CPA, as the name suggests, was established to protect consumers and their interests in a number of ways, including protecting consumer vulnerability which is caused by high levels of poverty, illiteracy and other forms of social and economic inequality.⁶³⁰ Eggs fall squarely under the ambit and definition of “goods” regulated by the CPA, and therefore all relevant provisions of the CPA apply to the Egg Industry (as suppliers thereof) and members of the public as consumers (purchasers thereof), as

⁶²⁵ Ngcobo, M.T (2024) "Artificial Intelligence and Blockchain Technologies in Online Dispute Resolution: A Solution to Consumer Disputes in South Africa?" PER / PELJ 2024(27), accessible at: <http://dx.doi.org/10.17159/1727-3781/2024/v27i0a14648>.

⁶²⁶ Labour Guide <https://labourguide.co.za/general/the-consumer-protection-act-your-guide-to-consumer-rights-a-how-to-protect-them> (accessed on 14 August 2024).

⁶²⁷ Mason, R.B., 2007. Consumer protection awareness in South Africa, accessible at: https://www.researchgate.net/publication/32116517_Consumer_Protection_Awareness_in_South_Africa.

⁶²⁸ *Ibid.*

⁶²⁹ Department of Science and Innovation <https://thenc.org.za/wp-content/uploads/2023/06/HSRC-Report-Attitudes-towards-consumer-rights-and-protection.pdf> (accessed on 14 August 2024).

⁶³⁰ The preamble to the CPA.

appropriate.⁶³¹ The CPA provides that consumers must be able to make informed decisions on their purchases, and prohibits consumers from being misled by Corporations.

With the growing emphasis on environmental issues and concerns about Greenwashing, and animal issues and concerns about Humane-washing, the CPA remains crucial in safeguarding consumers from Corporations engaging in Corporate Hypocrisy.

The CPA explicitly prohibits the marketing of any goods in a manner that is likely to imply a false or misleading or otherwise fraudulent in nature.⁶³² This relates to claims made in respect of the nature, properties, advantages, or uses of such goods or any other material aspects of such goods.⁶³³ The CPA however fails to define the terms “false”, “misleading”, or “deceptive” creating a potential gap within the law which Corporations may use to skirt this prohibition.⁶³⁴

NCC

The NCC, established under s 85 of the CPA, serves as a regulatory body dedicated to protecting consumer interests.⁶³⁵ Its key functions include resolving disputes between consumers and suppliers, investigating suppliers accused of prohibited conduct, referring cases to the National Consumer Tribunal,⁶³⁶ and promoting compliance with the CPA through advocacy and education.⁶³⁷ The NCC also ensures consumer safety by managing the recall of potentially hazardous goods. The CPA grants consumers fundamental rights, in line with the Constitution and UNGCP, and any violation of these rights constitutes non-compliance, allowing consumers to file complaints with the NCC.⁶³⁸

The CPA provides that the NCC may consider appropriate foreign and international law, and appropriate international conventions, declarations or protocols when making decisions relating to consumer protection.⁶³⁹ As such, despite the NCC not publishing any specific rules or regulations relating to Green-; Blue-; Health-, or Humane-washing respectively, in instances where a claim is considered “false”, “misleading” or “deceptive”, reference may be made to foreign precedent. This is particularly significant as in other jurisdictions, “green”, “ecological”, and “net-zero” claims must be clearly substantiated and fully explained to consumers.⁶⁴⁰ Examples of foreign laws and cases are included further below.

⁶³¹ Throughout the CPA for all provisions, both goods and services are mentioned, although each also have particular sections which apply to them only. For example, in relation to goods, s 43 - Pyramid and related schemes - is applicable.

⁶³² s 29 of the CPA.

⁶³³ s 29(i) and (v) of the CPA.

⁶³⁴ *Supra* note 113 above.

⁶³⁵ The National Consumer Commission (“NCC”) <https://thencc.org.za/> (accessed on 14 August 2024).

⁶³⁶ The National Consumer Tribunal <https://www.thenct.org.za/> (accessed on 14 August 2024).

⁶³⁷ *Ibid* and s 92 of the CPA.

⁶³⁸ *Ibid*.

⁶³⁹ s 2 of the CPA.

⁶⁴⁰ *Supra* note 113 above.

APSA and Egg Labelling Regulations

The labelling of eggs and other products in SA is regulated in terms of the APSA and more specifically, the Egg Labelling Regulations. **According to the regulations**, eggs **may** be labelled as “free range”,⁶⁴¹ “barn” eggs,⁶⁴² or “cage” eggs⁶⁴³ if their production meets specific requirements in these regulations. **Therefore, including the production method of eggs is not mandatory in South Africa as it is in other countries and jurisdictions around the world, such as the EU and the UK.**⁶⁴⁴

The APSA and Egg Labelling Regulations are significant in ensuring consumer awareness and promoting improved standards of consumer information, through the promotion of transparent labelling.⁶⁴⁵ It is particularly useful in addressing Corporate Hypocrisy by Corporations. S 6 of the APSA states:

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

This section concerning misleading labelling is of import in that it would, in theory, prohibit role-players in the Egg Industry from labelling their egg and/or egg related products as “humane”, “sustainable”, or “health conscious” if these are not accurate claims.

The Egg Labelling Regulations promulgated in terms of the APSA further restrict what can be displayed on the outer container of eggs.⁶⁴⁶ These restrictions also have potential implications for the prevention of Corporate Hypocrisy. For example, Regulation 13(1)(a) states (emphasis added):

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

*(ii) A message of veterinary medicine-free **or which indicates the more humane treatment or rearing of poultry or which creates an impression that the eggs are safer or that poultry was fed a special diet such as, but not limited to, ‘antibiotic free’, ‘fed a diet free of hormones’.***

⁶⁴¹ S 8(2)(a) of the Egg Labelling Regulations.

⁶⁴² s 8(3) of the Egg Labelling Regulations.

⁶⁴³ s 8(4) of the Egg Labelling Regulations.

⁶⁴⁴ Euro Group for Animals <https://www.eurogroupforanimals.org/what-we-do/areas-of-concern/method-production-labelling> (accessed on 14 August 2024). Conservative Animal Welfare Foundation <https://www.conservativeanimalwelfarefoundation.org/campaigns/mandatory-labelling/> (accessed on 14 August 2024).

⁶⁴⁵ The Egg Labelling Regulations.

⁶⁴⁶ *Ibid.*

‘cage free’, ‘furnished cage’, ‘safe’, ‘pure’, ‘grass fed’, ‘pasture fed’, ‘forage fed’, ‘canola fed’, ‘grain fed’, ‘mixed grain’, ‘organic’,

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

These restrictions are limited as they do not speak to the advertising and marking of eggs, only the outer packaging. This creates a gap which allows Corporations may therefore continue to market and advertise eggs and egg related products with the abovementioned claims, including “humane”, “sustainable” and/or “healthy” outside of labelling.

Egg labelling regulations, such as those related to “free range” claims, play a crucial role in protecting consumer interests and animal welfare.⁶⁴⁷ However, because disclosing egg production methods on egg labels is not mandatory, sellers selling “cage” eggs would most likely elect not to disclose this information on product labelling, as such a label could limit or prevent sales. Consequently, the regulations, insofar as they relate to the voluntary disclosure of egg production methods on egg labels, is largely ineffective in empowering consumers to make informed choices. As recommended in this report (Section IV), production method labelling requirements should be made mandatory to enhance consumer protection and prevent misleading marketing practices. Coupled with strict enforcement of these mandatory regulations, and strong consequences for non-compliance, such changes would ensure that producers adhere to established standards and that ensure consumers can trust the claims made on egg labels.⁶⁴⁸

MAPA

The purpose of the MAPA is to authorise the establishment and enforcement of measures to intervene in the marketing of agricultural products; including the introduction of levies on agricultural products; to establish the NAMC; and to provide for matters connected therewith.⁶⁴⁹ S 15 of the MAPA allows for the introduction of levies subject to certain conditions being met. This has led to the development of regulations which introduced statutory levies to be paid on all eggs sold in the country to the SAPA.⁶⁵⁰

⁶⁴⁷ *Supra* note 33 at page 43.

⁶⁴⁸ Food Advisory Consumer Service <https://foodfacts.org.za/labelling/> (accessed on 14 August 2024).

⁶⁴⁹ The MAPA.

⁶⁵⁰ *Ibid.*

The Egg Levy Regulations

In terms of the statutory levy regulations on eggs,⁶⁵¹ a levy is payable on “table eggs and egg products” being non-fertile eggs of the species *gallus domesticus* for domestic consumption.⁶⁵² The statutory levy regulations state (emphasis added):⁶⁵³

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

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

- a) Approximately 70% of the funds are required to be used for functions relating to **consumer communication and education, consumer assurance, research, industry information and liaison and production development**;*
- b) At least 20% of the funds are required to be used for **transformation**; and*
- c) Not more than 10% of the funds may be used for **administrative costs**”.*⁶⁵⁴

Below contains an extract of the amount of levies to be paid per sale of eggs:⁶⁵⁵

AMOUNT OF LEVY

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

This levy appears to cement the role of SAPA (discussed in further detail below and in the Initial Report) as the primary mouthpiece for the Egg Industry. Through these statutory levies, SAPA is empowered with financial resources to promote the Egg Industry including by obtaining research and communicating and educating consumers. However, as an industry body, SAPA may tend towards

⁶⁵¹ MAPA: Continuation of Statutory Levies on Table Eggs as prescribed by Regulation R345, as amended and on Egg Products sold to the Trade and Determination of Guideline Price 45771; 1680 Marketing of Agricultural Products Act (47/1996), accessible at: https://www.gov.za/sites/default/files/gcis_document/202201/45771gon1679.pdf.

⁶⁵² *Ibid.*

⁶⁵³ *Ibid.*

⁶⁵⁴ *Ibid.*

⁶⁵⁵ *Ibid.*

representing the interests of its members, over the public interest. This can have the effect that consumers are not educated or made aware of any negative aspects associated with the Egg Industry, including in relation to animal treatment, environmental impacts and even human health. As discussed in further detail in Part D below, research initiated by SAPA which impacts on consumer rights and choices is not made publicly available. These inhibit the ability of consumers to make informed choices and raise concerns around the role and power of SAPA.

Competition Act⁶⁵⁶

Corporate Hypocrisy has the potential to give rise to common law claims based on unlawful competition. Issues pertaining to competition are regulated by the Competition Act.⁶⁵⁷

The Competition Act was enacted to, among other things, provide for markets in which consumers have access to, and can freely select the quality and variety of goods and services they desire, and to restrain trade practices which undermine a competitive economy.⁶⁵⁸ While the Competition Act does not directly regulate Greenwashing or other forms of Corporate Hypocrisy, it contains measures upon which Corporations could hold their competitors accountable for such behaviours.⁶⁵⁹

The Competition Act allows for the possibility for a complaint being filed by a competitor in relation to conduct involving misleading claims made by a Corporation regarding their sustainability or related matters.⁶⁶⁰ For instance, s 8 of the Competition Act provides for abuse of dominance prohibitions and could be used in an instance of a dominant Corporation committing Corporate Hypocrisy. This would, however, depend on the facts and would require that such activity constitute an exclusionary act. An act is exclusionary if it impedes or prevents a competitor from entering into, or expanding within, a market.⁶⁶¹

The CCSA

The CCSA is a statutory body constituted in terms of the Competition Act.⁶⁶² It is empowered to investigate, control, and evaluate restrictive business practices, abuse of dominant positions and mergers, in order to achieve equity and efficiency in the SA economy.⁶⁶³ The CCSA is one of three such bodies, the other two being the Competition Tribunal (“**Tribunal**”)⁶⁶⁴ and the Competition Appeal Court (“**CAC**”).⁶⁶⁵ The CCSA is responsible for the investigating and prosecuting agency in respect of matters

⁶⁵⁶ The Competition Act 89 of 1998 (“Competition Act”), accessible at https://www.gov.za/sites/default/files/gcis_document/201409/a89-98.pdf.

⁶⁵⁷ *Ibid.*

⁶⁵⁸ *Ibid.*

⁶⁵⁹ *Ibid* at ss 4 and 8.

⁶⁶⁰ *Ibid* at s 41.

⁶⁶¹ *Ibid* at s 1(viii).

⁶⁶² *Ibid* at s 19.

⁶⁶³ *Ibid* at s 21.

⁶⁶⁴ *Ibid* at s 26.

⁶⁶⁵ *Ibid* at s 36.

related to competition while the Tribunal is the court.⁶⁶⁶ The CAC hears appeals against decisions of the Tribunals.

Earlier this year, the CCSA initiated a process into the poultry industry as “*it has reason to believe there are features in the poultry market that may impede, distort or restrict competition.*”⁶⁶⁷ This inquiry aims to ensure fair practices and prevent monopolistic behaviours that could negatively impact consumers.

CONSUMER PROTECTION REGULATORY BODIES

Ensuring good consumer practices such as ensuring accurate labelling, marketing and advertising and to inform consumers is vital for consumer protection in the Egg Industry.⁶⁶⁸ In addition to those bodies mentioned above, several statutory and/or industry bodies play a role in ensuring consumer protection and Corporate Accountability.

PAIA Request: Consumer Protection Regulatory Bodies

We requested records demonstrating whether the Phase 2 Selected Stakeholders and/or their suppliers have been reported to advertising standards agencies or regulatory bodies, such as the ARB, the Advertising Standards Authority (“ASA”), the CCP (part of the NCC), the CCSA, CGCSA etc. for complaints about marketing, advertising, labelling, or any environmental or animal welfare-related issues. We also requested details and outcomes of any proceedings, along with records on how eggs, egg products, and products containing eggs are labelled, particularly in relation to practices like caged egg farming.

Advertising Regulatory Board (“ARB”)⁶⁶⁹

Although a voluntary regulatory body, the ARB is relevant to the governance framework due to its role in providing specific guidance on consumer protection and Greenwashing.⁶⁷⁰ Consumers may lodge complaints with the ARB about the content of advertising.⁶⁷¹ According to its website, the ARB was set up by the broader marketing and communications industry to protect consumers in SA through the self-regulation of advertising, including packaging.⁶⁷²

⁶⁶⁶ The Competition Commission of South Africa (“CCSA”) <https://www.compcom.co.za/> (accessed on 14 August 2024).

⁶⁶⁷ CCSA <https://www.compcom.co.za/wp-content/uploads/2024/02/Commission-Invites-Comments-on-Draft-ToRs-into-the-Poultry-Industry-Value-Chain.pdf> (accessed on 14 August 2024).

⁶⁶⁸ *Supra* note 476.

⁶⁶⁹ Advertising Regulatory Board (“ARB”) <https://www.arb.org.za/> (accessed on 14 August 2024).

⁶⁷⁰ *Supra* note 126.

⁶⁷¹ ARB <https://www.arb.org.za/complaints.html> (accessed on 14 August 2024).

⁶⁷² *Supra* note 669.

ARB Code of Advertising Practice

The ARB administers the widely accredited Code of Advertising Practice (“**Code**”)⁶⁷³ which regulates the content of SA advertising.⁶⁷⁴ The Code defines “advertisement” to include any visual or aural communication, representation, reference or notification of any kind that is intended to promote the sale, leasing or use of any goods or services, or appeals for or promotes the support of any cause. This also includes any promotional content of display material, menus, labels and packaging.⁶⁷⁵

There is a specific code for “Food and Beverage” applicable to egg products.⁶⁷⁶ These advertising standards codes generally prohibit advertisements that are likely to be misleading to consumers.⁶⁷⁷ As such, the ARB and its specific Code applicable to egg products enables consumers to lodge complaints against role-players in the Egg Industry in instances where they suspect a form of washing is taking place. A consumer or other stakeholder concerned about unqualified claims and statements made by Corporations in the Egg Industry can lodge a complaint with the ARB requesting that the environmental claims be investigated.⁶⁷⁸

Appendix G to the ARB Code of Advertising Practice

In 2022, the aforementioned Code was amended to include an Appendix G (“**Appendix**”) which specifically deals with environmental claims, defined as: “*any direct or indirect claim, representation, reference or indication in an advertisement relating to the immediate or future impact or influence on the environment of a product or its packaging or service.*”⁶⁷⁹

The Appendix prohibits advertisements from including vague, incomplete, or irrelevant statements regarding environmental issues, and it mandates that ads should not undermine public confidence in the business community’s efforts to enhance ecological standards.⁶⁸⁰ Additionally, it regulates specific terms like “*recyclable*,” “*degradable*,” and “*ozone friendly*,” ensuring that these terms can only be used when they are accurately represented. Advertisements featuring general terms such as “*environmentally friendly*,” “*ozone friendly*,” or “*green*,” along with any related graphics or symbols, must be accompanied by a clear description of the associated benefits—for instance, “ozone friendly – free from CFCs.”⁶⁸¹

⁶⁷³ ARB <https://www.arb.org.za/index.html#codes> (accessed on 14 August 2024).

⁶⁷⁴ *Ibid.*

⁶⁷⁵ *Supra* note 126.

⁶⁷⁶ ARB [https://www.arb.org.za/assets/appendix-j-food--beverage-\(2022\).pdf](https://www.arb.org.za/assets/appendix-j-food--beverage-(2022).pdf) (accessed 14 August 2024).

⁶⁷⁷ *Supra* note 576.

⁶⁷⁸ Webber Wentzel <https://www.webberwentzel.com/News/Pages/greenwashing-and-the-role-of-the-advertising-regulatory-board-in-south-africa.aspx> (accessed on 14 August 2024).

⁶⁷⁹ Appendix G *Advertising containing Environmental Claims* accessible at https://www.arb.org.za/assets/lappendix-g_environmental.pdf.

⁶⁸⁰ *Supra* note 126.

⁶⁸¹ *Supra* note 679.

In the assessment of whether there has been a breach of the Code, the ARB will consider whether the claims had the effect of misleading the consumer (or are likely to mislead a consumer), are false or unsubstantiated, or in violation of the Code. As such, Corporations must be able to provide evidence to support claims and ensure that a claim is put into sufficient context to enable consumers to understand the basis on which they are made.⁶⁸²

ARB's Authority Over Non-Members

In 2022, the SCA held that the ARB does not only have the power to rule against a member of the ARB, but also to decide on complaints about an advertisement of a non-member of the ARB.⁶⁸³ The ARB can accordingly issue decisions on non-member advertisements for the benefit of its members, thereby indirectly influencing the advertising practices of non-members who wish to engage ARB members for promotional services.⁶⁸⁴ There are several important provisions in the Code that aim ensure that ARB members, who are bound by advertising standards, do not publish misleading advertisements, including those making unsubstantiated environmental claims.⁶⁸⁵ This framework allows consumers to challenge problematic practices, and ultimately have greater trust that there are safeguards in place to ensure honesty and integrity in the marketing and advertising of products and services.

The Code has been utilised in several cases involving advertising in the animal agriculture sector.⁶⁸⁶ Some challenges were unsuccessful and at least one has been successful.⁶⁸⁷ The successful challenge involved the ARB Appeals Committee ruling that a dairy company in SA could not utilise the terms “*humane*” and “*#happy cows*” in their advertising due to this being in contravention of the Code.⁶⁸⁸

⁶⁸² *Supra* note 126.

⁶⁸³ *Advertising Regulatory Board NPC and Others v Bliss Brands (Pty) Ltd* (786/21) [2022] ZASCA 51; [2022] 2 All SA 607 (SCA); 2022 (4) SA 57 (SCA); [2022] HIPR 201 (SCA) (12 April 2022), accessible at: <https://www.saflii.org/za/cases/ZASCA/2022/51.html>; and *Bliss Brands (Pty) Ltd v Advertising Regulatory Board NPC and Others* (CCT 132/22) [2023] ZACC 19; 2023 (10) BCLR 1153 (CC) (26 June 2023), accessible at: <https://www.saflii.org/za/cases/ZACC/2023/19.html>.

⁶⁸⁴ The Media Online <https://themediainline.co.za/2022/08/landmark-ruling-confirms-arb-can-make-decisions-on-non-members-advertising/> (accessed on 14 August 2024).

⁶⁸⁵ Visagie, J (2023) The Jurisdiction of the Advertising Regulatory Board over Non-members: The Supreme Court of Appeal confirms its Herbex-order in the Bliss-matter. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 26(1), pp.1-31, accessible at: https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812023000100003.

⁶⁸⁶ *Ibid.*

⁶⁸⁷ Medium <https://medium.com/@joannefairbrother/statement-on-advertising-appealscommittee-decision-on-complaint-fair-cape-dairies-vs-kemp-1173775edd14> (accessed 14 August 2024).

⁶⁸⁸ Advertising Regulatory Board (ARB). (2024). Case Reference: 3291 – TotalEnergies. Decision Date: 14 August 2024, accessible at: <https://www.arb.org.za/2024.html>. Cape Times <https://www.pressreader.com/south-africa/cape-times/20200508/281621012507965> (accessed 14 August 2024).

South African Bureau of Standards (“SABS”)

The SABS is an agency of the DTIC established by the Standards Act⁶⁸⁹ to develop, promote and maintain South African National Standards (“SANS”); to enhance the quality of commodities, products, and services, and to provide conformity assessment services.⁶⁹⁰

The SABS is the International Organization of Standardization (“ISO”) member body in SA.⁶⁹¹ Therefore, the SABS adopts and adapts ISO standards to meet local needs, ensuring that they are relevant to South Africa’s specific context while maintaining international best practices.⁶⁹²

SABS certification and accreditation entails certifying that a product has passed performance and quality assurance tests stipulated in a standard or regulation, or that it complies to a national and international standard or regulation governing quality and minimum performance requirements.⁶⁹³ The SABS Product Certification Scheme aims to provide third party guarantees of the quality, safety and reliability of products provided by Corporations to the consumer.⁶⁹⁴

Except for those SABS Standards that have been incorporated into law or included in permit conditions, adherence to these standards is voluntary.

In the Initial Report, we highlighted the role of SABS as it pertains to animal welfare governance in particularly through the SANS, and more specifically draft standards relating to poultry.⁶⁹⁵ We highlighted the lack of binding legal status for these standards and the concerning influence of industry representatives in the drafting process, which often results in standards that fall short of advancing animal welfare.⁶⁹⁶ This critique was integral to our analysis of the regulatory landscape in Phase 1, where we examined the limitations of relying on voluntary standards in promoting meaningful welfare improvements.⁶⁹⁷ Notably, the SABS has not yet published an updated version of the proposed Poultry Welfare Code as at the date of this Supplementary Report, after withdrawing the draft in 2021.

Environmental Claims Standards (SANS)

SA has voluntary standards that can be referenced to determine if an environmental claim is misleading which include:⁶⁹⁸

⁶⁸⁹ The Standards Act 24 of 1945, accessible at: https://www.gov.za/sites/default/files/gcis_document/201709/41064gon858.pdf.

⁶⁹⁰ National Government of SA <https://nationalgovernment.co.za/units/view/161/south-african-bureau-of-standards-sabs> (accessed on 14 August 2024).

⁶⁹¹ International Organization of Standardization (“ISO”) <https://policy.iso.org/south-africa.html> (accessed on 14 August 2024).

⁶⁹² ISO <https://www.iso.org/member/1485.html> (accessed on 14 August 2024).

⁶⁹³ DTIC <https://www.thedtic.gov.za/wp-content/uploads/SABS-APP.pdf> (accessed on 14 August 2024).

⁶⁹⁴ SAFIC <https://www.safic.co.za/post/sabs-certification> (accessed on 14 August 2024).

⁶⁹⁵ *Supra* note 33 at pages 109-110.

⁶⁹⁶ *Ibid.*

⁶⁹⁷ *Ibid.*

⁶⁹⁸ *Supra* note 126.

- SANS 14021:2017: Deals with self-declared environmental claims (Type II environmental labelling).⁶⁹⁹
- SANS 14024:1999: Focuses on Type I environmental labelling, which involves third-party certification.
- SANS 1728:2019: Sets requirements for marking and identifying degradable plastics. Degradable plastics include, but are not limited to, “biodegradable, compostable, oxo-biodegradable and water-soluble plastics”.⁷⁰⁰

In respect of SANS 1728:2019, as at February 2023, the SABS Acting CEO confirmed that, no products have been certified as compliant or meeting the requirements of the standard. As such, claims of plastic products being “*degradable*”, “*environmentally friendly*” or “*plastic free*” may be unverified or unsubstantiated.⁷⁰¹

While some SABS standards are freely available on their website,⁷⁰² most require a fee for public access. In respect of some of the above standards, SABS notes on its website that: “*Only informative sections of standards are publicly available. To view the full content, you will need to purchase the standard.*” Just one of these standards costs over ZAR700, which is unaffordable for many people in South Africa, rendering them inaccessible.

(In)accessibility presents a serious obstacle in terms of wider public awareness. Without knowing the contents of these standards, consumers are not able to challenge problematic practices, ultimately undermining efforts to promote transparency and accountability in environmental matters.



CPF and Other Consumer Protection Bodies

Part B of Schedule 4 of the Constitution states that Consumer Protection is a functional area of concurrent National and Provincial Legislative Competence. The CPF is a voluntary national structure⁷⁰³ established by the DTIC in line with Part B of Schedule 4 of the Constitution, which designates consumer protection as a shared responsibility between national and provincial governments. The CPF includes nine provincial consumer protection offices and various regulatory authorities, such as the National Regulator for Compulsory Specifications (“NRCS”),⁷⁰⁴ Independent Communications

⁶⁹⁹ There was an amendment to ISO 14021:2016/Amd 1:2021 Environmental labels and declarations — Self-declared environmental claims (Type II environmental labelling). The sample is accessible at: <https://www.iso.org/standard/81242.html>.

⁷⁰⁰ Engineering News <https://www.engineeringnews.co.za/article/sabs-warns-about-unverified-biodegradable-plastics-claims-2023-02-28> (accessed on 14 August 2024).

⁷⁰¹ *Ibid* and *Supra* note 126.

⁷⁰² South African Bureau of Standards <https://www.sabs.co.za/> (accessed on 14 August 2024).

⁷⁰³ *Supra* note 141.

⁷⁰⁴ National Regulator for Compulsory Specifications (“NRCS”) <https://www.nrscs.org.za/> (accessed on 14 August 2024).

Authority of South Africa (“**ICASA**”),⁷⁰⁵ National Credit Regulator (“**NCR**”),⁷⁰⁶ Council for Medical Aid Schemes (“**CMS**”),⁷⁰⁷ Financial Sector Conduct Authority (“**FSCA**”),⁷⁰⁸ National Energy Regulator of South Africa (“**NERSA**”),⁷⁰⁹ Credit Ombudsman, Council for Debt Collectors (“**CDC**”),⁷¹⁰ as well as Accredited Alternative Dispute Resolution Agents such as the Consumer Goods and Services Ombud scheme (“**CGSO**”),⁷¹¹ and Motor Industry Ombud scheme of South Africa (“**MIOSA**”).⁷¹²

The CPF convenes quarterly to discuss consumer protection issues, conduct research, perform compliance inspections, and promote consumer education and business compliance.⁷¹³ It is notable that despite its major footprint, there is no specific agricultural sector body included in the abovementioned regulatory authorities.



International Governance Measures

In addition to the above South African laws, policies, standards and codes, international frameworks have an influence on modern consumer protection frameworks. For example, the United Nations Guidelines for Consumer Protection 2016 (“**UNGCP**”)⁷¹⁴, establish essential principles aimed at ensuring consumer rights and promoting fair market practices across member states. These guidelines advocate for adequate protection against health and safety hazards, access to information for informed decision-making, and effective redress mechanisms for consumers.⁷¹⁵ They emphasise the importance of ethical conduct in business, the development of independent consumer organizations, and the promotion of sustainable consumption practices.⁷¹⁶ While not legally binding, the UNGCP serves as a vital framework for countries to enhance their consumer protection policies, fostering a fair marketplace where consumers can make informed choices and engage in economic activities safely and equitably.⁷¹⁷ The CPA is in alignment with the UNGCP.⁷¹⁸

⁷⁰⁵ Independent Communications Authority of South Africa (“**ICASA**”) <https://www.icasa.org.za/> (accessed on 14 August 2024).

⁷⁰⁶ National Credit Regulator <https://nationalgovernment.co.za/units/view/126/national-credit-regulator-ncr> (accessed on 14 August 2024).

⁷⁰⁷ Council for Medical Aid Schemes (“**CMS**”) <https://www.medicalschemes.co.za/> (accessed on 14 August 2024).

⁷⁰⁸ Financial Sector Conduct Authority (“**FSCA**”) <https://www.fsc.co.za/Pages/Default.aspx> (accessed on 14 August 2024).

⁷⁰⁹ National Energy Regulator of South Africa (“**NERSA**”) <https://www.nersa.org.za/> (accessed on 14 August 2024).

⁷¹⁰ Credit Ombudsman, Council for Debt Collectors (“**CDC**”) <https://www.cfdc.org.za/> (accessed on 14 August 2024).

⁷¹¹ Consumer Goods and Services Ombud scheme (“**CGSO**”) <https://www.cgso.org.za/cgso/> (accessed on 14 August 2024).

⁷¹² Motor Industry Ombud scheme of South Africa (“**MIOSA**”) <https://www.miosa.co.za/> (accessed on 14 August 2024).

⁷¹³ *Supra* note 141.

⁷¹⁴ United Nations Guidelines for Consumer Protection (“**UNGCP**”) https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf (accessed on 14 August 2024).

⁷¹⁵ *Ibid.*

⁷¹⁶ *Ibid.*

⁷¹⁷ *Ibid.*

⁷¹⁸ NCC <https://thencc.org.za/#> (accessed on 14 August 2024).

The aforementioned United Nations Guiding Principles on Business and Human Rights 2011,⁷¹⁹ are also relevant to the Egg Industry. They are premised upon general principles of respecting human rights, requiring businesses to comply with the law and respect human rights, and matching rights and obligations to remedies when breached. They place a strong responsibility on states to regulate business in this regard.

The UN has various strategic initiatives in place to tackle Greenwashing.⁷²⁰ In response to the rise of net-zero pledges often lacking transparency and integrity, the UN Secretary-General established a High-Level Expert Group to create clearer standards for these commitments in the realm of climate change.⁷²¹ Their report, “Integrity Matters,”⁷²² provides ten recommendations for credible net-zero pledges, which demonstrate the importance of accountability and transparency in climate action.⁷²³ To implement these recommendations, the UN introduced a Recognition and Accountability Framework.⁷²⁴ In September 2023, the UN held a Climate Ambition Summit, focusing on ambition, credibility, and implementation, while explicitly rejecting Greenwashing tactics.⁷²⁵ Additionally, the Secretary-General has called for a global ban on fossil fuel advertising and urged creative agencies to stop supporting Greenwashing, stressing the need for genuine action against climate change.⁷²⁶

These international guidelines have helped shape SA’s approach to consumer protection, providing a foundation for the country’s legislation and standards, particularly within industries like agriculture and food production,

Foreign Governance Measures

Foreign Codes and Regulations to Combat Corporate Hypocrisy

Although not established under SA domestic law, these codes serve as reference points and guidelines for developing consumer protection law in SA. The UK has developed a specific code to address potential greenwashing issues, known as the “*Green Claim Code*”.⁷²⁷ Introduced by the Competition and Markets Authority in 2021, this code updates UK consumer protection law with a focus on misleading Greenwashing claims.⁷²⁸ The key principles of the code require that corporate claims be truthful and accurate; clear and unambiguous; free from omissions or concealment of important

⁷¹⁹ UNHR https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (accessed on 14 August 2024).

⁷²⁰ The UN <https://www.un.org/en/climatechange/science/climate-issues/greenwashing> (accessed on 14 August 2024).

⁷²¹ The UN <https://www.un.org/en/climatechange/high-level-expert-group> (accessed on 14 August 2024).

⁷²² The UN https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf (accessed on 14 August 2024).

⁷²³ *Ibid.*

⁷²⁴ UNFCCC <https://unfccc.int/documents/629039> (accessed on 14 August 2024).

⁷²⁵ *Supra* note 720.

⁷²⁶ *Ibid.*

⁷²⁷ *Ibid.*

⁷²⁸ Compare Ethics <https://www.compareethics.com/resource-hub/green-claims-code-guide-for-brands-retailers> (accessed on 14 August 2024).

information; fair and meaningful in comparisons; and substantiated by considering the full life cycle of the product or service.⁷²⁹ The code applies to any claims made by businesses about the positive environmental aspects of their products or services.⁷³⁰ It may serve as a useful reference for addressing Greenwashing issues in South Africa.

The NCC could refer to and be guided by European Union regulations on Health-washing, specifically Regulation (EC) No 1924/2006,⁷³¹ which governs all nutrition and health claims in commercial communications, including food advertising and promotional campaigns. This regulation defines nutrition claims as any statements about a product's specific nutritional properties, such as its energy, nutrients, or other components, and health claims as those suggesting a link between a food or its ingredients and health.⁷³² The regulation mandates that such claims must not be false, ambiguous, or misleading; must not cast doubt on the safety or nutritional adequacy of other foods; and must not encourage excessive consumption.⁷³³ There are four main types of health claims under this regulation: general non-specific claims, claims not related to disease risk reduction, claims lowering disease risk, and claims about child growth and development.⁷³⁴ All claims must be substantiated by accepted scientific data, and food business operators must justify their use and demonstrate compliance.⁷³⁵

EXAMPLES OF LEGAL CONSUMER PROTECTION DUTIES OF CORPORATIONS IN THE EGG SUPPLY CHAIN

Corporations involved in the Egg Industry have several legal duties to uphold, ensuring compliance with consumer protection laws, regulations, and standards. These responsibilities encompass a range of regulations and best practices aimed at safeguarding consumer interests and ensuring product safety. Below are selected key legal duties:

Duty 1: Compliance with Consumer Protection Laws

All stakeholders within the Egg Industry must adhere to relevant consumer protection laws including legislation such as the CPA, Competition Act, APSA, MAPA, and relevant regulations such as the Egg Labelling Regulations, among others. Ensuring compliance with Consumer Protection Legislation, and other Relevant Legislation,⁷³⁶ is a crucial aspect of maintaining legal and ethical standards within the Egg

⁷²⁹ *Supra* note 113 above.

⁷³⁰ *Supra* note 728.

⁷³¹ Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on food, accessible at <https://eur-lex.europa.eu/legal-content/en/ALL/>.

⁷³² *Ibid* and Potter Clarkson <https://www.potterclarkson.com/insights/what-is-healthwashing-and-what-is-a-claim/> (accessed on 14 August 2024).

⁷³³ *Ibid* at Article 3.

⁷³⁴ *Ibid*.

⁷³⁵ Article 6 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on food accessible at <https://eur-lex.europa.eu/legal-content/en/ALL/>.

⁷³⁶ Ss 5, 22, 24, 27 of the CPA; ss 3 and 5 of the APA; s 2 of the MAPA; s 2 of the FCDA; and s 3 of the HA are applicable to this request.

Supply Chain. We sought to gain a clearer understanding of how Phase 2 Selected Stakeholders and their suppliers perceive and fulfil their legal obligations under Consumer Protection Legislation.

PAIA Request: (Non) Compliance with Consumer Protection Legislation

We requested records pertaining to the adherence to or breaches of Consumer Protection Legislation, as well as any related amendments, rules, regulations, and notices.

Duty 2: Ensure that Operations Prioritise Consumer Rights

Corporations are required to ensuring that their operations prioritise consumer rights recognised in the CPA, our Constitution as well as the UNGCP.

Duty 3: Product Safety and Quality

Corporations are responsible for ensuring the safety of their (egg) products. S 63 of the CPA mandates that businesses must not only provide safe products but also remove any that pose risks to consumers.

Duty 4: Supply Chain Transparency

Suppliers must maintain transparency in their operations, including providing accurate information about production methods that relate to animal welfare and environmental harm. This includes disclosing if eggs are produced using caged systems, which may be against the ethical values of a consumer.

Duty 5: Transparent Marketing Practices

Corporations have a duty to provide clear and accurate information about their products. This includes truthful labelling and advertising that do not mislead consumers regarding the nature, benefits, impact or other characteristics of the products.

Consumer Awareness Statements⁷³⁷ made by Corporations regarding animal welfare and environmental issues impact consumer protection by promoting transparency and accountability, allowing consumers to make informed choices aligned with their values.⁷³⁸ This openness fosters trust, encourages ethical practices across the Egg Industry, and creates mechanisms for consumer feedback, ultimately leading to

⁷³⁷ A Consumer Awareness Statement is a statement made by a Corporation informing consumers about a Corporation's practices and policies, especially regarding animal welfare and environmental issues. The statement is intended to provide true and correct information to consumers that will assist them in making informed decisions in respect of products sold by the Corporation. The information must therefore be clear and easy for the consumer to understand. Linked to Public Statements as defined in our Initial Glossary, accessible on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>, it includes details about egg sourcing, the conditions that Layer Hens are kept in, and the Corporation's adherence to environmental responsibilities. This information reflects the Corporation's engagement with the public on these matters and empowers consumers to make informed decisions.

⁷³⁸ McKinsey & Company <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/consumers-care-about-sustainability-and-back-it-up-with-their-wallets> (accessed on 14 August 2024).

a more responsible marketplace that prioritises consumer rights. For example, s41 of the CPA prohibits false or deceptive representations, which extends to claims about sustainability and environmental impact. Additional labelling, marketing and advertising requirements are contained in other legislation.⁷³⁹

PAIA Request: Consumer Awareness Statements

We requested records that evidenced Consumer Awareness Statements made by Phase 2 Selected Stakeholders and/or their suppliers regarding animal welfare and environmental issues, including statements concerning eggs, their sourcing, and the treatment of chickens under the Corporation and/or their supplier's control. The records were intended to assess not only compliance with environmental obligations, but also to reflect the Phase 2 Selected Stakeholders' and/or their suppliers' engagement with the public regarding these obligations.

POTENTIAL CONSEQUENCES FOR NON-COMPLIANCE WITH DUTIES AND OBLIGATIONS

Non-compliance with consumer protection laws and standards can result in a range of serious consequences for Corporations, including but not limited to:

● Strict Liability for Harm

The CPA imposes strict liability on producers and distributors for harm caused by unsafe goods, meaning Corporations can be held accountable (liable) without the need for consumers to prove fault.⁷⁴⁰ S 61(1) of the CPA provides that a producer or importer, distributor, or retailer is liable for any harm caused by supplying unsafe goods, product failures, defects, or inadequate instructions/warnings.

● Civil and Criminal Penalties

Penalties for violations under consumer protection laws vary by act and offence severity. S 112 of the CPA imposes fines up to R1 million or 10% of annual turnover, imprisonment for up to 10 years for serious offences, and potential compensation for consumer damages. S 59 of the Competition Act allows fines up to 10% of annual turnover for anti-competitive practices, asset divestiture in merger violations, and up to 10 years of imprisonment for cartel conduct.

S 24 of the MAPA permits fines and imprisonment up to two years. S 11 of the APSA enforces fines and imprisonment for up to 2 years. These penalties aim to enforce regulations, protect consumers, ensure fair competition, and maintain agricultural product quality.

● Reputational Damage

⁷³⁹ This request relates to ss 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 85 of the CPA.

⁷⁴⁰ S 61 of the CPA, and

A Corporation's reputation can suffer significantly if it is found to be non-compliant with the law,⁷⁴¹ or otherwise undertaking practices viewed to be harmful or problematic (such as Corporate Hypocrisy). Public trust is crucial for business success, and negative publicity can lead to loss of customers and partnerships, ultimately impacting sales and profitability.⁷⁴²

● Regulatory Actions

Consumers alleging that a Corporation has made false, misleading, or deceptive claim/s are afforded an opportunity to lodge complaints with various regulatory bodies, tribunals and forums discussed earlier. For example, if the NCC finds that suppliers of goods made false, misleading or deceptive claims, the offending Corporation may be subject to an administrative fine to the maximum of 10% of the offending Corporations' annual profit, or found guilty of criminal offences related to false labelling, over and above any other statutory remedies available to the consumer.⁷⁴³ Furthermore, consumers and other businesses can approach the ARB, which can make rulings and impose sanctions on non-compliant Corporations.⁷⁴⁴ If a business is found to be in breach, the ARB can for example require the offending advertisement to be withdrawn or amended. This can severely disrupt business operations.

● Class Actions

Entities responsible for consumer protection violations due to non-compliance may face court action from affected parties, including class actions. For example, individuals affected by the listeriosis outbreak from products sold by Tiger Brands between 2016 and 2018 are seeking compensation from Tiger Brands by way of a class action.⁷⁴⁵ This case is still in progress.

JURISPRUDENTIAL DEVELOPMENTS AND TRENDS

The following cases demonstrate the growing enforcement of legal and regulatory frameworks designed to hold Corporations accountable for Corporate Hypocrisy, including misleading advertising and unsafe practices, particularly within the food and agricultural sectors. They reveal the critical importance of transparency, consumer protection, and corporate responsibility in preserving public trust and ensuring the accuracy of environmental and health-related claims. Through these decisions, the courts and regulatory bodies are setting significant precedents, reinforcing the need for truthful communication and adherence to safety standards in corporate conduct – and in some instances, setting consumers two paces back.

⁷⁴¹ Financial Crime Academy <https://financialcrimeacademy.org/consequences-of-non-compliance/> (accessed on 14 August 2024).

⁷⁴² The Manual <https://trainual.com/manual/brand-reputation> (accessed on 14 August 2024).

⁷⁴³ Barnard Inc. <https://barnardinc.co.za/2023/11/13/navigating-the-green-tide-south-africas-emerging-greenwashing-litigation-landscape/> (accessed on 14 August 2024).

⁷⁴⁴ Barter McKellar <https://www.bartermckellar.law/entertainment-law-explained/the-advertising-regulatory-board-in-south-africa-a-comprehensive-guide#> (accessed 14 August 2024).

⁷⁴⁵ *Tiger Brands Limited and Others v Pillay and Others (Famous Brands and Another Intervening)* (2019/25309; 2018/12835; 2019/36431) [2020] ZAGPJHC 160 (23 June 2020), accessible at: <https://www.saflii.org/za/cases/ZAGPJHC/2020/160.html>.

South African Rulings: Selected Examples

- In *Kemp & Others v Fair Cape Dairies*,⁷⁴⁶ the ARB Appeals Committee ruled against a dairy farm for using terms like “#HappyCows” and “humane”, in marketing their products which the appeals committee found to be misleading and problematic, and required that the company stopped utilising such terms. This ruling is a key step in combatting Humane-washing in the context of animal agriculture. By limiting or prohibiting the use of such claims, the decision enhances consumer protection, ensuring transparency and accountability in advertising.⁷⁴⁷ While most challenges under the ARB Code in animal agriculture have failed, this case stands out as a success. The 2022 introduction of Appendix G to the ARB Code, addressing environmental claims, may pave the way for future cases of Corporate Hypocrisy in the Egg Industry and beyond.
- The ARB’s first Greenwashing complaint, filed by **Fossil Free South Africa against TotalEnergies**,⁷⁴⁸ relates to an advertisement claiming a commitment to “sustainable development” and “environmental protection,” despite the Corporation concerned, TotalEnergies, being one of the largest GHG emitters globally.⁷⁴⁹ On 14 August 2024, the ARB determined that TotalEnergies’ website content misled consumers regarding its environmental commitment, violating the Code of Advertising Practice.⁷⁵⁰ The ARB ordered TotalEnergies to withdraw or amend the advertisement to prevent further public misdirection.⁷⁵¹ This ruling underscores the need for accountability in environmental advertising, fosters transparency, and sets a precedent for companies to provide truthful information to consumers.

South African Case Law: Selected Examples

- In *Amalgamated Beverage Industries Natal (Pty) Ltd v City Council of the City of Durban*,⁷⁵² a soft drink manufacturer was convicted under municipal by-laws for selling contaminated products.⁷⁵³ The court confirmed that strict liability applies in food safety cases, meaning that manufacturers can be held liable for selling food unfit for consumption regardless of their knowledge or negligence.⁷⁵⁴ This precedent reinforces the importance of compliance with health regulations in the food industry.

⁷⁴⁶ *Kemp & 10 Others v Fair Cape Dairies (Pty) Ltd* (Advertising Regulatory Board, Advertising Appeals Committee, 30 April 2020), accessible at: https://drive.google.com/file/d/1G0Y0HJEB0WHsM27bft0_uDxISDAG6nuY/view?usp=sharing.

⁷⁴⁷ *Ibid* at par 4.1, 14, 16 and 17.

⁷⁴⁸ *Supra* note 688.

⁷⁴⁹ *Ibid* at page 3.

⁷⁵⁰ *Ibid* at page 11.

⁷⁵¹ *Ibid* at page 10.

⁷⁵² *Amalgamated Beverage Industries Natal (Pty) Ltd v City Council of the City of Durban* (675/92) [1994] ZASCA 2; 1994 (3) SA 170 (AD); [1994] 2 All SA 222 (A) (22 February 1994), accessible at: <https://www.saflii.org/za/cases/ZASCA/1994/2.html>.

⁷⁵³ *Ibid* at para 21.

⁷⁵⁴ *Ibid* at para 4.

- From 2016 to 2018, SA faced the largest listeriosis outbreak in history, linked to ready-to-eat processed meat products from Tiger Brands' Polokwane facility, resulting in 1,065 confirmed cases and 218 deaths. The subsequent class action in *Tiger Brands Limited and Others v Pillay and Others*,⁷⁵⁵ certified by the High Court in 2018, aimed to establish strict liability under the CPA and prove negligence by Tiger Brands, representing a pivotal moment in consumer rights and emphasising the need for Corporations to be held accountable for food safety violations.⁷⁵⁶ The SCA's ruling in *Deltamune (Pty) Ltd and Others v Tiger Brands Limited and Others*,⁷⁵⁷ which allowed the class action to proceed, further reinforced the principle of Corporate Accountability. The case will be proceeding to trial in due course.⁷⁵⁸

Selected Examples of Foreign Advertising / Competition Board Rulings

- In 2020, the UK's *Advertising Standards Authority ("ASA") v Ryanair Ltd t/a Ryanair Ltd*⁷⁵⁹ ruling confirmed that Ryanair's claims of "low CO₂ emissions" and being the "lowest emissions airline" were misleading.⁷⁶⁰ The ASA found that while consumers might understand the relative nature of the claim, the evidence provided by Ryanair was insufficient to substantiate it, particularly as the data referenced was outdated and did not include comparisons with other major airlines.⁷⁶¹ The ASA ordered the ads not to be reused in their current forms.⁷⁶² This case is indicative of the need for greater corporate accountability and transparency in advertising claims as they relate to carbon.
- In the Australian case of *Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission*,⁷⁶³ Volkswagen faced a staggering fine of approximately \$34.69 billion for implementing software that falsified emissions data to evade regulatory tests.⁷⁶⁴ This case, known as "Dieselgate", highlighted the extent of Corporate deception in environmental claims and underscored the necessity for stringent regulations to protect consumers from misleading practices.⁷⁶⁵

⁷⁵⁵ *Supra* note 745.

⁷⁵⁶ *Ibid.*

⁷⁵⁷ *Deltamune (Pty) Ltd and Others v Tiger Brands Limited and Others* (847/2020) [2022] ZASCA 15; [2022] 2 All SA 26 (SCA); 2022 (3) SA 339 (SCA) (4 February 2022), accessible at: <https://www.saflii.org/za/cases/ZASCA/2022/15.html>.

⁷⁵⁸ IOL <https://www.iol.co.za/capetimes/news/listeria-class-action-grinds-to-a-slow-halt-0ea7d88e-63dc-4cac-9a01-9b67d93438f6> (accessed on 14 August 2024).

⁷⁵⁹ Advertising Standards Authority (2020, February 5). *Ryanair Ltd t/a Ryanair Ltd*. ASA Ruling, accessible at: <https://www.asa.org.uk/rulings/ryanair-ltd-cas-571089-p1w6b2.html>.

⁷⁶⁰ *Ibid.*

⁷⁶¹ *Ibid.*

⁷⁶² *Ibid.*

⁷⁶³ *Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission* [2021] FCAFC 49 (9 April 2021), accessible at: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2021/49.html>.

⁷⁶⁴ *Ibid.*

⁷⁶⁵ Maris, I.C. (2019) *The automotive industry and the Dieselgate case* (Master's thesis), accessible at: <https://trepo.tuni.fi/bitstream/handle/10024/118588/MarisIoanaCorina.pdf;jsessionid=F06C4EAD1569B844DFD8C5AD0070E0D3?sequence=2>.

● In the Canadian matter of *Commissioner of Competition v Keurig Canada Inc.*,⁷⁶⁶ Keurig was fined \$3 million for misleading consumers about the recyclability of its coffee pods, and entered into an agreement with the Commissioner of Competition, confirming that the fine will be paid in full.⁷⁶⁷ The company led consumers to believe that the pods could be easily recycled, which was not the case in most provinces.⁷⁶⁸ This matter illustrated the importance of accurate labelling and the need for accountability in marketing practices.

Selected Examples of Foreign Case Law

- In the Danish case of *Vegetarian Society et al. of Denmark v Danish Crown*,⁷⁶⁹ the court found Danish Crown, Europe's largest pork producer, guilty of misleading advertising in its "Climate-Controlled Pork" campaign.⁷⁷⁰ The court ruled that the claim of being "more climate-friendly than you think" was not a violation, but the pink stickers claiming the pork was "climate-controlled" violated Denmark's Marketing Act due to lack of independent verification.⁷⁷¹ This case spotlighted deceptive marketing practices in the meat industry.
- In the U.S case of *Animal Legal Defense Fund ("ALDF") & Others v Hudson Valley Foie Gras LLC ("HVFG") & Others*,⁷⁷² the plaintiffs accused HVFG of misleadingly marketing foie gras, made from force-fed ducks and geese, as "the humane choice".⁷⁷³ The production involves cruel practices banned in several countries.⁷⁷⁴ The court allowed some claims to proceed to a higher court, emphasising the case's significance for consumer protection and animal welfare.⁷⁷⁵ HVFG subsequently removed the misleading language from its marketing, and the plaintiffs chose to dismiss the case.⁷⁷⁶ This case is beneficial for addressing Humane-washing and enhancing consumer protection as it challenges deceptive marketing claims that mask inhumane practices, reinforcing the need for accurate representation of animal welfare standards.

⁷⁶⁶ *Canada (Commissioner of Competition) v Keurig Canada Inc.* (CT-2018-005), Registered Consent Agreement, accessible at: <https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/518827/index.do>.

⁷⁶⁷ *Ibid* at para 5.

⁷⁶⁸ Canadian Government <https://www.canada.ca/en/competition-bureau/news/2022/01/keurig-canada-to-pay-3-million-penalty-to-settle-competition-bureaus-concerns-over-coffee-pod-recycling-claims.html> (accessed on 14 August 2024).

⁷⁶⁹ *Vegetarian Society et al. of Denmark v Danish Crown*, Vestre Landsret (Western High Court), March 1, 2024, accessible at: <https://climatecasechart.com/non-us-case/vegetarian-society-et-al-of-denmark-v-danish-crown/>.

⁷⁷⁰ *Ibid*.

⁷⁷¹ Ingredients Network <https://www.ingredientsnetwork.com/danish-crown-s-climate-controlled-claim-news123961.html> (accessed on 14 August 2024).

⁷⁷² *Animal Legal Defense Fund et al v HVFG, LLC. et al*, No. 3:2012cv05809 - Document 104 (N.D. Cal. 2013), accessible at: <https://law.justia.com/cases/federal/district-courts/california/candce/3:2012cv05809/260814/104/>.

⁷⁷³ *Supra* note 772 at para 2.

⁷⁷⁴ Animal Equality <https://animalequality.org/blog/2022/02/08/what-is-foie-gras/> (accessed on 14 August 2024).

⁷⁷⁵ *Supra* note 772 at para 2.

⁷⁷⁶ *Ibid*.

PART D: LAYING IT ON THE LINE

LACK OF TRANSPARENCY: REALITIES IN THE EGG INDUSTRY

Many Corporations operating within the Egg Supply Chain make claims relating to sustainability and good animal welfare practices. Claims of such nature, should be backed up with evidence, information and data, in order to be meaningful and legitimate. Industry bodies may also make claims, which should similarly be verified.

Due to the focus of our Project on the Egg Industry in SA, and more specifically on the environmental, animal, and human (specifically consumer) impacts of the Egg Industry, we discuss recent developments in the industry in respect of a transition towards cage-free egg production, particularly for Layer Hens.

One argument commonly raised by Corporations (and industry bodies that represent them) in resistance of transitioning to cage-free egg production is a lack of economic feasibility.⁷⁷⁷ In SA, there is very little information regarding the costs of egg production, particularly when negative externalities are considered. These externalities may include but are not limited to: environmental harm caused by egg production and distribution;⁷⁷⁸ Cruel Practices towards animals such as de-toeing and de-beaking;⁷⁷⁹ health risks associated with excessive antibiotic use in Layer Hens⁷⁸⁰ and Avian Flu; and social issues such as the negative impacts on workers and rural communities near industrial chicken and egg farms,⁷⁸¹ and the financial burden on taxpayers.⁷⁸² Addressing these factors is essential for a comprehensive understanding of the overall economic viability of the egg production industry.

One study commissioned by the SAPA and conducted by the NAMC (“**NAMC Study**”) as discussed below, engages with the economic feasibility of transitioning from caged systems, and other factors which impact on consumer rights and choices, among various other rights. This study has proven incredibly difficult to obtain. Below we outline some key considerations relating to the study including the stakeholders involved and the problems arising from it, and its non-disclosure.

⁷⁷⁷ Fair Play Movement <https://fairplaymovement.org/cage-free-eggs-will-cost-r5bn/> (accessed on 14 August 2024).

⁷⁷⁸ *Supra* note 195.

⁷⁷⁹ The African <https://theafrican.co.za/featured/improving-animal-welfare-on-south-african-farms-e8022b22-57c7-4005-a32d-be3911ea9201/> (accessed on 14 August 2024).

⁷⁸⁰ Lima, É et al (2023) Antibiotics in intensive egg production: Food Safety tools to ensure regulatory compliance. *Food Chemistry Advances*, 3, p.100548, accessible at <https://www.sciencedirect.com/science/article/pii/S2772753X23003696>.

⁷⁸¹ Pew Commission on Industrial Farm Animal Production <https://clf.jhsph.edu/sites/default/files/2022-03/impact-of-industrial-farm-animal-production-on-rural-communities.pdf> (accessed on 14 August 2024).

⁷⁸² *Supra* note 652.

● SAPA

SAPA represents both the poultry and egg industries in South Africa.⁷⁸³ Through its Egg Organisation, SAPA promotes, develops and guides the commercial Egg Industry in SA.⁷⁸⁴ SAPA's tagline is "*Small Footprint – Big Impact*".⁷⁸⁵ This tagline is particularly concerning in light of the scope and scale of the industry SAPA represents and the potential collective impact of its members on animal, human and environmental matters (as further highlighted in the Environmental Pillar above).

● NAMC

The NAMC is a statutory body established in terms of the MAPA, reporting to the Minister of DALRRD.⁷⁸⁶ Its mandate is executed through four core divisions: Agribusiness Development, Agricultural Trusts, Statutory Measures, and the Markets and Economic Research Centre, all of which work towards increasing market access, promoting marketing efficiency, optimizing export earnings, and enhancing the viability of the agricultural sector.⁷⁸⁷

NAMC Study

In 2020, SAPA appointed the NAMC to conduct an economic study of Layer Hen housing and production systems in the midst of growing pressure from advocacy groups and the public to go cage-free.⁷⁸⁸ The study is titled "*Analysis of the South African Egg Layer System*". The stated purpose of the NAMC Study is to explore whether it would be an economically viable option for SA to transition from caged to free-range chicken and egg facilities.⁷⁸⁹

The NAMC Study is not in the public domain, despite having direct and indirect impacts on consumers, being conducted by a statutory body, and commissioned by a body which has certain obligations in respect of consumer education and which receives funding from consumers on eggs they purchase. One of the few documents in the public domain that relates to the NAMC Study is a press release by the NAMC dated 9 November 2020.⁷⁹⁰ The press release confirms that the NAMC Study "*will be made available by the end of February 2021*" – however, it does mention to whom the study will be made available.⁷⁹¹

⁷⁸³ SAPA <https://www.sapoultry.co.za/> (accessed on 14 August 2024).

⁷⁸⁴ SAPA <https://www.sapoultry.co.za/board-members/> (accessed on 14 August 2024).

⁷⁸⁵ *Supra* note 783.

⁷⁸⁶ NAMC <https://www.namc.co.za/about-us/profile/> (accessed on 14 August 2024).

⁷⁸⁷ *Ibid.*

⁷⁸⁸ NAMC <https://www.namc.co.za/wp-content/uploads/2020/11/Egg-Economic-Study-Press-Release.pdf> (accessed on 14 August 2024).

⁷⁸⁹ SAPA <https://www.sapoultry.co.za/wp-content/uploads/2023/06/7-Dr-Abongile-Balarane-SAPA-presentation-2023.pdf> (accessed on 14 August 2024).

⁷⁹⁰ *Ibid.*

⁷⁹¹ *Ibid.*

A non-publicly available Executive Summary of the NAMC Study dated 1 March 2023, states that should SA transition to cage-free farming practices:

- X A direct investment of **R4,93 billion** would be required to aid the transition;
- X The SA Egg Industry could potentially **decrease by between 26% and 36%** due to price increases;
- X The Gross Domestic Product (“GDP”)⁷⁹² of the Egg Industry will decline by **21%**;
- X The contribution to employment in the Egg Industry will decline by **6 158 jobs**; and
- X State revenue of approximately **R1 092 million** will be forfeited due to the implementation of the additional regulations.

The Executive Summary primarily addresses the economic and social impacts of transitioning to cage-free egg production in South Africa, discussing effects on costs, prices, competitiveness, and employment. While environmental impacts are not directly addressed, water supply is mentioned among several factors affecting industry competitiveness. The summary states that the Egg industry “*has sound potential to grow in a financially feasible and sustainable manner if a supportive environment were to exist*”. However, this claim of sustainability is not substantiated with reference to relevant environmental data. The quality and availability of water are noted as important, with questions raised about local water resource management, but the summary does not address how different production systems might impact water use or other environmental factors. This omission represents a significant gap in the analysis, particularly given environmental harm caused by egg production in general.

● CGCSA

Although not directly involved in the creation of the NAMC Study, the CGCSA has made certain statements to its members in respect of it. The CGCSA is “*an industry association representing over 9 000 member companies in the Consumer Goods, Retail and Services sectors, which is one of the largest employers in South Africa*”.⁷⁹³ According to its website, it is the CGCSA’s “*vision to become the leading Consumer Goods industry platform for advocacy, collaboration and best practice in South Africa and across Africa*”.⁷⁹⁴ This influence extends across the entire food supply chain for many products sold in South Africa, including items like eggs.

⁷⁹² International Monetary Fund <https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/gross-domestic-product-GDP> (accessed on 14 August 2024).

⁷⁹³ CGCSA <https://www.cgcsa.co.za/> (accessed on 14 August 2024).

⁷⁹⁴ *Ibid.*

The CGCSA claims to “*help members trade better and build sustainable business through*” among others, “*sharing best practice standards and ensuring alignment with global Sustainable Development Goals and National Development Plan*”.⁷⁹⁵

According to its website, the directors of CGCSA are leaders of various corporations, including AVI, Unilever, Rainbow Chicken, Tiger Brands, and many others.⁷⁹⁶ The reach and impact of the CGCSA cannot be overstated in respect of consumer goods in SA. The CGCSA encourages its thousands of members to act in accordance with its recommendations.

Despite regarding itself as an entity acting with **integrity, excellence and accountability**, the CGCSA has taken a problematic stance in respect of the NAMC Study, releasing a statement to its members stating the following (emphasis added throughout):

- X “...some animal welfare activists have been calling for a ban of cage egg production in SA”.
- X “The results of the study, which we have attached, **clearly conclude that SA is not yet ready for 100% cage-free systems**”.
- X “introducing cage-free egg production without a transitional period would result in a significant increase in the price of eggs, on whom many people depend for protein; the knock-on impact on jobs would affect more than 30 00 livelihoods; and the egg industry would contract by as much as R4 billion”.
- X “**Clearly, from the foregoing and other findings in the report, the current economic situation does not make it ideal to ban or switch to cage free eggs**”.
- X “We are however against **unnecessary coercion** and pressure which may have **detrimental effects** to the food security and **egg value chain**”.
- X “**In the case of member companies not ready to economically ban cage eggs as part of their business, we urge them to share the attached letter and report (authorised by SAPA) with lobby groups coercing them to make/adopt this change**”.
- X “It is our considered view that calls for adopting cage free egg production is a regulatory issue which should therefore be directed to the relevant authorities who regulate egg production in the country.”

⁷⁹⁵ CGCSA <https://www.cgcsa.co.za/who-we-are/> (accessed on 14 August 2024).

⁷⁹⁶ *Ibid.*

Why is access to the NAMC Study important?

Without access to the full NAMC Study, its findings cannot be properly understood, nor reviewed. Important matters such as which information and resources were relied on; the accuracy and completeness of the information; the rigour and basis of the NAMC Study; and other relevant factors cannot be interrogated. This calls into question the rationality of reliance thereon by SAPA, the CGCSA and others. Moreover, the non-transparency from these bodies raises significant concerns.

Another major concern is that SAPA receives statutory levies paid by the consumer, including for consumer communication and education, consumer assurance, research and industry information. The NAMC Study incorporates all these issues, and consumers have an interest in understanding its findings.

The primary issue explored in the study is a transition towards cage free systems. As discussed above and in the Animal Welfare Pillar of the Initial Report,⁷⁹⁷ certain stakeholders within the Egg Supply Chain make use of Cruel Practices which are harmful to animal welfare, human health and well-being, and the environment. The practice of using Battery Cages in caged-egg production involves, amongst others, chickens being confined to spaces in which they can barely move, and having their beaks and toes trimmed off so that they do not inflict harm to themselves or other chickens.⁷⁹⁸ Around the world there are efforts to phase out and ban the use of Battery Cages, given their cruel and inhumane nature.⁷⁹⁹

Obtaining access to the NAMC Study is a matter of public interest. The CGSA statement to its members, indicates that the study should be referenced as a rationale for Corporations refusing to engage with civil society organisations and undertake Cage-Free Commitments to transition to more ethical, humane and sustainable egg production systems. This has broad implications beyond financial considerations, as it relates to Corporate Transparency and Corporate Accountability.

There appears also to be inconsistencies also about the costs of caged vs. cage free systems. As per the graph below, SAPA's own industry data indicates that the gap between the costs of egg production systems is closing.⁸⁰⁰ SAPA confirmed that: *"The average price for cage eggs increased by 5.9% in 2022 while for barn + free-range eggs it decreased by 6.2%. In 2022, 98.5% of the eggs were produced in cages (up from 98.3% in 2021). The narrowing of the gap between prices for cage eggs and barn + free-range eggs, since 2018, suggests a shift by increasingly price-sensitive consumers to cheaper options."*⁸⁰¹

⁷⁹⁷ *Supra* note 33 at pages 53-137.

⁷⁹⁸ Animal Welfare Institute <https://awionline.org/content/inhumane-practices-factory-farms> (accessed on 14 August 2024).

⁷⁹⁹ The Humane League <https://thehumaneleague.org/article/cage-free-progress-worldwide> (accessed on 14 August 2024).

⁸⁰⁰ *Supra* note 20.

⁸⁰¹ *Ibid.*

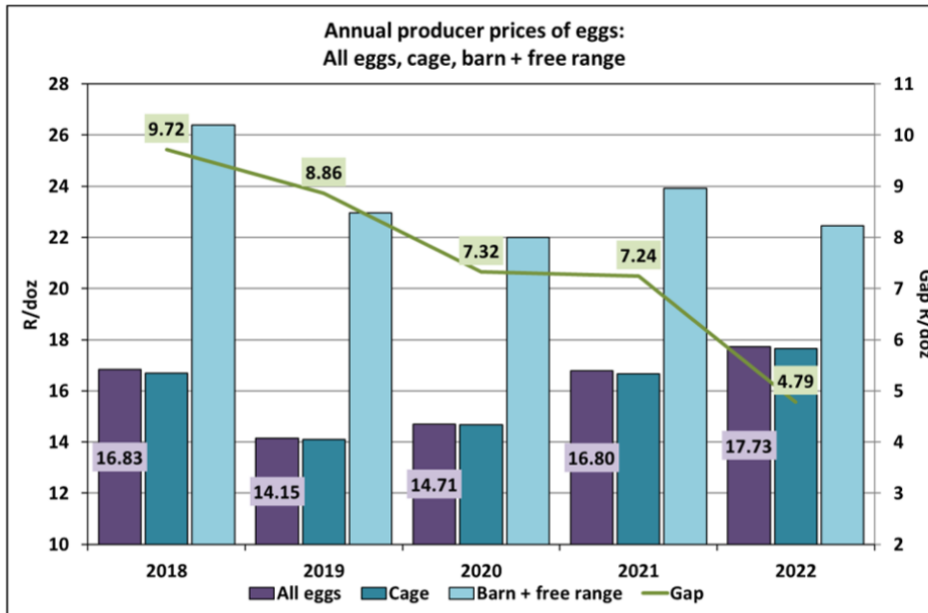


Figure 2: Annual producer prices for the different housing systems (source: SAPA)

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In addition, as depicted in the table below, between 2018 and 2022, the average mark-up on large eggs was **102.5%**.⁸⁰³

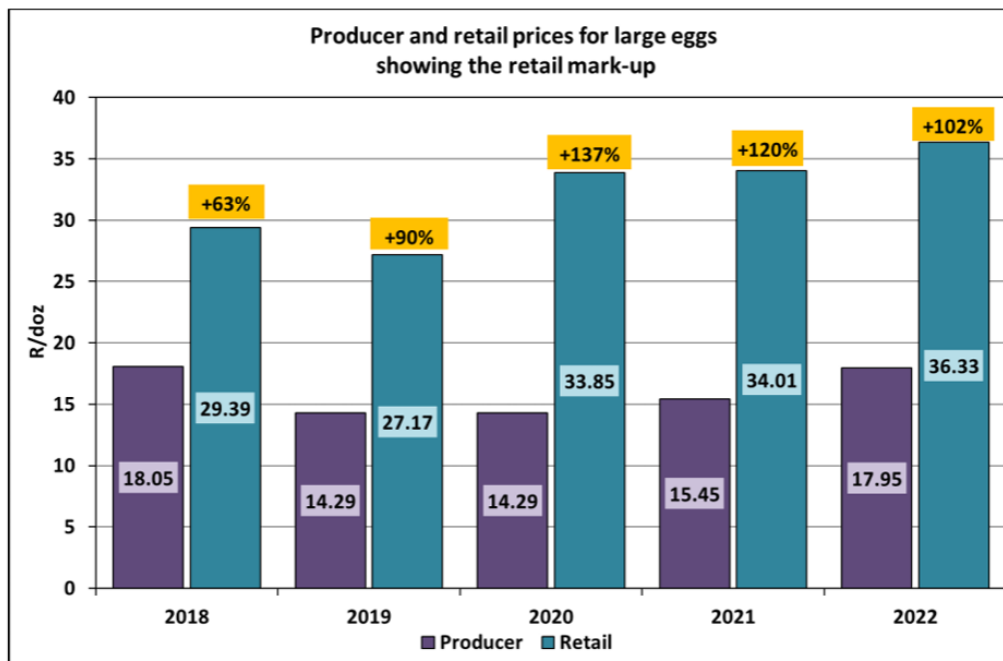


Figure 3: Annual producer and retail prices of large eggs (source: Stats SA)

⁸⁰² *Ibid.*

⁸⁰³ *Ibid.*

This high mark-up suggests that consumers are paying a substantial premium on egg prices, which could indicate that the industry has some room to absorb additional costs that may be associated with transitioning to more humane production methods, without necessarily passing costs on to consumers. It raises questions about the validity of the industry's assertion that cage-free systems are not a feasible option. Consumers should be mindful of such information when evaluating the Egg Industry's claims about the viability of transitioning to cage-free production systems.

Civil Society's Efforts to Obtain the NAMC Study and Public Interest

ALRSA has attempted to gain access to the NAMC Study utilising PAIA requests and processes since January 2023. Over the span of 20 months, we have initiated separate processes with different stakeholders including SAPA, NAMC, CGCSA, and DALRRD.⁸⁰⁴ Our requests have been refused for different reasons, including based on technicalities. In some instances, we have submitted multiple requests to the same entity; submitted internal appeals; and/or submitted formal complaints with the Information Regulator. As at September 2024, we have still not been granted access the full study.

Other animal protection organisations such as FOUR PAWS, HSI-Africa (among other organisations and including individuals) have also attempted to obtain access to the NAMC Study, which we understand have also not been successful. In light of this, FOUR PAWS released a petition titled “*Egg industry laws being influenced by secret report*” to demonstrate public interest in and support for releasing the NAMC Study into the public domain.⁸⁰⁵ As at date of writing, close to 4000 people have signed the petition.

Industry Role-Players' Response to Civil Society

The Southern African Faith Communities Environmental Institute (“**SAFCEI**”), a non-profit, multi-faith environmental justice organisation advocating for eco-justice, sustainable living, and animal welfare have, for years, engaged with role players in the Egg Supply Chain, including retailers to encourage a transition to cage-free eggs. After initial collective engagement efforts failed, SAFCEI focused on individual retailers.

One retailer informed the organisation that such a transition is not viable for their business operations unless other retailers in the Egg Supply Chain follow suit. During March 2024, SAFCEI received a letter from the CGCSA, acting on behalf of some of its member companies that were contacted by SAFCEI. CGCSA made the following statements in its letter:

“We are concerned that despite the engagements and clarity provided regarding the need to involve the entire value chain, SAFCEI continues with its tactics which amount to coercion and borders on encouraging uncompetitive behavior.”

⁸⁰⁴ Requests to the aforementioned stakeholders were sent at different times over the 20 month period since January 2023.

⁸⁰⁵ FOUR PAWS <https://help.four-paws.org/en/egg-industry-laws-being-influenced-secret-report> (accessed on 14 August 2024).

SAFCEI conduct and actions may in our view solicit our members to contravene the provisions of competition laws particularly Section 8(d) of the Competition Act, 1998 which prohibits abuse of dominance.”

Strategic Litigation Against Public Participation (“SLAPP”) Lawsuits

Civil society organisations are becoming increasingly concerned to challenge industries for fear of retaliation. Corporations, industry and regulatory bodies, and other role-players in these industries have the financial means to hire legal teams, and initiate legal proceedings act against civil society, which usually have very limited resources, and limited access to legal representation.

One tactic used by industry role-players are SLAPP lawsuits,⁸⁰⁶ (short for Strategic Litigation Against Public Participation) which are designed to intimidate and silence public interest campaigns. Typically, these lawsuits aim to place limitations on free speech and discourage public engagement on matters of public interest.⁸⁰⁷

They have been described as: “[L]awsuits initiated against individuals or organisations that speak out or take a position on an issue of public interest . . . not as a direct tool to vindicate a bona fide claim, but as an indirect tool to limit the expression of others . . . and deter that party, or other potential interested parties, from participating in public affairs.”⁸⁰⁸

The Constitutional Court⁸⁰⁹ has recognised SLAPP as an abuse of process and confirmed that SA law recognises a special defence to SLAPP lawsuits. This illustrates that SA courts have rejected such corporate bullying, particularly when aimed at suppressing constitutional rights like freedom of expression and the right to an environment not harmful to health or well-being, which includes animal welfare.⁸¹⁰

Although this is a massive win for civil society, organisations and activists still face the risk of needing to secure legal representation and defend their activism, even with a strong defence.

⁸⁰⁶ Cornell Law School https://www.law.cornell.edu/wex/slapp_suit (accessed on 14 August 2024).

⁸⁰⁷ Media Defence <https://www.mediadefence.org/resource-hub/resources/slapps-in-sub-saharan-africa/> (accessed on 14 August 2024).

⁸⁰⁸ 1704604 Ontario Ltd v Pointes Protection Association 2020 SCC 22 449 DLR (4th)

⁸⁰⁹ Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others (CCT 66/21) [2022] ZACC 37; 2023 (2) SA 68 (CC); 2023 (7) BCLR 779 (CC) (14 November 2022), accessible at: <https://www.saflii.org/za/cases/ZACC/2022/37.html>.

⁸¹⁰ GNHRE <https://gnhre.org/?p=12961> (accessed on 14 August 2024).

PART E: LAYING IT AT STAKEHOLDERS' DOORS

ENHANCING CORPORATE ACCOUNTABILITY TOWARDS CONSUMERS IN THE EGG INDUSTRY

There are various measures that can be adopted to enhance consumer Corporate Accountability in the Egg Industry. This Part E provides a handful of selected measures and is to be read with the Part D of Section II, Supplementary Environmental Pillar, Section IV of this Supplementary Report and Initial Report Recommendations.

Promoting Good Consumer Practices by Corporations

Good consumer practices involve being informed and proactive in making purchasing decisions while understanding and asserting one's rights.⁸¹¹ Consumers should seek clear information about products and services, including pricing, quality, and safety standards, to ensure they are making educated choices. It is essential to be aware of consumer rights, such as the right to fair treatment, the right to return defective products, and the right to receive accurate advertising. Additionally, consumers should engage with businesses that demonstrate ethical practices and accountability, report unfair practices, and participate in consumer advocacy groups to help promote better standards in the marketplace.⁸¹² By being vigilant and informed, consumers can contribute to a fairer and more transparent economy.

Transparent Labelling

Transparent labelling is a key aspect of good consumer practices in the agricultural industry.⁸¹³ It involves providing clear and truthful information on product labels, including details about product origins, nutritional content, and production methods.⁸¹⁴ Transparent labelling empowers consumers to make informed choices and encourages producers to adopt more sustainable and ethical practices.⁸¹⁵

⁸¹¹ Karimzadeh, S (2024) Ethical consumption in three stages: a focus on sufficiency and care. *Environmental Sociology*, 10(1), pp.1-11, accessible at: <https://www.tandfonline.com/doi/full/10.1080/23251042.2023.2277971>.

⁸¹² Forbes <https://www.forbes.com/sites/annaschaverien/2018/12/12/consumers-do-care-about-retailers-ethics-and-brand-purpose-accenture-research-finds/> (accessed on 14 August 2024).

⁸¹³ Schütz, A (2023) Making animal welfare labelling more transparent–The potential of different information types from simple text to highly immersive stable tours via VR glasses. *Journal of Agriculture and Food Research*, 14, p.100712 <https://www.sciencedirect.com/science/article/pii/S2666154323002193>.

⁸¹⁴ Kenya National Farmers' Federation <https://kenaff.org/wp/2023/10/12/role-of-transparent-food-labeling-in-ensuring-food-safety-for-consumers/> (accessed on 14 August 2024).

⁸¹⁵ BSI <https://www.bsigroup.com/en-VN/blog/food-industry-blog/eco-labelling-for-more-sustainable-food-choices/> (accessed on 14 August 2024).

Several countries have made efforts to implement transparent labelling regulations in the agricultural industry. Countries in the European Union have been at the forefront of this movement.⁸¹⁶ For example, as of 2023, the European Union has compulsory energy, nutrition and ingredient labelling standards in place.⁸¹⁷ Other countries have established mandatory standards to prevent misleading labelling and ensure that consumers receive accurate information about the products they purchase. For example, food products in Chile are required to have clear warnings on the front of the item, which alert them to high sugar content, saturated fat, and salt, which is placed in black and white text inside in a “stop sign” shape.⁸¹⁸

● Mandating Production Method Labelling

Amending the Egg Labelling Regulations (including regulation 8(1)(b)(ii) of the regulations) by replacing the word “may” with “must” to ensure that disclosing egg production methods such as “cage”, “barn”, and “free range” on egg labels (and any other appropriate terms) is a legally enforceable, mandatory requirement in SA would contribute to enhancing transparent labelling of egg products, and promoting consumer protection and animal protection.

● Mandating Ecolabelling

Having food labels which contain information about the environmental impact of a product would be highly beneficial for consumers, the environment, and Corporate Accountability.⁸¹⁹ It could be a measure to improve the food industry’s ecological footprint as Corporations would need to make positive changes in order for their product labels to not dissuade consumers from purchasing their products.

● Challenging Corporate Statements and Demanding Transparency

Consumers are increasingly challenging Corporate statements and demanding transparency from agricultural companies.⁸²⁰ This shift in consumer behaviour may encourage Corporations to be more

⁸¹⁶ Australian Government <https://www.agriculture.gov.au/biosecurity-trade/export/controlled-goods/dairy/din/maa-2014-18> (accessed on 14 August 2024).

⁸¹⁷ Australian Government <https://www.wineaustralia.com/getmedia/cf6a66c3-e3e0-451a-b048-cd0ad2db0208/20231128-Guidance-Ingredient-and-nutrition-labelling-with-Annexure-A.pdf> (accessed on 14 August 2024).

⁸¹⁸ University of the Witwatersrand <https://www.wits.ac.za/curiosity/stories/misleading-labels-and-insidious-ingredients.html> (accessed on 14 August 2024).

⁸¹⁹ Smith School <https://www.smithschool.ox.ac.uk/news/food-ecolabels-trusting-what-you-put-your-plate#> (accessed on 14 August 2024).

⁸²⁰ Mehrabi, S (2022) The role of consumer-citizens and connectedness to nature in the sustainable transition to agroecological food systems: the mediation of innovative business models and a multi-level perspective. *Agriculture*, 12(2), p.203, accessible at: <https://www.mdpi.com/2077-0472/12/2/203>.

accountable for their practices and to provide accurate information about their production methods.⁸²¹ By demanding transparency, consumers are driving positive change in the agricultural industry and promoting more sustainable and ethical practices.⁸²²

● Making Relevant Commitments⁸²³

Stakeholders in the Egg Supply Chain can show consumers that they are rising to meet expectations relating to animal protection, sustainability, and food quality (among other important issues) by making Relevant Commitments. These commitments are often made publicly and create positive (non-legal) duties for Corporations to make changes and report on their progress. They can assist consumers to make more ethical and informed choices about the products they purchase,⁸²⁴ while serving as a means for Corporations to held accountable for their practices.⁸²⁵ Such commitments can be made with support or pressure from consumers and civil society organisations. As more stakeholders make commitments, and consumers become aware of them, they can become a trend or norm, which can drive industry-wide change, ultimately leading to such matters being included in industry codes or standards, and even legislative changes.

In order to ensure that commitments are meaningful and do not contribute to Corporate Hypocrisy, it is imperative that they meet certain criteria, some of which are expanded on in Section IV, Recommendation 1 below. Despite commitments not being legally binding, Corporations which make them should be held accountable for failing to meet their promises. Due to our focus on the Egg Industry, for purposes of our investigation, we sought information in respect of certain commitments pertaining to Layer Hens in egg production systems.

PAIA Request: Relevant Commitments

We requested access to records which would demonstrate whether the Phase 2 Selected Stakeholders and/or their suppliers had signed onto animal welfare commitments, such as the Better Chicken Commitment ("BCC") and Cage-Free Commitments, and their progress in meeting these commitments.

⁸²¹ Gualandris, J. and Kalchschmidt, M (2014) Customer pressure and innovativeness: Their role in sustainable supply chain management. *Journal of Purchasing and Supply Management*, 20(2), pp.92-103, accessible at: <https://www.sciencedirect.com/science/article/abs/pii/S1478409214000260>.

⁸²² Koltiva <https://www.koltiva.com/post/transforming-agriculture-supply-chains-a-path-to-achieving-transparency-and-sustainability> (accessed on 14 August 2024).

⁸²³ 'Relevant Commitments' refers to one or more Animal Welfare Commitments and Environmental Commitments, as defined in our Initial Glossary, accessible on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

⁸²⁴ *Ibid.*

⁸²⁵ *Supra* note 223.

● Third Party Certification(s)

Certain bodies provide third party certifications including relating to the manufacturing process of a product and independently determine whether the final product complies with specific standards for safety, quality or performance.⁸²⁶ These standards can include in respect of animal welfare, the environment and human health.

Another example of a third-party certifier in the context of animal agriculture, is a Greener World (“AGW”) certifies certain animal and sustainability practices.⁸²⁷ This includes an “animal welfare approved” food label awarded to companies that comply with the requirements or certification of AGW. By assuring consumers of these standards, third-party certifications empower them to make informed choices, fostering confidence in the products they purchase and supporting a market that prioritises ethical and sustainable practices.

As indicated with regard to commitments above, in order to ensure these third-party certifications are meaningful and do not contribute to Corporate Hypocrisy, it is imperative that they meet certain criteria, some of which are expanded on in Section IV, Recommendation 1 below.

PAIA Request: Third Party Certification

We requested records from Phase 2 Selected Stakeholders and/or their suppliers relating to third-party certifications from AGW, and other relevant entities to ensure compliance with sustainability and quality assurance standards.

● Membership to Industry Associations

Access to animal welfare membership records enables consumers to verify whether Corporations and their suppliers are committed to Responsible Sourcing practices and promotes compliance with such practices among Corporations.

PAIA Request: Animal Welfare Membership Records

We requested records of current and past memberships in industry associations related to the egg, chicken, and poultry sectors, such as SAPA and SABS, along with any correspondence regarding the confirmation, refusal, suspension, or termination of these memberships.

⁸²⁶ *Supra* note 33 at page 127.

⁸²⁷ A Greener World (“AGW”) <https://agreenerworld.org.za/> (accessed on 14 August 2024).

SECTION III

RUFFLING FEATHERS

STAKEHOLDER COMPONENT



SECTION III:

RUFFLING FEATHERS: STAKEHOLDER COMPONENT

SECTION III: STAKEHOLDER COMPONENT

PART A: INTRODUCTION

While the Research Component in Section II outlines research related to selected environmental impacts and consumer protection as it relates to the Egg Industry, this Section III is our Stakeholder Component (Component 2 of the Phase 2 Project). It discusses the performance and commitment of 36 (or 3 dozen) Phase 2 Selected Stakeholders in relation to enhancing animal welfare, environmental protection, consumer protection, transparency, Corporate Accountability in the Egg Supply Chain, based on our specific Rating Criteria and Indicators.

Part B details our methodology, including our approach to stakeholder selection, engagement methods, development of Rating Criteria and Indicators, and our rating system. In Part C, we present the results of our ratings for the 36 Phase 2 Selected Stakeholders across six main criteria. Part D provides an in-depth analysis of our findings, examining trends in compliance, transparency, and corporate practices across different segments of the Egg Supply Chain. Finally, in Part E, we offer observations on key issues that emerged during our assessment, including areas where information gaps persist and notable inconsistencies and/or irregularities in stakeholder responses.

We aim to provide insights that equip consumers to make more informed choices, promote the importance of Corporate Accountability, and ignite broader discussions on issues relating to animal, environmental and consumer protection in the Egg Industry.

PART B: METHODOLOGY

The methodology followed for our Initial Report has largely been replicated with some adaptations for the purposes of Phase 2 and this Supplementary Report.⁸²⁸

Briefly, the following steps were implemented from August 2023 to September 2024.

⁸²⁸ See more information on the methodology adopted during our Initial Report on our dedicated egg website under the Stakeholder Component, accessible at <https://www.eggssouthafrica.org/stakeholder/>.

- **STEP 1: STAKEHOLDER SELECTION**, which involved making use of the Stakeholder Mapping exercise undertaken in preparation of our Initial Report to identify and select 36 Phase 2 Selected Stakeholders for analysis and rating in this Supplementary Report based on selection criteria. 30 of the Phase 2 Selected Stakeholders were rated in our Initial Report.
- **STEP 2: STAKEHOLDER ENGAGEMENT**, which involved locating the PAIA Manuals⁸²⁹ (statutorily required to be publicly available)⁸³⁰ of Phase 2 Selected Stakeholders and other necessary information to prepare and submit requests for access to records of Phase 2 Selected Stakeholders in terms of PAIA. The PAIA requests were dispatched with letters explaining the rationale for our requests. Thereafter, we engaged in correspondence with Phase 2 Selected Stakeholders in relation to their responses or lack thereof.
- **STEP 3: DEVELOPING RATING CRITERIA AND INDICATORS** and creating a rating system against which Phase 2 Selected Stakeholder would be rated.
- **STEP 4: RATING** the Phase 2 Selected Stakeholder based on an analysis of the information and correspondence received in response to our PAIA requests or lack thereof.
- **STEP 5: REPORTING** on our findings.

Each step is discussed in further detail below.

STEP 1: STAKEHOLDER SELECTION

In this Supplementary Report, we revisited our Stakeholder Mapping process detailed in Section IV of our Initial Report, where we mapped over 200 entities involved in various stages of the Egg Supply Chain in South Africa, focusing primarily on large Corporations.⁸³¹

Stakeholder Selection Factors

In the Initial Report, a 3 (three) component Stakeholder Selection Criteria system was developed and utilised in order to select stakeholders for analysis and rating.

This Stakeholder Selection Criteria comprised of the following:

1. Size of Market Share;⁸³²

⁸²⁹ The Manual referred to in s 51 of PAIA which must be compiled by the head of the private body, updated regularly, and must contain, among other things, contact details, records available without the need for a PAIA request, records available in terms of applicable legislation, details as to how to request information.

⁸³⁰ See s 14 of PAIA.

⁸³¹ *Supra* note 33.

⁸³² Our Stakeholder Mapping exercise in Phase 1 revealed that some role-players in the Egg Supply Chain have a significant share of the market. Phase 2 Selected Stakeholders are generally those with a significant market share in one of the three stages of the Egg Supply Chain. To narrow the scope of our inquiry, small-scale role-players identified through our mapping exercise were not selected.

2. OWA Global Cage-Free Campaign;⁸³³
3. Popularity: Well-known/prevalent players/ familiar and iconic brands in SA to the general public.⁸³⁴

In selecting stakeholders for Phase 2, and this Supplementary Report, we took into account the following additional factors (these were considerations rather than strict criteria):

4. Whether the stakeholder is a Multinational Corporation⁸³⁵ with its headquarters in Africa or a presence in SA;
5. Whether the stakeholder claims to have made a Cage-Free Commitment; and⁸³⁶
6. Whether the Stakeholder presents itself as an entity that is sustainable / environmentally and/or animal friendly, and/or as being a responsible corporation, and / or being committed to health and social welfare, and/or consumers have the perception of them being any of these.⁸³⁷

To enhance engagement with Phase 2 Selected Stakeholders, we sent PAIA requests to the primary or holding companies and also specifically listed the relevant subsidiaries or brands from which we sought records. For example, whereas in Phase 1 of our Project we sent a PAIA request to Massmart, in Phase 2 we sent a new request to Massmart, but also specifically stated that our request extends to its brands, Game and Makro.

Phase 2 Selected Stakeholders

The Phase 2 Selected Stakeholders include many of the same entities identified in Phase 1, as detailed in the Initial Report. However, we have revised our selection of stakeholders by removing certain stakeholders and adding new ones. Based on this methodology, the following Phase 2 Selected Stakeholders were identified for analysis and rating in this Supplementary Report. Completely *new* stakeholders are indicated in **green**, and instances where we approached a *different entity* or included different entities in Phase 2 (i.e. a holding company, subsidiary, or brand that was not specifically approached in Phase 1 but part of the relevant group) are marked in **purple**:

⁸³³ ALRSA is a member of OWA (specifically, the Africa group), which has the objective of ending the abuse of chickens worldwide. OWA and its partners have done considerable research into the role-players involved in the production and consumption of eggs in Africa and globally to pursue its cage free objective. This research has resulted in longstanding and successful advocacy campaigns against caged egg production and supply by various Corporations. Role-players identified by OWA as significant to advancing their global and regional Cage Free Campaigns were chosen as Phase 2 Selected Stakeholders for part of this Project and for rating.

⁸³⁴ We identified Corporations that are considered prevalent, well-known, or popular in the Egg Supply Chain. Role-players such as Famous Brands, Pick n Pay, KFC, and Shoprite were identified on this basis.

⁸³⁵ OWA Africa defines Multinational Corporations as enterprises that are headquartered in an African country and conduct business operations in other countries in Africa, and abroad, beyond their country of origin, thereby extending their reach and influence.

⁸³⁶ See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

⁸³⁷ ALRSA wants to analyse the Progressive Measures implemented by the Phase 2 Selected Stakeholder (if any) in respect of their response to environmental issues and approach adopted in respect of sustainability. Furthermore, it is of specific interest in analysing these stakeholders to assess their approach to the link between animal welfare and environmental protection, as confirmed by our courts.

1. **Major retailers**, namely: (1) Pick n Pay Stores Ltd (including Pick n Pay Retailers (Pty) Ltd and **(Boxer Superstores(Pty) Ltd)** (“**Pick n Pay**”); (2) Shoprite Checkers (Pty) Ltd (including Checkers and **OK Bazaars (Venda) Ltd)** (“**Shoprite**”); (3) Spar Group Ltd (“**Spar**”); (4) Woolworths Holdings Ltd (“**Woolworths**”); and (5) Masstores (Pty) Ltd (Masstores (Pty) Ltd t/a **Game and Masstores (Pty) Ltd t/a Makro)** (“**Massmart**”) (Phase 2 Selected Stakeholders 1 to 5).
2. **Fast food outlets and restaurants**, namely: (6) Spur Corporation Ltd (including Spur Group (Pty) Ltd and Rocommamas Franchise Co (Pty) Ltd) (“**Spur**”); (7) Famous Brands Ltd (including Mugg n Bean Franchising (Pty) Ltd; Wimpy Marketing Fund (Pty) Ltd; and Steers (Pty) Ltd) (“**Famous Brands**”); (8) Chickenland (Pty) Ltd t/a Nando’s (“**Nando’s**”); (9) Real Foods (Pty) Ltd t/a Kauai (“**Kauai**”); (10) YUM!Brands Inc (KFC (Pty) Ltd t/a KFC) (“**KFC**”); (11) **McDonald’s Corporation** and MSA DEVCO (Pty) Ltd t/a McDonalds (“**McDonalds**”); (12) **Starbucks Corporation and its associated company, Rand Capital Coffee (Pty) Ltd t/a Starbucks SA** (“**Starbucks**”); and (13) **Restaurant Brands International Inc. and its associated company Burger King SA (Pty) Ltd** (“**Burger King**”); and (14) **Krispy Kreme Doughnut Corporation and KK Doughnuts SA (Pty) Ltd** (“**Krispy Kreme**”) (Phase 2 Selected Stakeholders 6 to 14).
3. **Wholesalers and manufacturers**, namely: (15) Pioneer Food Group (Pty) Ltd (“**Pioneer Food Group**”); (16) Rhodes Food Group Holdings Ltd (“**Rhodes Food Group**”); (17) Bid Corporation Ltd and its subsidiary, Bidfood (Pty) Ltd (“**Bidcorp**”); (18) Unilever PLC and its associated company, Unilever (Pty) Ltd (“**Unilever**”); and (19) **Nestlé SA (Pty) Ltd** (“**Nestlé**”); (Phase 2 Selected Stakeholders 15 to 19).
4. **Hotels**, namely: (20) Sun International Ltd (“**Sun International**”); (21) City Lodge Hotel Group (“**City Lodge**”); (22) Southern Sun Ltd (“**Southern Sun**”); (23) Luxury Hotels International SA (Pty) Ltd t/a Protea Hotels by Marriott Hotels (“**Marriott Hotels**”); and (24) Hilton Hotels Worldwide Holdings Inc in respect of its hotels located in SA (“**Hilton Hotels**”) (Phase 2 Selected Stakeholders 20 to 24).
5. **Egg producers and Hatcheries**, namely: (25) **Kuipers Group (Pty) Ltd**’s wholly owned subsidiary, Eggbert Egg (Pty) Ltd (“**Eggbert**”); (26) Quantum Foods (Pty) Ltd (including **Nulaid and Nova Feeds)** (“**Quantum Foods**”); (27) TopLay EggCo-operative Ltd (“**TopLay**”); (28) **Hy-Line International and its associated company, Hy-Line SA (Pty) Ltd** (“**Hy-Line**”); (29) **Lohmann Breeders SA** (“**Lohmann**”); (30) **Rossouw Poultry (Pty) Ltd t/a Rossgro** (“**Rossgro**”); (31) **Windmeul Eierboere (Pty) Ltd** (“**Windmeul**”); and (32) ALZU Agri (Pty) Ltd (“**Alzu**”) (Phase 2 Selected Stakeholders 25 to 32).
6. **Equipment (cage and feed) manufacturers** namely: (33) Big Dutchman SA (Pty) Ltd (“**Big Dutchman**”); (34) Afgri Group Holdings (Pty) Ltd (“**AFGRI**”); (35) RCL Foods Ltd (including **Epol and Driehoek Feeds)** (“**RCL Foods**”); (36) Astral (including Meadow Feeds and **National Chicks Limited**) (Phase 2 Selected Stakeholders 33 to 36).

STEP 2: STAKEHOLDER ENGAGEMENT

We engaged with these 36 (or 3 dozen) Phase 2 Selected Stakeholders based on their constitutional, statutory, and other legal obligations. The Phase 2 Selected Stakeholders owe constitutional obligations to the public in light of the horizontal application of certain rights the Constitution. Relevant rights impacted in the Egg Industry could include (among others): the right to have the environment protected (which includes the protection of animal welfare, due to the fact that animals are part of the environment and the court jurisprudence referred to above); consumer protection associated with the right to human dignity, among others; and the right to access to information. We requested information from these Phase 2 Selected Stakeholders by submitting PAIA requests.⁸³⁸ We encountered challenges such as refusals and non-responsiveness as further expanded on herein. This lack of transparency highlights the need for a culture of accountability and justification within corporate practices, as outlined by the courts and required by constitutional values.⁸³⁹

Our requests comprised two groupings: animal protection / welfare-related requests (Part A) which largely mirrored the requests sent in Phase 1, and environmental and consumer protection -related requests (Part B). We requested Phase 2 Selected Stakeholders to provide the necessary documents through two Google forms designed to streamline the process and allow stakeholders to provide records, grounds for refusals, or an affidavit in accordance with s 55 of PAIA in the event that the requested documents were not in their possession or did not exist at the time of our request, and which confirmed the stakeholder and/or their suppliers' efforts to locate or obtain the documents, including from third parties.

Furthermore, in acknowledging that certain requests did not apply universally, Selected Stakeholders were free to indicate when the requested information was not applicable to their business practices. Our Google forms included a disclaimer stating, “[t]he entirety of [our PAIA request] *may not be applicable to your company and/or each of its suppliers, but to the extent that it is, we kindly request that you provide the necessary records.*” To ensure clarity and account for instances of non-applicability, we introduced a ● **BLUE** colour-rating to our Phase 2 rating system, which will be discussed below.

Following the dispatch of PAIA requests to Phase 2 Selected Stakeholders from a period beginning 23 November 2023, we sent follow-up emails to those that failed to respond, addressed any concerns that they may have had, responded to queries, and clarified the legal obligations underlying our requests. This process relied on provisions within PAIA, the environmental right (concerning impacts on land, air, and water, as well as animal welfare, among others), and consumer protection. This Supplementary Report includes aspects of our engagements and correspondence with Phase 2 Selected Stakeholders up to 26 August 2024.

⁸³⁸ Requests were sent in accordance with s 50 of PAIA and accompanied by Form 2 in terms of Regulations Relating to the PAIA, published under Government Notice R.757, in *Government Gazette* No. 45057 of 27 August 2021, accessible at: https://www.gov.za/sites/default/files/gcis_document/201409/a2-000.pdf.

⁸³⁹ See Consumer Protection Pillar and the Environmental Pillar in Section II of this Supplementary Report.






STEPS 4 AND 5: DEVELOPMENT AND APPLICATION OF RATING CRITERIA AND INDICATORS

The Supplementary Rating Criteria (“**Criteria**”) and Indicators (“**Indicators**”), against which the Phase 2 Selected Stakeholders have been analysed and rated, were carefully crafted with reference to the industry, regulatory framework, and enforcement. The Criteria and Indicators were designed to assess records provided by Phase 2 Selected Stakeholders pertaining to animal welfare, environmental protection, and consumer protection and our engagements with Phase 2 Selected Stakeholders. The intention is that these Criteria and Indicators, as well as those developed for our Initial Report, will serve as a benchmark for Corporations, consumers, and other stakeholders (including government) to advance animal welfare, environmental protection, and consumer protection and improve corporate practices.


We requested information from the Phase 2 Selected Stakeholders that extends beyond what is reflected in the Criteria and Indicators. This is because we received little to no information from many of the Phase 2 Selected Stakeholders in respect of these requests.



RATING SYSTEM

Evaluation Criteria and Colour-ratings

Building on the criteria and indicators developed in Phase 1, and based on engagements with Phase 2 Selected Stakeholders, we refined our Supplementary Rating Criteria, Indicators and corresponding colour rating system. We awarded colour-ratings to each Phase 2 Selected Stakeholder linked to specific Indicators and Criteria. The colours are:  **GREEN**,  **ORANGE**,  **RED**,  **BLUE**, and  **GREY**. We explain below what each colour represents in relation to each specific Criterion and Indicator. The final colour-rating for each Phase 2 Selected Stakeholder is based on their performance in relation to the records and information provided and nature of their engagements with us, as specified below with reference to the thresholds for colour-ratings. We did not rely on information in the public domain or additional research for purposes of the ratings. The ratings are thus based solely on ALRSA’s interactions with the Phase 2 Selected Stakeholders and their representatives during the period 23 November 2023 to 26 August 2024.

Grey Ratings vs. Red Ratings

GREY ratings are awarded when a Phase 2 Selected Stakeholder was non-responsive to a request for access to records. These ratings are to be distinguished from  **RED** ratings, which indicate inadequately justified refusals to provide information or non-compliance with best animal welfare, environmental, and consumer protection practices.

Although  **GREY** ratings denote a lack of response, they should not be considered *less concerning* than  **RED** ratings. An unwillingness on the part of Corporations to address matters potentially violating constitutional rights is itself a significant cause for concern.

● Blue ratings vs. □ Grey ratings

In this Supplementary Report we incorporated an additional colour-rating not included in our Initial Report. ● **BLUE** ratings are awarded in instances where a Criterion and/or Indicator is not applicable to the Phase 2 Selected Stakeholder. For example, an animal feed producer could not be expected to provide records related to the labelling of eggs or products containing eggs.

□ **GREY** ratings are distinguished from ● **BLUE** ratings as □ **GREY** ratings indicate non-responsiveness, whereas ● **BLUE** ratings represent non-applicability.

Adaptive Rating System

Due to the diverse nature of the stakeholders within the Egg Supply Chain, we recognise that a one-size-fits-all approach to PAIA requests and rating would not be appropriate. Phase 2 Selected Stakeholders' roles, responsibilities, and regulatory obligations vary. Accordingly, we have tailored the application of our Criteria to align with each Phase 2 Selected Stakeholder's specific activities and position within the Egg Supply Chain. For example, in respect of Indicator 5.3 of Criteria 5 (relating to PAIA Manuals), we considered whether a Phase 2 Selected Stakeholders' PAIA Manuals list environmental protection, consumer protection, and animal welfare concerns as relevant subjects or categories of information/records, and whether they list Consumer Protection Legislation, Environmental Legislation, and Animal Legislation⁸⁴⁰ as relevant to their business practices. However, we acknowledged that stakeholders such as hotels not involved in the production of Layer Hens and other animals (including slaughter) would not necessarily list all Animal Legislation in their PAIA Manuals, since these laws would not directly apply to, nor regulate their operations. This differentiated approach was aimed at fair comparisons among Phase 2 Selected Stakeholders, highlighting areas for improvement without applying adverse ratings when aspects of Criteria and/or Indicators were not relevant. It offers a holistic view of the Egg Supply Chain, recognising the unique challenges and responsibilities at each stage. If an entire Criterion was deemed not applicable to a Phase 2 Selected Stakeholder, a **BLUE** rating was given.

Insufficient Justification for Refusal

When a Phase 2 Selected Stakeholder cites grounds from PAIA to refuse access to information, ALRSA assigned a ● **RED** rating for the Indicator if the justification was deemed inadequate against the legal requirement that the onus rests on the person refusing a request for records to demonstrate that a ground of refusal is applicable. This approach was adopted even where a refusal was made under oath. Simply quoting PAIA provisions without providing a substantive explanation for how these grounds specifically apply to the requested information has been found by the courts to be unlawful.⁸⁴¹ Responses to PAIA requests must include a detailed, context-specific justification that clearly demonstrates why the cited PAIA grounds for refusal are relevant and applicable to the particular

⁸⁴⁰ See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>.

⁸⁴¹ *President of the Republic of South Africa and Others v M & G Media Ltd* (CCT 03/11) [2011] ZACC 32; 2012 (2) BCLR 181 (CC); 2012 (2) SA 50 (CC) (29 November 2011) at para 86, accessible at: <https://www.saflii.org/za/cases/ZACC/2011/32.html>.

information requested.⁸⁴² This justification should include a comprehensive explanation of the legal provisions' relevance and specific details on how they apply to the actual content being withheld. By assessing Phase 2 Selected Stakeholders against this standard, ALRSA is advancing the level of transparency and accountability in the information-sharing process required by the law.⁸⁴³

GENERAL KEY

● **GREEN** was awarded in instances of compliance by a Phase 2 Selected Stakeholder with our request, Criteria and relevant Indicator.

● **ORANGE** was awarded when the Phase 2 Selected Stakeholder's response was limited in respect to our request, or partially compliant with the relevant Indicator.

● **RED** was awarded in an instance of non-compliance or refusal⁸⁴⁴ on the part of the Phase 2 Selected Stakeholder in respect of a specific Criterion and/or Indicator.

● **BLUE** was awarded in instances where the requested records were deemed not applicable to the operation of the Phase 2 Selected Stakeholder's business as it relates to the Egg Supply Chain.

□ **GREY** was awarded when a Phase 2 Selected Stakeholder was Non-responsive⁸⁴⁵ in respect of a specific Criterion and/or Indicator.

THRESHOLD FOR COLOUR-RATINGS

For each Criterion, the threshold for the colour-rating for that Criteria was determined with reference to the colour-rating per Indicator relating to that Criterion as follows (subject to the exception below):




COLOUR KEY	THRESHOLD FOR COLOUR-RATING
●	GREEN ratings were awarded for 50% or more of the underlying Indicators in respect of a Criterion.
●	ORANGE ratings were awarded for 50% or more of the underlying Indicators in respect of a Criterion.

⁸⁴² See the PAIA Guide published by the Information Regulator, accessible at: https://inforegulator.org.za/wp-content/uploads/2020/07/PAIA-Guide-English_20210905.pdf.

⁸⁴³ *Supra* note 211.









⁸⁴⁴ A situation where a Phase 2 Selected Stakeholder refused to provide access to information requested by ALRSA by invoking one or more of the grounds of refusal listed in ss 62 to 70 of PAIA, as opposed to a situation contemplated by s 58 of PAIA, where the Phase 2 Selected Stakeholder is deemed to have refused access by virtue of their failure to give a decision on a request for access within the prescribed period (i.e. 30 days or an extended period). In this report, the latter situation is referred to as 'Non-responsiveness', whereas the former situation is referred to as a Refusal in this Supplementary Report. In terms of PAIA, a refusal would include both situations.

⁸⁴⁵ A situation contemplated by s 58 of PAIA, where the Phase 2 Selected Stakeholder is deemed to have refused access by virtue of their failure to give a decision on a request for access within the prescribed period (i.e. 30 days or an extended period) whether having acknowledged receipt of a request for access to information or not.

COLOUR KEY	THRESHOLD FOR COLOUR-RATING
	RED ratings were awarded for 50% or more of the underlying Indicators in respect of a Criterion.
	BLUE ratings (not applicable) were awarded for 50% or more of the underlying Indicator in respect of a Criterion.
	GREY ratings were awarded for 50% or more of the underlying Indicators in respect of a Criteria.


Similarly, an “overall” colour-rating for all Criteria was awarded to each Phase 2 Selected Stakeholder based on their colour rating across all 6 Criteria.

Exception: Tied Ratings

In instances where a Phase 2 Selected Stakeholder receives an equal number of one or more colour ratings for the Indicators, the rating allocated to the relevant Criterion has been decided as follows: Where there are four Indicators for one Main Criterion, and the Phase 2 Selected Stakeholder is awarded  **GREEN** ratings for two of the Indicators, and  **RED** ratings for the other two Indicators, the final rating for the Main Criteria allocated would be  **ORANGE** to indicate the partial satisfaction of the particular Main Criterion. When there are two  **GREEN** ratings and two  **ORANGE** ratings, the final rating will be **ORANGE** because this too is indicative of a Phase 2 Selected Stakeholder’s room for improvement in respect of the Main Criterion in question. Where there are two  **ORANGE** ratings and two  **RED** ratings, the final rating will be  **ORANGE**, due to the fact that the Phase 2 Selected Stakeholder’s failure to provide records or denial of access rendered us unable to fully analyse the Phase 2 Selected Stakeholder in question. This is particularly relevant in respect of Main Criterion 2 (Publishes and Implements Environmental and Animal Welfare Related Internal Policies demonstrating Good ESG Practices); Main Criterion 3 (Adopts and Practices Consumer Protection Measures); Main Criterion 4 (Exercises Oversight of Suppliers to Advance Responsible Sourcing); and Main Criterion 5 (PAIA Manual Compliance).

CRITERIA AND INDICATORS

The Supplementary Report’s Rating Criteria are:

-  **Main Criterion 1:** Demonstrates Compliance with and Enforcement of Relevant Environmental⁸⁴⁶

⁸⁴⁶ Environmental Legislation (including any amendments, rules, lists, notices, regulations, etc.) which relates to activities occurring within the Egg Supply Chain, and for the purposes of this Supplementary Report includes, but is not limited to: the NEMA, NEM:WA, NEM:AWA, NWA, NEA, CTA and CCA. The records requested include licences, permits, warnings, citations, notices, directives, and similar enforcement and compliance records (such as environmental management plans), both internal and external) specifically in relation to compliance and/or non-compliance with Environmental Legislation.

and Animal Welfare⁸⁴⁷ Legislation;

- **Main Criterion 2:** Publishes and Implements Environmental and Animal Welfare Related Internal Policies demonstrating Good ESG Practices;⁸⁴⁸
- **Main Criterion 3:** Adopts and Practices Consumer Protection Measures;⁸⁴⁹
- **Main Criterion 4:** Exercises Oversight of Suppliers to Advance Responsible Sourcing;⁸⁵⁰
- **Main Criterion 5:** PAIA Manual Compliance;⁸⁵¹ and
- **Main Criterion 6:** Cooperates with Civil Society.⁸⁵²

⁸⁴⁷ See Initial Glossary on our dedicated egg website, <https://www.eggssouthafrica.org/resources/>. Animal Legislation (including any amendments, rules, lists, notices, regulations, etc.) regulating human-animal interactions and/or animal agriculture, including, but not limited to, the Regulations Regarding the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of South Africa of 31 May 2019, Notice 289 of 2019; the Animals Protection Act 71 of 1962 (“APA”), the Meat Safety Act 40 of 2000; the Animal Identification Act 6 of 2002; the Veterinary and Para-Veterinary Professions Act 19 of 1982; and the Animal Diseases Act 35 of 1984.

⁸⁴⁸ If it is engaged in best practice, a company’s Internal Policies contain measures towards animal welfare, specifically related to Layer Hens and chicks as well as broader environmental and sustainability measures, as required by the environmental right. A company’s compliance with environmental and sustainability measures can also be measured against their Internal Policies. As such, we requested records for Internal Policies relating to animal welfare and environmental matters applied or produced during the Phase 2 Period. Internal Policies refer to any policy document of a Phase 2 Selected Stakeholder, including, but not limited to their Responsible Sourcing policy, sustainability policy, or environmental policy that specifically addresses or regulates animal welfare and environmental protection (whether in general or in relation to the Egg Supply Chain specifically). Internal Policies, plans and policies, however, exclude Annual Reports, Relevant Commitments and Other Commitments, as defined in this Initial Report.

⁸⁴⁹ Consumer Protection encompasses ensuring that Corporations engage in fair dealings with consumers, emphasising the accountability of these Corporations in their production and marketing practices. From an environmental and animal perspective, this protection mandates that Corporations adhere to sustainable practices, transparently disclose their environmental impact, and ensure that their products are ethically sourced. This includes minimising harm to the environment, reducing carbon footprints, and ensuring humane treatment of animals in their supply chains. etc. Additionally, it requires rigorous enforcement of laws and standards to prevent misleading claims about the environmental and ethical attributes of products, thereby safeguarding consumers’ rights to make informed and conscientious choices.

⁸⁵⁰ We requested records that relate to the Phase 2 Selected Stakeholder’ suppliers in the Egg Supply Chain. This Criterion focuses on responses received in relation to this part of our request. Responsible Sourcing by Corporations involves sourcing materials, products, or services from suppliers that have measures in place, such as Internal Policies which they are compliant with, to ensure the ethical treatment of animals and minimise environmental impact.

⁸⁵¹ This Criterion is intended to evaluate the transparency efforts of Phase 2 Selected Stakeholders. We examine each stakeholder’s website for the availability and accessibility of information related to this Initial Report, including a current PAIA Manual. We also assess the officials’ understanding and compliance with PAIA and the constitutional right to access information during the stakeholder engagement process. The evaluation against this Criterion is based on specific Indicators, and stakeholders were rated using a colour rating system.

⁸⁵² Aimed at examining whether a Phase 2 Selected Stakeholder engaged with ALRSA in a cooperative manner during our stakeholder engagement. Whilst some Phase 2 Selected Stakeholder were willing to engage and supportive of enhancing animal welfare, transparency, and accountability in the Egg Supply Chain, we experienced others to be obstructive and tardy in their engagements with us.

CRITERION 1: Demonstrates Compliance with and Enforcement of Relevant Environmental and Animal (Welfare) Legislation

As a role-player in the Egg Supply Chain, a Phase 2 Selected Stakeholder and/or its suppliers owe obligations in respect of various legislation related to the environment and animal welfare. Compliance with Relevant Legislation⁸⁵³ is required to fulfil the environmental right. Our requests for information in relation to compliance with and enforcement of Relevant Environmental and Animal (Welfare) Legislation was intended to provide insight into Phase 2 Selected Stakeholders' understanding of their legal obligations in the context of the Egg Supply Chain. As such, we requested reports, licenses, permits, warnings, citations, notices, directives, and similar enforcement and compliance records (such as environmental management plans, both internal and external) specifically in relation to compliance and/or non-compliance with agricultural, consumer protection and environmental legislation (including any amendments, rules, lists, notices, regulations, etc. in terms thereof). To rate Phase 2 Selected Stakeholders against this Criterion, we considered the following Indicators and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
1.1: The Phase 2 Selected Stakeholder provided access to any record of (non) compliance with Relevant Environmental and Animal Legislation.	<p>● The Phase 2 Selected Stakeholder acknowledged their obligations under all Relevant Environmental and Animal Legislation, and further provided records demonstrating compliance and/or provided confirmation under oath that the Phase 2 Selected Stakeholder has not been the subject of complaints or reported irregularities.</p> <p>● The Phase 2 Selected Stakeholder acknowledged their obligations under, and demonstrated compliance with, some Relevant Environmental and Animal Legislation, but denied applicability of other Relevant Environmental and Animal Legislation and/or provided confirmation that the Phase 2 Selected Stakeholder has been the subject of complaints or reported irregularities but has addressed those complaints or irregularities.</p> <p>● The Phase 2 Selected Stakeholder refused to provide or denied applicability/ existence of any records related to Relevant Environmental and Animal Legislation and/or records demonstrating compliance in respect therewith and/or has been the subject of complaints or reported for irregularities and has failed to address the complaints or irregularities and/or failed to respond under oath.</p> <p><input type="checkbox"/> The Phase 2 Selected Stakeholder was Non-responsive.</p>

⁸⁵³ Relevant Legislation includes Environmental Legislation and Consumer Protection Legislation as defined in our Supplementary Glossary and Animal Legislation as defined in the Initial Glossary, and any other legislation that may be relevant to the Egg Industry.

INDICATOR	COLOUR-RATING
1.2: The Phase 2 Selected Stakeholder provided evidence of mitigation measures specifically aimed at reducing the environmental impact of egg production.	<p>● The Phase 2 Selected Stakeholder provided access to records illustrating the mitigation measures (such as policies, guidelines, or initiatives) specifically aimed at reducing the environmental impact of egg production and provided evidence of compliance therewith.</p> <p>● The Phase 2 Selected Stakeholder provided limited access to records illustrating its mitigation measures specifically aimed at reducing the environmental impact of egg production and provided limited or no records of compliance therewith or provided information relating to mitigation measures concerning environmental impacts generally, as opposed to specifically relating to the impact of egg production.</p> <p>● The Phase 2 Selected Stakeholder refused to provide or denied the applicability/existence of the requested records related to their mitigation measures specifically aimed at reducing the environmental impacts of egg production.</p> <p>● This Indicator is not applicable to the Phase 2 Selected Stakeholder.</p> <p>□ The Phase 2 Selected Stakeholder was non-responsive.</p>
1.3: The Phase 2 Selected Stakeholder provided records demonstrating inspections, criminal charges, citations, breaches and warnings by Relevant Animal Protection Authority, including the NSPCA or confirmation under oath that no such records exist.	<p>● The Phase 2 Selected Stakeholder provided records demonstrating inspections and/or compliance and/or provided confirmation under oath that the Phase 2 Selected Stakeholder has not been the subject of inspections/complaints or reported irregularities in terms of Relevant Animal Legislation.</p> <p>● The Phase 2 Selected Stakeholder demonstrated compliance with some Relevant Animal Legislation, and/or denied applicability of other Relevant Animal Legislation, and/or provided evidence that the Phase 2 Selected Stakeholder has been the subject of inspections and complaints or reported irregularities but has addressed complaints or irregularities.</p> <p>● The Phase 2 Selected Stakeholder was unable or refused to provide records demonstrating inspections or compliance and/or has been the subject of complaints or reported for irregularities and has failed to address the complaints or irregularities or failed to respond under oath in relation to this request.</p> <p>● This Indicator is not applicable to the Phase 2 Selected Stakeholder.</p> <p>□ The Phase 2 Selected Stakeholder was Non-responsive.</p>

CRITERION 2: Publishes and Implements Environmental and Animal Welfare Related Internal Policies demonstrating Good ESG Practices

This Criterion assesses Corporations' commitments to adopting and implementing Good ESG Practices, with a focus on environmental, consumer protection, and animal welfare Internal Policies. These policies illustrate how Phase 2 Selected Stakeholders view and seek to be responsive to their environmental and socio-economic impacts within the Egg Supply Chain. Consequently, we requested records confirming ESG policies, plans, and programmes. Internal Policies dictate the procedures and considerations for actions taken by stakeholders in the Egg Supply Chain, encompassing various environmental aspects such as water, energy (including renewable energy), waste management, air quality, and soil management. Additionally, animal welfare policies are crucial, particularly regarding the treatment of Layer Hens and Progressive Measures to address Cruel Practices. To ensure that these policies are implemented, monitoring compliance measures are essential. To rate Phase 2 Selected Stakeholders against this Criterion, we considered the Indicators and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
2.1: The Phase 2 Selected Stakeholder provided records relating to their resource usage including, as applicable, energy, soil and water, such as renewable energy policies or plans, and/or responsible water use policies or plans.	<p>● The Phase 2 Selected Stakeholder provided comprehensive policies and/or plans relating to its resource use.</p> <p>● The Phase 2 Selected Stakeholder provided limited or vague policies and/or plans relating to its resource use.</p> <p>● The Phase 2 Selected Stakeholder denied applicability/ existence of, or refused to provide access to, information in terms of this request without adequate justification.</p> <p>● This Indicator is not applicable to the Phase 2 Selected Stakeholder</p> <p>□ The Phase 2 Selected Stakeholder was non-responsive.</p>
2.2: The Phase 2 Selected Stakeholder provided records relating to their waste and air quality management methods, including policies/ plans to reduce waste and air pollution, etc.	<p>● The Phase 2 Selected Stakeholder provided comprehensive policies and/or plans relating to pollution control and waste reduction.</p> <p>● The Phase 2 Selected Stakeholder provided limited or vague policies/plans relating to pollution control and waste reduction.</p> <p>● The Phase 2 Selected Stakeholder denied applicability / existence of, or refused to provide access to, information in terms of this request without adequate justification.</p> <p>● This Indicator is not applicable to the Phase 2 Selected Stakeholder</p> <p>□ The Phase 2 Selected Stakeholder was Non-responsive.</p>

INDICATOR	COLOUR-RATING
2.3: The content of Phase 2 Selected Stakeholder's Internal Policies prohibit or contain Progressive Measures to address Cruel Practices.	<p>● All Cruel Practices are expressly prohibited by relevant policy documents.</p> <p>● Cruel Practices are permitted, but relevant policy documents provide for Progressive Measures to address all Cruel Practices, for instance through phasing out processes.</p> <p>● One or more Cruel Practices are neither prohibited nor regulated in any way in Internal Policies / the Phase 2 Selected Stakeholder explicitly refused access or confirmed (whether explicitly or implicitly) that no such Internal Policies exist.</p> <p><input type="checkbox"/> The Phase 2 Selected Stakeholder was non-responsive.</p>
2.4: The Phase 2 Selected Stakeholder provided evidence of monitoring compliance with Internal Policies.	<p>● The Phase 2 Selected Stakeholder produced Comprehensive records evidencing internal and third-party compliance with Internal Policies, demonstrating meaningful compliance monitoring.</p> <p>● The Phase 2 Selected Stakeholder produced limited records evidencing internal and third-party compliance with Internal Policies, demonstrating some degree of compliance monitoring.</p> <p>● The Phase 2 Selected Stakeholder was unable or explicitly refused to produce records evidencing internal and third party (non)compliance with Internal Policies, demonstrating a failure to meaningfully monitor and address (non)compliance / confirmed that no Internal Policies exist.</p> <p>● This Indicator is not applicable to the Phase 2 Selected Stakeholder.</p> <p><input type="checkbox"/> Phase 2 Selected Stakeholder was Non-responsive.</p>

CRITERION 3: Adopts and Practices Consumer Protection Measures

Numerous Phase 2 Selected Stakeholders sell eggs and egg-related products directly to consumers. An analysis of such Phase 2 Selected Stakeholders' Consumer Protection Measures is imperative for purposes of this Supplementary Report. As such, we requested records confirming Phase 2 Selected Stakeholders' Consumer Protection Measures, including labelling, advertisements and Consumer Awareness Statements. To rate Phase 2 Selected Stakeholders against this Criterion, we considered the following Indicators and awarded a colour rating as tabulated.

INDICATOR	COLOUR-RATING
3.1: The Phase 2 Selected Stakeholder provided access to records confirming measures in respect of Consumer Protection.	<p>● The Phase 2 Selected Stakeholder provided access to records confirming specific and comprehensive measures in place in respect of Consumer Protection such as policies, reports, commitments, labelling practices, etc.</p> <p>● The Phase 2 Selected Stakeholder provided limited and vague records relating to measures in respect of Consumer Protection.</p> <p>● The Phase 2 Selected Stakeholder adopted an obstructive approach and/or refused to grant access to information in terms of this request without providing an adequate justification.</p> <p>● This Indicator is not applicable to the Phase 2 Selected Stakeholder</p> <p><input type="checkbox"/> The Phase 2 Selected Stakeholder was Non-responsive.</p>
3.2: The Phase 2 Selected Stakeholder provided records relating to how it labels eggs, egg products and/or products containing eggs when being sold and/or advertised to consumers.	<p>● The Phase 2 Selected Stakeholder provided records confirming how it labels eggs, egg products and/or products containing eggs when being sold and/or advertised to consumers.</p> <p>● The Phase 2 Selected Stakeholder provided limited access to records confirming how it labels eggs, egg products and/or products containing eggs when being sold and/or advertised to consumers.</p> <p>● The Phase 2 Selected Stakeholder adopted an obstructive approach and/or refused to grant access to information in terms of this request without an adequate justification.</p> <p>● This Indicator is not applicable to the Phase 2 Selected Stakeholder</p> <p><input type="checkbox"/> The Phase 2 Selected Stakeholder was non-responsive.</p>
3.3: The Phase 2 Selected Stakeholder provided access to any record related to Consumer Awareness Statement(s).	<p>● The Phase 2 Selected Stakeholder has provided evidence confirming that it has made Consumer Awareness Statement(s).</p> <p>● The Phase 2 Selected Stakeholder confirmed under oath that no Consumer Awareness Statement(s) have been made or the information provided in relation to this request only partially meets the definition for Consumer Awareness Statement.</p> <p>● The Phase 2 Selected Stakeholder refused to grant access to information in terms of this request without an adequate justification.</p> <p>● This Indicator is not applicable to the Phase 2 Selected Stakeholder</p>

INDICATOR	COLOUR-RATING
	<input type="checkbox"/> The Phase 2 Selected Stakeholder was non-responsive.
3.4: Consumer Awareness Statement(s), ⁸⁵⁴ could not be construed as Corporate Hypocrisy ⁸⁵⁵ or otherwise misleading to the public.	<p> ● The Phase 2 Selected Stakeholder has made Consumer Awareness Statement(s) that is/are Comprehensive, do not amount to as Corporate Hypocrisy and are not otherwise misleading to the public or the Phase 2 Selected Stakeholder confirmed under oath that no Consumer Awareness Statement(s) exist, but referred us to other records in the public domain addressing Consumer Protection concerns. </p> <p> ● The Phase 2 Selected Stakeholder's Consumer Awareness Statement(s) is/are not Comprehensive, could be construed as Corporate Hypocrisy or was/were otherwise misleading to the public. </p> <p> ● The Phase 2 Selected Stakeholder refused to grant access to such records without an adequate justification, or to confirm under oath that such record does not exist. </p> <p> ● This Indicator is not applicable to the Phase 2 Selected Stakeholder </p> <input type="checkbox"/> The Phase 2 Selected Stakeholder was non-responsive.

CRITERION 4: Exercises Oversight of Suppliers to advance Responsible Sourcing

While Corporations appear to be increasingly calling for Responsible Sourcing and often publicly claim that their actions are undertaken in a manner that is 'sustainable' and/or 'responsible', many Phase 2 Selected Stakeholders were unwilling to demonstrate how they practicably and tangibly implement these commitments in the context of the Egg Supply Chain.

One measure of Responsible Sourcing could include ensuring compliance from their suppliers on Relevant Legislation, as well as their Internal Policies to advance best practices in the Egg Supply Chain. For example, if a Phase 2 Selected Stakeholder has made a Cage-Free Commitment, we would expect a Phase 2 Selected Stakeholder to monitor and oversee their suppliers to ensure that they supply eggs in a manner compliant with such Cage-Free Commitment. As such, we requested records confirming

⁸⁵⁴ In relation to a Public Statement, 'Comprehensive' refers to a Public Statement that addresses Progressive Measures and Cruel Practices of the Phase 2 Selected Stakeholder in detail, with full disclosure and the utmost transparency, for instance, not only disclosing Progressive Measures aimed at eliminating Cruel Practices, but also the extent to which the Phase 2 Selected Stakeholder remains complicit or a participant in Cruel Practices, and how the Phase 2 Selected Stakeholder intends to handle/ is responsive to environmental concerns.

⁸⁵⁵ A false, misleading, or untrue action or set of claims made by a Phase 2 Selected Stakeholder about the positive impact that a company, product or service has on the environment, animals and/or people.

compliance monitoring undertaken by Phase 2 Selected Stakeholders in respect of their suppliers. Furthermore, this Criteria provided an opportunity for Phase 2 Selected Stakeholders to account for their use of battery cages by themselves or suppliers within their supply chain, if applicable. To rate Phase 2 Selected Stakeholder against this Criterion, we considered the following Indicators and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
4.1: The Phase 2 Selected Stakeholder disclosed their supplier(s) in the Egg Supply Chain.	<p>● The Phase 2 Selected Stakeholder has provided access to records confirming their supplier(s) in the Egg Supply Chain.</p> <p>● The Phase 2 Selected Stakeholder provided limited access to records relating to their supplier(s) in the Egg Supply Chain / provided records and/or confirmed under oath that it requested consent from their suppliers to disclose requested information, but said request was refused.</p> <p>● The Phase 2 Selected Stakeholder adopted an obstructive approach and/or refused to grant access to information in terms of this request without an adequate justification.</p> <p>● This Indicator is not applicable to the Phase 2 Selected Stakeholder</p> <p>□ The Phase 2 Selected Stakeholder was Non-responsive.</p>
4.2: The Phase 2 Selected Stakeholder provided evidence of its suppliers' Cage-Free Commitments.	<p>● The Phase 2 Selected Stakeholder has provided access to records confirming their supplier(s) Cage-Free Commitments.</p> <p>● The Phase 2 Selected Stakeholder provided limited access to records relating to their supplier(s) Cage-Free Commitments / provided records and/or confirmed under oath that it requested consent from their suppliers to disclose requested information, but said request was refused.</p> <p>● The Phase 2 Selected Stakeholder adopted an obstructive approach and/or refused to grant access to information in terms of this request without an adequate justification.</p> <p>● This Indicator is not applicable to the Phase 2 Selected Stakeholder</p> <p>□ The Phase 2 Selected Stakeholder was non-responsive.</p>
4.3: The Phase 2 Selected Stakeholder provided access to any record relating to their suppliers' (non) compliance	<p>● The Phase 2 Selected Stakeholder provided access to records demonstrating compliance by its suppliers with their Cage-Free Commitments.</p> <p>● The Phase 2 Selected Stakeholder provided limited evidence</p>

INDICATOR	COLOUR-RATING
with its Cage-Free Commitments (if any).	<p>demonstrating its suppliers' compliance with their Cage-Free Commitments.</p> <ul style="list-style-type: none"> ● The Phase 2 Selected Stakeholder adopted an obstructive approach and/or refused to grant access to information in terms of this request without an adequate justification. ● This Indicator is not applicable to the Phase 2 Selected Stakeholder. <input type="checkbox"/> The Phase 2 Selected Stakeholder was non-responsive.
4.4: The Phase 2 Selected Stakeholder provided access to records related to each of their suppliers' ESG policies, plans, programmes, etc.	<ul style="list-style-type: none"> ● The Phase 2 Selected Stakeholder provided access to records confirming that their suppliers have comprehensive ESG policies, plans and programmes in place. ● The Phase 2 Selected Stakeholder provided records and/or confirmed under oath that their suppliers have ESG policies, plans and programmes in place, however, did not have consent to provide access / provided limited access to its suppliers' ESG policies, plans and programmes. ● The Phase 2 Selected Stakeholder and/ or their suppliers adopted an obstructive approach and/or refused to grant access to information in terms of this request without an adequate justification. ● This Indicator is not applicable to the Phase 2 Selected Stakeholder. <input type="checkbox"/> The Phase 2 Selected Stakeholder was non-responsive.

CRITERION 5: PAIA (Manual) Compliance

In terms of PAIA, Phase 2 Selected Stakeholders are obligated to have a readily available and easily accessible PAIA Manual that designates an information officer as well as lists relevant environmental, consumer protection and animal welfare related legislation in relation to their operations. As such, ALRSA analysed the availability and content of Phase 2 Selected Stakeholders' PAIA Manuals. To rate Phase 2 Selected Stakeholder against this Criterion, we considered the following Indicators and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
5.1: The Phase 2 Selected Stakeholder' website contained	<ul style="list-style-type: none"> ● The Phase 2 Selected Stakeholder' website contained a readily available and easily accessible PAIA Manual. ● While not having a PAIA manual available on their website,

INDICATOR	COLOUR-RATING
a readily available and easily accessible PAIA Manual.	<p>the Phase 2 Selected Stakeholder's PAIA Manual is obtainable upon request / the PAIA Manual available on their website was outdated.</p> <ul style="list-style-type: none"> ● The Phase 2 Selected Stakeholder does not have a PAIA Manual readily available or easily accessible as per statutory requirements / failed or was unable to provide a PAIA Manual on request.
5.2: The Phase 2 Selected Stakeholder's PAIA Manual designates an Information Officer.	<ul style="list-style-type: none"> ● The Phase 2 Selected Stakeholder's PAIA Manual designates an Information Officer. ● The Phase 2 Selected Stakeholder designated an Information Officer, however their contact information is not readily available, outdated and/or required further investigation. ● No records indicating that the Phase 2 Selected Stakeholder has designated an Information Officer could be found / were made available.
5.3: The Phase 2 Selected Stakeholder's PAIA Manual explicitly mentions environmental protection, consumer protection, and animal welfare concerns as relevant subjects or categories of information/records, and lists Consumer Protection Legislation, Environmental Legislation and Animal Legislation.	<ul style="list-style-type: none"> ● The Phase 2 Selected Stakeholder's PAIA Manual explicitly mentions environmental protection, consumer protection and animal welfare and lists a majority of the Consumer Protection Legislation, Environmental Legislation and Animal Legislation. ● The Phase 2 Selected Stakeholder's PAIA Manual contains limited reference to environmental protection, consumer protection and animal welfare and/or Consumer Protection Legislation, Environmental Legislation and Animal Legislation. ● No reference is made to environmental protection, consumer protection and animal welfare concerns nor Consumer Protection Legislation, Environmental Legislation and Animal Legislation in the Phase 2 Selected Stakeholder's PAIA Manual.
5.4: The Phase 2 Selected Stakeholder demonstrated an understanding of, and willingness and ability to comply with ALRSA's PAIA request for access to records.	<ul style="list-style-type: none"> ● The Phase 2 Selected Stakeholder provided a detailed and compliant response to ALRSA's request for access to records. ● The Phase 2 Selected Stakeholder provided a partially compliant response to ALRSA's request, and/or required further engagement in order to receive information. ● The Phase 2 Selected Stakeholder objected to ALRSA's

INDICATOR	COLOUR-RATING
	request and/or took a defensive / obstructive approach in dealing with ALRSA's PAIA request and/or failed to respond despite several follow ups.





CRITERION 6: Cooperates with Civil Society

An analysis was undertaken in respect of the Phase 2 Selected Stakeholders' willingness to cooperate with ALRSA as a civil society organisation. To rate Phase 2 Selected Stakeholder against this Criterion, we considered the following Indicators and awarded a colour-rating as tabulated.

INDICATOR	COLOUR-RATING
6.1: The Phase 2 Selected Stakeholder was cooperative and transparent throughout ALRSA's engagements.	<p>● The Phase 2 Selected Stakeholder responded promptly, sought clarity where required, engaged telephonically, via email, or online meetings if needed, and generally demonstrated a cooperative stance, openness, and a willingness to engage.</p> <p>● The Phase 2 Selected Stakeholder indicated a willingness to engage and was partially transparent and cooperative in that it demonstrated some willingness to engage constructively with ALRSA (often only after follow ups or further justification was provided), and/or explicitly and coherently invoked grounds of refusal in terms of PAIA as a basis to refuse to disclose information in respect of specific requests, such as information related to suppliers.</p> <p>● The Phase 2 Selected Stakeholder took an obstructive and uncooperative approach in respect of ALRSA's request in that it refused to engage constructively, threatened spurious legal action, and/or invoked grounds of refusal in terms of PAIA without providing an adequate or coherent justification.</p> <p><input type="checkbox"/> The Phase 2 Selected Stakeholder was Non-responsive.</p>

PART C: SUPPLEMENTARY RATINGS

Having evaluated the information relative to the Phase 2 Selected Stakeholder obtained through the Project against the Criteria and Indicators discussed above, the Phase 2 Selected Stakeholder' overall colour-rating scores are as follows:

PHASE 2 SELECTED STAKEHOLDER	OVERALL RATING
MAJOR RETAILERS	
Pick n Pay, Shoprite, Woolworths	
Massmart	
Spar	
FAST FOOD OUTLETS AND RESTAURANTS	
KFC	
Spur, Famous Brands, Nando's, McDonalds, Burger King, Krispy Kreme	
Kauai, Starbucks	
WHOLESALEERS	
Rhodes Food Group	
Bidcorp, Nestlé	
Unilever, Pioneer Food Group	
HOTELS	
City Lodge	
Southern Sun, Marriott Hotels, Hilton Hotels	
Sun International	
EGG PRODUCERS AND HATCHERIES	
Quantum Foods, Toplay, Hy-Line	
Eggbert, Lohmann, Rossgro, Windmeul, Alzu	
EQUIPMENT MANUFACTURERS	
RCL Foods	
AFGRI, Astral	
Big Dutchman	

RATING STAKEHOLDERS AGAINST THE INITIAL REPORT'S [PHASE 1] CRITERIA AND INDICATORS



In an effort to compare and contrast the responses received from the Phase 2 Selected Stakeholder that were rated in our Initial Report to the responses received from these Phase 2 Selected Stakeholder for this Supplementary Report, we have rated each Phase 2 Selected Stakeholder against the same Criteria and Indicators developed and utilised for our Initial Report.⁸⁵⁶

Differences in Rating Scores Between Phase 1 and Phase 2

The key difference between the Phase 1 and Phase 2 Rating Criteria and Indicators stems from the distinct focus areas of the two phases. The emphasis of Phase 1 and our Initial Report was primarily on animal welfare, analysing corporate practices including Corporate Accountability and Corporate Transparency related to the treatment of animals, especially Layer Hens but including other animals such as Chicks. However, in our Phase 1, we included requests and analysis on some environmental and consumer protection- related aspects (including requests for certain environmental legislation, and requests for public statements), but specifically as these related to animals.

In contrast, the focus of Phase 2 and our Supplementary Report, is primarily on environmental protection with a secondary focus on consumer protection concerns, as well as animal welfare, Corporate Accountability and Corporate Transparency. Phase 2 for example requested detailed records pertaining to specific environmental and consumer protection concerns. These same records were not requested in Phase 1. In addition, the difference between the Phase 1 rating and Phase 2 ratings on the same criteria relates to the difference in time periods of our requests and analysis. The time periods of the request were different: Phase 1 Period was between 1 November 2018 and 30 November 2022, whereas the Phase 2 Period was between 1 December 2022 and 30 November 2023.

The rationale for developing new criteria in Phase 2 was to address these broader environmental and consumer protection issues that were not central to Phase 1. Despite the shift in focus, inevitably some overlap exists between the Criteria and Indicators for the two phases due to the interconnected nature of animal welfare, environmental sustainability, and consumer rights - as practices that impact and harm animals often have corresponding impacts on the environment and consumers. The Phase 2 Rating Criteria and Indicators are thus specifically designed to be in line with the purpose of our Phase 2 assessment, but the shared aspects, like transparency, cooperation, and compliance with Relevant Legislation, provide consistency for our analysis.
























This clarification is essential for stakeholders wanting to understand why they may have received different ratings across the phases. Criteria and/or indicators in Phase 1 might appear to be very similar in some respects, when in fact, there subtle nuances exist between them. As a result, a stakeholder who received a  **GREEN** rating on a particular criterion or indicator in Phase 1 might be rated  **ORANGE** in Phase 2 due to these refined distinctions in focus.

⁸⁵⁶ *Supra* note 33 at pages 204-156.

Final Ratings

Stakeholders included in Phase 2, but not Phase 1 – i.e. completely new stakeholders are indicated in **green**, and their Phase 1 rating is marked as “N/A”. Instances where we approached a *different entity* or included different entities in Phase 2 vs. Phase 1 (i.e. a holding company, subsidiary, or brand that was not specifically approached in Phase 1 but part of the relevant group) are marked in **purple**. Stakeholders rated in Phase 1 but removed from Phase 2 are indicated with **[red square brackets]**, and their Phase 2 rating is marked as “N/A”.

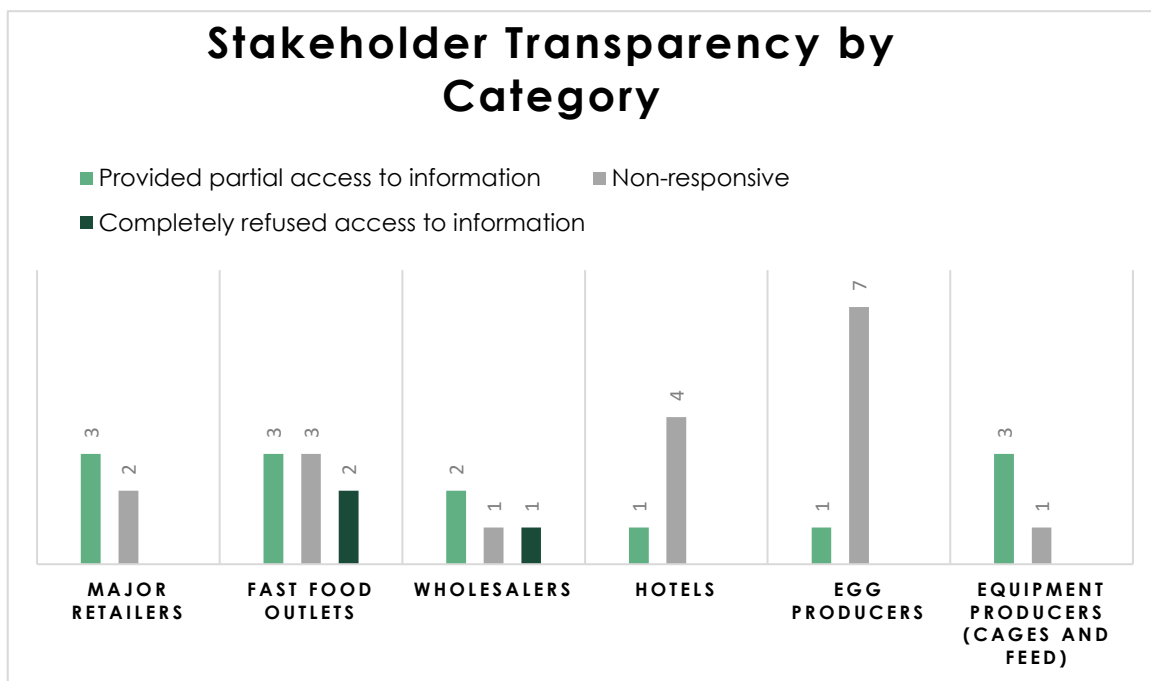
PHASE 2 SELECTED STAKEHOLDER	INITIAL RATING	REPORT	SUPPLEMENTARY RATING (PHASE 1 CRITERIA)
MAJOR RETAILERS			
(1) Pick n Pay			
(2) Shoprite			
(3) Spar			
(4) Woolworths			
(5) Massmart			
FAST FOOD OUTLETS AND RESTAURANTS			
(6) Spur			
(7) Famous Brands			
(8) Nando's			
(9) Kauai			
(10) KFC			
(11) McDonalds			
(12) Starbucks	N/A		
(13) Burger King	N/A		
(14) Krispy Kreme	N/A		
[Papachinos]			N/A
[Subway]			N/A
[Bidvest]			N/A
WHOLESALEERS			
(15) Pioneer Food Group			
(16) Rhodes Food Group			
(17) Bidcorp			
(18) Unilever			
(19) Nestlé	N/A		

PHASE 2 SELECTED STAKEHOLDER	INITIAL RATING	REPORT	SUPPLEMENTARY RATING (PHASE 1 CRITERIA)
[Tiger Brands]			N/A
[Bakers (National Brands Limited)]			N/A
HOTELS			
(20) Sun International			
(21) City Lodge			
(22) Southern Sun			
(23) Marriott Hotels			
(24) Hilton Hotels			
[Hotel Verde]			N/A
EGG PRODUCERS AND HATCHERIES			
(25) Eggbert			
(26) Quantum Foods			
(27) Toplay			
(28) Hy-Line	N/A		
(29) Lohmann	N/A		
(30) Rossgro	N/A		
(31) Windmeul			
(32) Alzu	N/A		
EQUIPMENT MANUFACTURERS			
(33) Big Dutchman			
(34) AFGRI			
(35) RCL Foods			
(36) Astral			

PART D: ANALYSIS

Despite subsequent email correspondence to our PAIA requests, 18 out of 36 Phase 2 Selected Stakeholders did not respond to our PAIA requests at all. ALRSA sent numerous follow up emails to these Phase 2 Selected Stakeholders, highlighting that their non-response amounted to a refusal in terms of PAIA and as such, the Phase 2 Selected Stakeholder would be negatively rated in this Supplementary Report on that basis.

The graph below illustrates the stakeholder categories and the responsiveness by Phase 2 Selected Stakeholders within each category.*



**The graph excludes Pioneer Food Group and does not represent the final ratings of stakeholders within their respective categories.*

The stakeholder responses (or lack thereof) reveal inconsistencies and a lack of commitment to disclosure. While some Phase 2 Selected Stakeholders were willing to engage and support transparency initiatives within the Egg Supply Chain, others adopted obstructive approaches or failed to respond at all.

Below we offer some analysis in respect of the rating exercise linked to each Criterion discussed above.

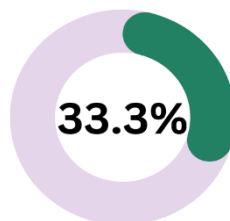
1. MAIN CRITERION 1: COMPLIANCE WITH AND ENFORCEMENT OF RELEVANT ENVIRONMENTAL AND ANIMAL (WELFARE) LEGISLATION

The majority of Phase 2 Selected Stakeholders either failed to provide records, explicitly refused access, or neglected to confirm that information did not exist or could not be located under oath as required by s 55 of PAIA regarding their compliance with legislation, environmental mitigation measures, and animal welfare inspections. Instead of providing comprehensive records confirming compliance with Environmental and Animal (Welfare) Legislation; some stakeholders, including Pick n Pay, Woolworths, and Quantum Foods, offered limited information or made general statements rather than concrete evidence of compliance. We had asked for permits, authorisations, inspection records, internal and independent third-party auditing. However, reliance on confidentiality clauses and selective interpretation of legal requirements obstructed public scrutiny, undermining consumer trust and impeding effective monitoring and oversight by regulatory bodies and civil society.

Shoprite expressed the view that egg production mitigation measures to prevent environmental harms are not applicable to its business, despite selling eggs under its own brand. Furthermore, Quantum Foods, an egg producer, claimed that records related to its mitigation measures (relating to environmental and animal welfare impacts) do not exist. These and other responses (as well as the lack of responses) highlight the urgent need for clear, industry-wide standards delineating environmental and reporting responsibilities throughout the Egg Supply Chain to promote transparency and in turn promote a culture of compliance that reduces harm to the environment and animals amidst an unsustainable food system.

We are concerned that compliance with relevant law and policy may be inadequately documented, or information may be deliberately withheld. The Egg Industry ought to prioritise providing access to records that demonstrate compliance with Relevant Legislation and actively work to foster a culture of openness and accountability. While certain Animal and Environmental Legislation currently applies to the roles of specific types of Phase 2 Selected Stakeholders, and not others, the financial benefits they derive from the environmental and animal-related impacts of their roles should make them equally responsible for ensuring compliance among their suppliers, distributors, and end sellers within the Egg Supply Chain.

Percentage of Phase 2 Selected Stakeholders that provided access to records related to compliance with Relevant Legislation:



12 of the 36 Phase 2 Selected Stakeholders provided information related to Main Criteria 1: Demonstrates Compliance with and Enforcement of Relevant Environmental and Animal (Welfare) Legislation. The responses varied, with some Phase 2 Selected Stakeholders demonstrating strong compliance, and others citing confidentiality or claiming non-applicability.

2. MAIN CRITERION 2: PUBLISHES AND IMPLEMENTS ENVIRONMENTAL AND ANIMAL WELFARE RELATED INTERNAL POLICIES DEMONSTRATING GOOD ESG PRACTICES

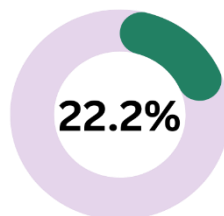
Only 8 of the 36 Phase 2 Selected Stakeholders shared their Internal Policies, plans, programmes, etc. which mainly covered renewable energy initiatives; water usage; GHG emissions reduction; and waste management. However, at best, these Internal Policies set out limited Progressive Measures to address Cruel Practices in the Egg Supply Chain, such as Battery Cage farming, de-beaking, de-toeing, and male chick culling. Additionally, most of the Internal Policies lacked robust compliance monitoring mechanisms, raising serious doubts about their effectiveness in promoting animal welfare and environmental protection.

Our assessment revealed that many Phase 2 Selected Stakeholders provided only vague information without concrete plans to address the environmental challenges linked to their operations, particularly in egg production. This absence of comprehensive and actionable Internal Policies suggests a lack of stakeholders' commitment to implementing measures that could mitigate the negative impacts of corporate practices on both the environment and animal welfare.

Reform would require that Phase 2 Selected Stakeholders set measurable goals for resource usage reduction and waste management while ensuring effective communication and implementation throughout their operations. Strong monitoring and compliance mechanisms are crucial to demonstrate adherence to these policies. Regular audits, transparent reporting, and clear accountability measures for non-compliance will help foster public trust and ensure corporate accountability within the Egg Supply Chain.

The findings indicate that many Phase 2 Selected Stakeholders' Internal Policies are not sufficiently robust to effectively address our concerns regarding animal welfare and environmental impacts of their operations. By prioritising the development and implementation of comprehensive policies aligned with Good ESG Practices, Phase 2 Selected Stakeholders can demonstrate their commitment to sustainability and positively impact the Egg Industry, and aid consumers in being able to make informed decisions about the products they purchase.

Percentage of Phase 2 Selected Stakeholders that provided access to Internal Policies:



Only 8 of the 36 Phase 2 Selected Stakeholders provided access to their Internal Policies, plans or programmes related to environmental protection and animal welfare. The responses revealed that many stakeholders had vague or limited policies, with only a few demonstrating comprehensive and specific measures to address environmental impact and animal welfare concerns.

3. MAIN CRITERION 3: ADOPTS AND PRACTICES CONSUMER PROTECTION MEASURES

Only 10 of 36 Phase 2 Selected Stakeholders provided information related to Consumer Protection Measures. The remainder either refused access to relevant records or failed to meet the established Criteria related to Consumer Protection Measures. Consumer Protection in the food industry is important in order to uphold consumer rights. The absence of comprehensive records confirming specific Consumer Protection Measures—such as detailed policies, reports, commitments, and labelling practices—leaves consumers uninformed about corporate practices, hindering their ability to make informed decisions. This situation raises serious questions about the genuine commitment of these stakeholders to consumer protection and Good ESG Practices.

In terms of egg and egg-related product labelling, several Phase 2 Selected Stakeholders, including Shoprite and McDonald's, claimed that labelling was not applicable to their business activities, despite Shoprite selling whole eggs and various products containing eggs or egg-related products as ingredients, and McDonald's offering numerous egg-based items, including breakfast options and desserts to consumers.⁸⁵⁷ Without access to stakeholders' product labelling and marketing materials, evaluating the accuracy and transparency of their claims is challenging. Prioritising transparency in labelling and marketing practices is essential to provide clear and truthful information about their products.

Some stakeholders provided limited information on environmental practices, failing to meet necessary standards to fully inform and protect consumers. Therefore, the records provided fell short of the definition of Consumer Awareness Statements. For example, RCL Foods provided a presentation and video series by Epol aimed at broiler farmers in response to our request for Consumer Awareness Statements. These videos, which offer advice on animal welfare and disease identification, are informative and presented within the context of SA law and existing animal welfare standards. However, there is little to no mention of environmental protection or consumer protection. The videos also depict chickens in barn farming systems, not cages, suggesting that RCL Foods supplies feed only to cage-free farmers. This, however, cannot be verified, as such information was not provided by this Phase 2 Selected Stakeholder, potentially leading to consumer confusion to the extent that Epol supplies feed to caged egg production systems.

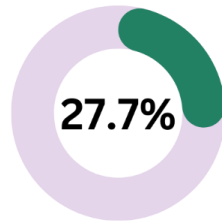
Furthermore, Phase 2 Selected Stakeholders provided vague Consumer Awareness Statement regarding their responses to climate change, egg sourcing, and the conditions for Layer Hens. This lack of specificity could be perceived as Corporate Hypocrisy, misleading consumers about environmental responsibility, animal welfare, health benefits, and ethical practices. To prevent this, Corporations must provide clear, specific, and verifiable information about their egg sourcing, including details on Layer Hen conditions and environmental impact.

Consumer Awareness Statements should accurately reflect animal welfare and environmental practices, using straightforward language that empowers consumers to make informed choices. Transparent engagement with consumers fosters trust and showcases a commitment to responsible practices. Additionally, regulatory bodies and consumer protection agencies are essential in enforcing laws and

⁸⁵⁷ McDonald's <https://www.mcdonalds.co.za/menu> (accessed on 14 August 2024).

standards in the Egg Industry by monitoring labelling and marketing claims, investigating violations, and ensuring accountability among stakeholders.

Percentage of Phase 2 Selected Stakeholders that Provided access to Consumer Protection Measures:

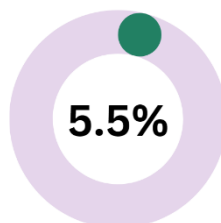


Only 10 of the 36 Phase 2 Selected Stakeholders provided information regarding their Consumer Protection Measures. Despite this, many of the Phase 2 Selected Stakeholders failed to provide records adequately reporting on product labelling and informing consumers sufficiently to make an informed choice. This raises significant concerns regarding Corporate Transparency and Accountability.

4. MAIN CRITERION 4: EXERCISES OVERSIGHT OF SUPPLIERS TO ADVANCE RESPONSIBLE SOURCING

2 of 36 Phase 2 Selected Stakeholders disclosed their egg suppliers: McDonald's and Rhodes Food Group. Other stakeholders refrained from sharing supplier information, citing confidentiality or claiming it was "not applicable", despite operating within a supply chain. These actions obscure consumers' understanding of key suppliers and their compliance with animal welfare and environmental standards. Furthermore, stakeholders who sought supplier records often faced refusals, with suppliers invoking the PAIA without valid justification. Our courts have confirmed that simply quoting from PAIA without justification is not permissible.⁸⁵⁸ Such refusals therefore hinder the evaluation of Responsible Sourcing practices within the industry.

Percentage of Phase 2 Selected Stakeholders that provided information related to their oversight of suppliers



Only 2 of the 36 Phase 2 Selected Stakeholders provided information regarding their suppliers.

The concept of Responsible Sourcing involves ensuring that materials and products are obtained from suppliers who adhere to ethical treatment of animals and minimise environmental impacts.⁸⁵⁹ Responsible Sourcing requires stakeholders to establish clear expectations, conduct regular audits, and

⁸⁵⁸ *Supra* note 841.

⁸⁵⁹ IBM <https://www.ibm.com/topics/ethical-sourcing#> (accessed on 14 August 2024).

implement corrective actions when non-compliance is identified.⁸⁶⁰ However, the responses indicate that many stakeholders may not be effectively exercising oversight of their suppliers, potentially prioritising cost or convenience over Responsible Sourcing practices. Lack of engagement with suppliers on critical issues undermines the integrity of the supply chain and raises concerns about the ethical implications of their sourcing decisions.

To drive meaningful change throughout the Egg Supply Chain, stakeholders must prioritise Responsible Sourcing as a core component of their business strategy.⁸⁶¹ This includes actively engaging with suppliers to set clear expectations, providing support and resources for improvement, and terminating relationships with suppliers who consistently fail to meet established standards.⁸⁶² By fostering collaboration with suppliers and civil society organisations, stakeholders can help advance systemic change in the Egg Supply Chain. Additionally, implementing robust monitoring and reporting mechanisms to track supplier compliance with environmental and animal welfare standards is essential for ensuring accountability and transparency.

Stakeholders should also focus on enhancing their Internal Policies related to animal welfare and environmental protection. This includes providing comprehensive records of their resource usage, waste management, and compliance monitoring. The establishment of clear policies that prohibit cruel practices and promote progressive measures is crucial for promoting ethical sourcing. By taking these steps, stakeholders can contribute to a more sustainable and ethical Egg Supply Chain while enhancing their reputation among consumers and other stakeholders.

Some stakeholders have made commitments regarding their sourcing practices. However, it is unclear whether these practices are being implemented. KFC confirmed that they are seeking to source 100% cage-free eggs by 2030 and “*take the utmost care to work with suppliers who have the welfare of chickens as a key priority of their operations*”. Despite this, KFC is reluctant to provide the details of these suppliers. The same applies to other well-known Phase 2 Selected Stakeholders such as Woolworths, Nando’s, and Spur. Woolworths claimed that every year, it asks its suppliers to complete a holistic assessment that considers sustainability management, water, energy, waste, human rights, employee well-being, lean manufacturing, transformation, and Responsible Sourcing. It further claimed that suppliers who have been participating since the inception of this assessment have indicated significant improvements in operational efficiency. However, no records were provided to confirm these statements.

Rhodes Food Group provided the details of its suppliers in the Egg Supply Chain. Furthermore, they mentioned that one of their suppliers, Eikenhof Poultry Farms (Pty) Ltd, only produces free-range eggs.

⁸⁶⁰ Stibo Systems <https://www.stibosystems.com/blog/supplier-compliance> (accessed on 14 August 2024).

⁸⁶¹ Siems, E et al (2023) Stakeholder roles in sustainable supply chain management: a literature review. *Journal of Business Economics*, 93(4), pp.747-775, accessible at: https://www.researchgate.net/publication/364718471_Stakeholder_roles_in_sustainable_supply_chain_management_a_literature_review.

⁸⁶² Kumar, D. and Rahman, Z (2015) Sustainability adoption through buyer supplier relationship across supply chain: A literature review and conceptual framework. *International strategic management review*, 3(1-2), pp.110-127, accessible at: <https://www.sciencedirect.com/science/article/pii/S2306774815000046>.

Bidcorp stated that all of its poultry suppliers are members of the SAPA and directed ALRSA to request access directly from its suppliers or SAPA. However, the PAIA allows requesters to obtain information directly from the entity holding the records, and ALRSA cannot engage with suppliers whose identity is unknown.

Percentage of Phase 2 Selected Stakeholders that provided information related to their oversight of suppliers:



A total of 9 of the 36 Phase 2 Selected Stakeholders provided information related to their oversight of suppliers. This number indicates a potential lack of detailed records in relation to suppliers being monitored and raises questions about Corporate Accountability and Responsible Sourcing practices in the Egg Industry.

5. MAIN CRITERION 5: PAIA MANUAL COMPLIANCE

The majority of Phase 2 Selected Stakeholders have readily available and easily accessible published PAIA Manuals available on their respective websites, including Pick n Pay, Shoprite, Spar, Woolworths, Massmart, Spur, Nando's, KFC, McDonald's, Burger King, Pioneer Foods, Bidcorp, Nestlé, Unilever, Sun International, City Lodge, Sun International, Quantum Foods, Big Dutchman, AFGRI, RCL Foods and Astral.

In instances where the Phase 2 Selected Stakeholder's PAIA Manual was not readily available or easily accessible on the stakeholder's website, we sent the PAIA request to email addresses that were publicly available.⁸⁶³

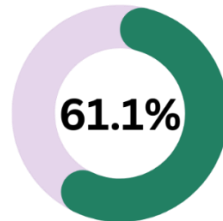
None of the PAIA Manuals reviewed identified animal welfare as a relevant category for information requests, despite the fact that all Phase 2 Selected Stakeholders are integral to the Egg Supply Chain and the broader food system, which includes animal agriculture. Furthermore, the majority of the PAIA Manuals either fail to mention or only make limited references to applicable Animal Legislation or Environmental Legislation in relation to their operations.

Despite stakeholders having publicly accessible PAIA Manuals, most failed to demonstrate an understanding of their obligations under the law, which undermines the public's right to access information. The varied and often limited nature of the responses complicates efforts to draw definitive conclusions about industry-wide practices. To build trust and enable effective oversight, stakeholders must prioritise transparency by proactively disclosing relevant information and demonstrating a commitment to upholding the right to access information and related rights, particularly the environmental right.

⁸⁶³ This included email addresses available on Phase 2 Selected Stakeholders' websites.

They should also ensure that their PAIA manuals are current and easily accessible, demonstrating their commitment to the constitutional right to access information.

Percentage of Phase 2 Selected Stakeholders that have publicly accessible PAIA Manuals:



A total of 22 of the 36 Phase 2 Selected Stakeholders provided data on their efforts to ensure Corporate Transparency in the form of an easily accessible PAIA Manual available on their website. However, many stakeholders did not demonstrate compliance with certain duties in terms of PAIA.

6. MAIN CRITERION 6: COOPERATES WITH CIVIL SOCIETY

While some Phase 2 Selected Stakeholders expressed a willingness to engage and support initiatives aimed at enhancing animal welfare, transparency, and accountability in the Egg Supply Chain, others were uncooperative. The varying levels of engagement make it challenging to assess the Egg Industry's overall commitment to collaborating with civil society organisations (in this instance, ALRSA)..

To drive meaningful change, stakeholders should actively engage with civil society, incorporating feedback and demonstrating a willingness to work together toward shared goals. Civil society organisations play a crucial role in advocating for animal welfare, environmental protection, and consumer rights. By collaborating with these organisations, stakeholders can gain valuable insights, access resources and expertise, and build trust with the broader public.

However, the responses (or lack thereof) in respect of ALRSA's requests, indicate that many stakeholders are hesitant to engage with civil society. Some seem to perceive these organisations as adversaries or critics rather than potential partners in driving positive industry reform for the good of society as a whole. Others may be concerned about the reputational risks associated with engaging with civil society, particularly if their practices are found to undermine human rights and animal welfare.

To overcome these barriers, stakeholders should adopt a proactive and constructive approach to engaging with civil society.⁸⁶⁴ This includes initiating dialogues, participating in multi-stakeholder initiatives, and responding to concerns and recommendations in a timely and substantive manner.⁸⁶⁵ By

⁸⁶⁴ Apolitical <https://apolitical.co/solution-articles/en/the-role-of-civil-society-in-policymaking> (accessed on 14 August 2024).

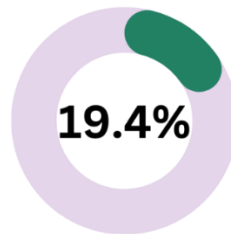
⁸⁶⁵ di San Giorgio, L.T (2016) Understanding Multi-Stakeholder Dialogue: The Emerging Concept of Community of Practice. *Business, Peace and Sustainable Development*, 2016(7), pp.8-31, accessible at: https://www.researchgate.net/publication/313820676_Understanding_multi-stakeholder_dialogues_the_emerging_concept_of_community_of_practice.

demonstrating a willingness to listen, learn, and adapt, stakeholders can build trust and showcase their commitment to continuous improvement.⁸⁶⁶

Civil society organisations also have a responsibility to engage with stakeholders constructively,⁸⁶⁷ and have a critical role in promoting Corporate Transparency.⁸⁶⁸ By providing clear and actionable recommendations, collaborating with other stakeholders, and recognising positive steps taken by industry role-players, civil society can help drive meaningful change while maintaining a critical perspective on industry practices.⁸⁶⁹

Therefore, fostering collaboration between stakeholders, regulators, and industry bodies, civil society organisations, and consumers is essential for driving positive change in the Egg Supply Chain.⁸⁷⁰ Prioritising transparency, accountability, and continuous improvement, ensures that stakeholders can contribute to a more sustainable and ethical food system that respects the rights and needs of animals, workers, and consumers alike.

Percentage of Phase 2 Selected Stakeholders that demonstrated cooperation with civil society:



A total of 7 of the 36 Phase 2 Selected Stakeholders satisfied cooperation with civil society (ALRSA) in respect of their PAIA obligations.

⁸⁶⁶ Faster Capital <https://www.fastercapital.com/content/Business-Trust-Scores--How-to-Build-and-Maintain-Your-Business-Trust-Scores-with-Your-Stakeholders.html> (accessed on 14 August 2024).

⁸⁶⁷ Commonwealth Foundation https://commonwealthfoundation.com/wp-content/uploads/2013/06/Civil_Society_Accountability_Toolkit_South_Africa.pdf (accessed on 14 August 2024).

⁸⁶⁸ GI Fit <https://fiscaltransparency.net/the-role-of-civil-society-organizations-in-ensuring-transparency-and-accountability-in-emergency-policy-responses/> (accessed on 14 August 2024).

⁸⁶⁹ *Ibid.*

⁸⁷⁰ Chauhan, C et al (2022) Supply chain collaboration and sustainable development goals (SDGs). Teamwork makes achieving SDGs dream work. *Journal of Business Research*, 147, pp.290-307, accessible at: <https://www.sciencedirect.com/science/article/pii/S0148296322002818>.

PART E: OBSERVATIONS

GREAT “EGG”-SPECTATIONS, GREAT DISAPPOINTMENTS

Following the publication of our Initial Report, we anticipated improved practices, including transparency from the Phase 2 Selected Stakeholders (specifically those engaged for our Initial Report and this Supplementary Report). We had hoped that Corporations would be motivated and incentivised to engage with us openly, knowing their responses would be made public and that they would be rated according to our Criteria. We were inclined to believe that the Phase 2 Selected Stakeholders understood that non-responsiveness would not exempt them from scrutiny or rating, but rather demonstrate to the public their disinterest in advancing animal, environmental or consumer protection respectively—a problematic stance for numerous reasons. Furthermore, by expanding our Stakeholder Selection Criteria to include the consideration of Corporations making claims in these areas, including in such as “sustainable”, “animal-friendly”, among others, and those that had made Cage-Free Commitments, we hoped to have at least one ‘*Good Egg*’ per stakeholder category.

Our expectations were unfortunately not met. As many as 18 of the 36 Phase 2 Selected Stakeholder were non-responsive to our PAIA requests, and the majority of those that responded received ● **RED** colour-ratings overall. We attribute many of the issues we encountered with Phase 2 Selected Stakeholders to certain misconceptions and/or myths regarding PAIA, expanded on below.

COMMON MISCONCEPTIONS OF PAIA

Responses received from Phase 2 Selected Stakeholders revealed the following misconceptions and/or myths about PAIA:

X **MYTH 1:** Corporations do not have an obligation to be informed of PAIA and its processes.

● **FACT:** Every public body and private body (except those exempt in accordance with PAIA regulations⁸⁷¹) must appoint a dedicated Information Officer and have a publicly accessible PAIA Manual. The manual should detail how to request access to information, provide the Information Officer’s contact details, outline the applicable legislation, and specify remedies if access is denied.

X **MYTH 2:** Only a law firm or state institution has the authority to request information in terms of PAIA.

● **FACT:** PAIA authorises *any* person to request information from public bodies or private bodies. Accordingly, civil society has an important role in advancing the promotion, protection, and fulfilment

⁸⁷¹ Exemption of Certain Private Bodies to Compile Manual Regulations published under Government Notice 865 on 31 August 2005 in terms of the PAIA, accessible at: https://www.justice.gov.za/legislation/regulations/r2005/gg27988_r865_paia.pdf.

of the rights in the Bill of Rights, including the right to access to information and the environmental right.

X MYTH 3: Corporations can refuse to disclose “proprietary” information.

FACT: That information is “proprietary” is not a recognised ground provided for in Chapter 4 of PAIA on which Corporations and others can rely to resist providing access to records.

X MYTH 4: Discussions about PAIA requests can be marked “without prejudice”.

FACT: “Without prejudice” is used to indicate that a communication or document is made in an effort to settle a dispute or negotiate a resolution; and that the content cannot be used as evidence in court/seen as an admission of guilt or liability. A PAIA request is not a litigious issue that requires resolution, negotiation or settlement. Therefore, the use of the term is misplaced in stakeholder engagements involving requests for access to records in terms of PAIA.

X MYTH 5: One may rely on grounds of refusal without any or an adequate justification.

FACT: SA courts have confirmed that it is necessary to indicate and fully justify the basis upon which access to information is refused in terms of PAIA.⁸⁷² The onus rests on the person refusing access to demonstrate why a ground of refusal applies.

X MYTH 6: It is not necessary to confirm that information does not exist/is unavailable *under oath* in an affidavit.

FACT: S 55 of PAIA requires that if a requested record cannot be found or does not exist despite all reasonable efforts, the head of a private body must notify the requester via affidavit or sworn affirmation detailing the steps taken to locate the record. This notice is considered a formal refusal to grant access, but if the record is later found, the requester must be granted access unless another refusal ground applies.

X MYTH 7: There is no duty on public or private bodies to approach third parties for their consent to disclose information (e.g. their suppliers).

FACT: S 71 of PAIA requires the head of a private body to notify a third party, whose interests might be affected by a request for access to a record, within 21 days of receiving the request. The notification must include details about the record, the requester, relevant sections of PAIA, and the third party’s right to make representations or consent to the disclosure of the record.

X MYTH 8: Private bodies set the threshold for whether information is required by a requestor for the protection of rights.

FACT: The courts have confirmed that the threshold for whether information is required for the protection of rights under PAIA is low and can be met by demonstrating that information is required to protect the environment. Animal life is part of the environment, yet many stakeholders claimed that

⁸⁷² *Supra* note 858.

we did not adequately justify the infringement of the environmental right, arguing that animal welfare is not included within this right, despite judicial confirmation to the contrary.⁸⁷³

✓ “GOOD EGGS”

Unfortunately, not one of the Phase 2 Selected Stakeholders received an overall ● **GREEN** colour-rating. There were, however, Indicators for which certain Phase 2 Selected Stakeholders received ● **GREEN** ratings. The Phase 2 Selected Stakeholders who received **some** ● **GREEN** ratings include Pick n Pay, Shoprite, Woolworths, Rhodes Food Group, and RCL Foods, as they provided access to comprehensive Internal Policies which relate to their resource usage, and waste and air management plans, among others. Shoprite also provided an affidavit in terms of s 55 of PAIA which confirms most of Shoprite’s claims in relation to our requests under oath. Kauai and City Lodge, the two “Good Eggs” from our Initial Report, did not retain their status in this Supplementary Report. Kauai was entirely non-responsive to our request and City Lodge demonstrated partial compliance with our PAIA request in Phase 2.

Rhodes Food Group remained forthcoming throughout our engagement with them, particularly as it related to their obligations in respect of providing records related to their suppliers. Further, Rhodes Food Group provided comprehensive records in respect of its undertakings related to environmental protection. Despite this, Rhodes Food Group did not provide records related to all requests, which impacted its final rating.

Woolworths improved relative to Phase 1, as it provided records indicative of its proactive steps and continued effort in respect of animal welfare, sustainability in its sourcing of eggs, and displayed some measure of efforts to inform its consumers of their free-range egg sourcing. In Phase 1, Woolworths was non-responsive, so its engagement with ALRSA during Phase 2 was encouraging, even if limited.

X “BAD EGGS”

In response to our request, TopLay engaged an attorney and requested that ALRSA provide proof that it is a registered law firm before they would release any records. TopLay’s request bears no relation to the provisions of PAIA, which entitle ALRSA to request access to information irrespective of whether it is a registered law firm. When ALRSA clarified that it is a registered NPO, TopLay did not provide access to records, nor respond to our subsequent emails.

Spur and Nando’s adopted a hostile approach to our request, as they did during Phase 1, and refused to provide access to the requested records. Krispy Kreme denied receiving our PAIA request, despite ALRSA having received confirmation that our emails were delivered and read.

Nestlé, upon receipt of our request, denied access to records stating:

“While animal welfare is an important issue, the rights protected under PAIA apply to natural and juristic persons. Currently, SA law does not recognize animals as legal persons with individual rights within the scope of PAIA and the bill of rights. It is for this reason that the request has been refused.”

⁸⁷³ *Supra* note 128.

As mentioned above, the environmental right includes the recognition of the protection of animal welfare as confirmed by the Constitutional Court.⁸⁷⁴ This judicial development was explained in our request, and in our response to Nestlé. However, Nestlé did not provide access to the requested records.

Furthermore, other than Quantum Foods, all egg producers, refused or failed to provide access to information.

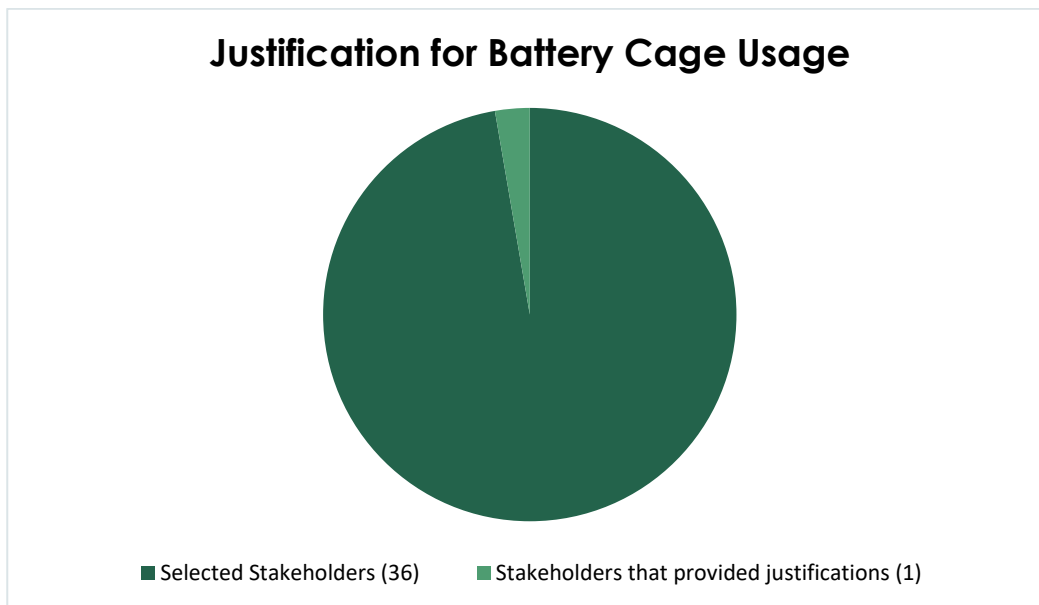
SHELL-SHOCKING SECRECY: ISSUES WE ARE STILL IN THE DARK ABOUT

The Egg Industry's lack of transparency not only threatens animal, environmental and consumer safety, but suggests a systemic prioritisation of profits over ethical and legal obligations. A wall of silence undermines public trust and demands immediate regulatory intervention to crack open the industry's opaque practices, enforce transparency, and ensure adherence to crucial standards that protect animals, the environment, and public health.

Whilst specific information was requested from Phase 2 Selected Stakeholders, due to non-compliance and partial responses to our requests, certain gaps in our research remain. As a result, we were unable to rate the stakeholders on these issues. Consequently, we remain uninformed about certain aspects of the Egg Supply Chain, including:

X Battery Cage Usage

Phase 2 Selected Stakeholders were requested to provide records relating to the Corporation and/or each of their suppliers' justification(s) for the use of Battery Cages. Only one Phase 2 Selected Stakeholder, Pick n Pay, provided information in relation to this request as illustrated in the pie chart below.



Graphic Representation of justification for battery cage usage by Phase 2 Selected Stakeholders

⁸⁷⁴ *Supra* note 128.

Pick n Pay provided access to its “Poultry and Egg Welfare Policy”, which states that: “[t]he majority of eggs sold by Pick n Pay are battery eggs. This is due to the economic costs of production to meet the South African consumer demand and food security. The farming costs on battery eggs are lower than on free range eggs. We offer both to our consumers to be able to make an informed decision.” No records were provided to support these claims, nor was this information confirmed under oath.

The lack /absence of any justification provided by the Phase 2 Selected Stakeholders for the use of Battery Cages reveals a significant gap in transparency and accountability, raising concerns about the ethical and environmental implications of this practice which is prevalent in the Egg Supply Chain.

X Feed for Layer Hens

Our PAIA requests sought records detailing where the Phase 2 Selected Stakeholder and/or their suppliers source feed for Layer Hens, as well as information on the composition of the feed. However, not one of the feed producers, and only 1 of the 8 egg producers we requested records from, provided access to the requested records. As a result, we are unable to determine what Layer Hens in the Egg Supply Chain are being fed.

This is concerning because the health of animals is directly influenced by the quality and composition of their feed, which can have broader implications for public health. For instance, Listeriosis in ruminant animals is often caused by animals consuming spoiled silage.⁸⁷⁵ Listeriosis is then spread to humans through the ingestion of products containing meat, milk, etc. from infected animals.⁸⁷⁶ In 2017, there was an outbreak of Listeriosis in SA which resulted in 193 reported deaths.⁸⁷⁷ Furthermore, animal feed has negative implications on the environment. Studies show that 63% of the total GHG emissions from egg farming are attributed to the production of feed for chicken.⁸⁷⁸

Without transparency about feed sources and composition, it is not possible for the public to determine whether Layer Hens are receiving nutritionally adequate and safe feed, which is essential for their health and well-being. Furthermore, considering that consumers are increasingly concerned about the ethical and environmental impacts of their food choices,⁸⁷⁹ lack of information prevents consumers from

⁸⁷⁵ Allerberger, F et al (2023) Listeriosis: the dark side of refrigeration and ensiling. In *Zoonoses: Infections Affecting Humans and Animals* (pp. 373-410) Cham: Springer International Publishing, accessible at: https://www.researchgate.net/publication/374566079_Listeriosis_The_Dark_Side_of_Refrigeration_and_Ensiling.

⁸⁷⁶ National Institute for Communicable Diseases https://www.nicd.ac.za/wp-content/uploads/2019/03/Frequently_Asked_Questions_Listeriosis_20170601.pdf (accessed on 14 August 2024).

⁸⁷⁷ National Institute for Communicable Diseases <https://www.nicd.ac.za/wp-content/uploads/2020/02/Outbreak-of-Listeriosis-in-South-Africa-Associated-with-Processed-Meat.pdf> (accessed on 14 August 2024). Thomas, J et al (2020) Outbreak of listeriosis in South Africa associated with processed meat. *New England Journal of Medicine*, 382(7), pp.632-643, accessible at: <https://www.nejm.org/doi/full/10.1056/NEJMoa1907462>.

⁸⁷⁸ Farm Carbon: <https://farmcarbontoolkit.org.uk/toolkit-page/poultry-egg-production/>. The sourcing of feed for Layer Hens in the South African Egg Supply Chain can lead to environmental harms, including deforestation, water pollution, pesticide use, and GHG emissions, highlighting the need for sustainable feed production practices to mitigate these impacts.

⁸⁷⁹ *Supra* note 2.

making informed decisions about the eggs they purchase and consume, potentially compromising their values and expectations regarding animal welfare and sustainability.⁸⁸⁰

As the primary industry body representing poultry and egg producers in SA, SAPA has a crucial role in addressing these issues. SAPA is responsible for promoting best practices in poultry farming, including sustainable feed sourcing and ensuring transparency in feed composition for Layer Hens.⁸⁸¹ By requiring its members to disclose information about feed sources and composition, and making this information available to researchers and consumers, SAPA can help mitigate environmental impacts, ensure the health and well-being of poultry, and enhance public health. SAPA's engagement in these areas is essential for advancing the industry's commitment to ethical and sustainable practices, ultimately supporting informed consumer choices and fostering industry accountability.

The power and influence that industry bodies have on the Egg Industry and other animal agriculture industries, including obtaining financial benefit deriving from the continuation of practices related to the industries, we believe that further engagement with such bodies could enhance Corporate Accountability and Corporate Transparency.

X Avian Flu and Disease Control

The general lack of access to information among egg producers has limited our ability to fully assess how stakeholders in the Egg Supply Chain respond to Avian Flu and other diseases affecting animals. Disease control is an animal welfare, environmental, and consumer protection issue. It further directly relates to Food Safety and Health, as discussed in Section III, Part 3 of our Initial Report.

Quantum Foods is the only egg producer that provided access to information relating to Avian Flu. In its 2022 integrated report, Quantum Foods disclosed a major Avian Flu outbreak at its Lemoenkloof layer farm in January 2022.⁸⁸² The outbreak significantly disrupted operations for the rest of the year, with repopulation of the farm starting only in July 2022. Quantum Foods revealed that approximately **400,000 Layer Hens** were culled as a result. Quantum Foods emphasised the heavy economic losses and the impact on trade and livelihoods, including lost production capacity and immediate replacement challenges. Quantum Foods asserted that Avian Flu is a regulated disease in SA as every case must be reported to the state veterinarian, with DALRRD “overseeing passive and active surveillance”.⁸⁸³

⁸⁸⁰ In 2019, ALRSA submitted commentary on proposed amendments to the FFFARSRA. Our submission highlighted the significance of following best international practices, ensuring transparency, enforcing stringent quality control measures, and promoting accountability, as well as the need for robust labelling requirements, prohibitions on harmful substances, and provisions for genetically modified foods. We also stressed the necessity for periodic quality tests, proper regulation, and the inclusion of punitive measures for contraventions.

⁸⁸¹ SAPA <https://www.sapoultry.co.za/wp-content/uploads/2022/06/2022-SAPA-COP.pdf> (accessed on 14 August 2024).

⁸⁸² Quantum Foods <https://quantumfoods.co.za/downloads/2022/quantum-foods-integrated-report-2022.pdf> (accessed on 14 August 2024).

⁸⁸³ *Ibid.*

During an Avian Flu outbreak in 2023, the SA government confirmed that the infected carcasses of culled birds, which include chicken and ostrich, were dumped at an “approved hazardous dump site”.⁸⁸⁴ Such disposal of infected carcasses can facilitate the spread of disease, lead to pollution and the contamination of ecosystems, affecting plants, animals, and even human populations.

Furthermore, while not provided in response to our request, in terms of a publicly available court case, in 2023, RCL Foods challenged the Western Cape Minister of Local Government’s⁸⁸⁵ decision to grant environmental authorisation for a free-range chicken farm near RCL’s existing facility in Hopefield, citing significant biosecurity risks that could lead to disease outbreaks like Avian Flu.⁸⁸⁶ RCL argued that the new farm, located approximately 2.94 km away, could jeopardise its strict biosecurity measures and overall operations, potentially requiring the culling of birds within a 3 km radius in the event of an outbreak.⁸⁸⁷ The Minister opposed RCL’s application, arguing that RCL was attempting to impose its biosecurity standards on smaller producers and that the approval did not violate any existing regulations.⁸⁸⁸

The disclosure by Quantum Foods about its Avian Flu outbreak and the impact thereof highlights the critical need for transparency in disease control within the egg industry. The challenges faced by Quantum Foods and the biosecurity concerns raised by RCL Foods about new developments further illustrate the broader implications of disease outbreaks on industry operations and regulatory practices.

X Listed Activities and Environmental Audits

We received very limited responses to our requests concerning Listed Activities, which raises questions about the monitoring and auditing of environmental compliance among the Phase 2 Selected Stakeholders.

According to s 24N(7)(d) of NEMA, both holders of EAs and those issued such authorisations must monitor and audit their compliance with the EMP. Moreover, s 24 of NEMA requires that Listed Activities, identified as having potential significant environmental impacts, must not be undertaken without obtaining an EA. If a party (in this case, a Corporation) proceeds with these activities without the necessary authorisation, they may face legal penalties, including fines or imprisonment, and could be required to halt the activity and undertake corrective measures to address any environmental damage.⁸⁸⁹

⁸⁸⁴ DALRRD <https://www.dalrrd.gov.za/images/outbreaks/Avian%20Influenza/Reports/h5-and-h7-update-15-sept-2023-signed.pdf> (accessed on 14 August 2024).

⁸⁸⁵ *RCL Foods Consumer (Pty) Ltd v Western Cape Minister of Local Government, Environmental Affairs and Development Planning and Others* (5779/2020) [2023] ZAWCHC 19 (6 February 2023), accessible at: <https://www.saflii.org/za/cases/ZAWCHC/2023/19.html>.

⁸⁸⁶ *Ibid* at para 25.

⁸⁸⁷ *Ibid* at para 5.

⁸⁸⁸ *Ibid*.

⁸⁸⁹ S 24F of NEMA.

In response to our request, Quantum Foods noted that they have identified the need to submit a s 24G application in terms of NEMA for their Kaalfontein operations. A s 24G application is a process that allows entities to seek retrospective EA when a Listed Activity has been conducted without prior approval, allowing the entity to regularise their environmental compliance. However, as this process is still in the pre-application phase, Quantum Foods claimed that there are no records available for disclosure at the time of responding to our request.

The failure by Phase 2 Selected Stakeholders to provide such information highlights a significant gap in available data and points to a broader issue of transparency in environmental auditing practices. Addressing these gaps is crucial for ensuring adherence to environmental regulations and enhancing accountability within the Egg Industry.

X Membership with Industry Associations

Many of the Phase 2 Selected Stakeholders are members of or otherwise influenced (either directly or indirectly) by industry bodies and associations. Of particular importance in the context of the Egg Industry, such bodies and associations include:

- \$ SAPA;
 - \$ SAPA Egg Association;
 - \$ SAPA Broiler Association;
- \$ Animal Feed Manufacturers Association (“**AFMA**”);
- \$ And any other poultry, egg or chicken organisations or associations that may be relevant to obligations in terms of rights (in this case, environmental and consumer).

While not an industry body, but a statutory body, the South African Bureau of Standards (“**SABS**”) sets industry related standards and includes industry representatives on technical committees.

One of the Phase 2 Selected Stakeholders, Shoprite, confirmed that it does not measure compliance with association standards, requirements, and certification. This highlights a gap in adherence to industry standards, and/or requirements by industry associations to be compliant with its standards, requirements and certifications.

Further engagement with these industry bodies is necessary to develop comprehensive measures for Corporate Accountability and Transparency.

X Animal Welfare and Environmental Commitments

While certain Phase 2 Selected Stakeholders provided mixed measures of Animal Welfare Commitments, most stakeholders disregarded the applicability of undertaking Animal Welfare and Environmental Commitments in their role within the Egg Supply Chain.

The inconsistent approach adopted in relation to commitments demonstrates that while some stakeholders within the Egg Supply Chain are taking steps towards fulfilling Animal Welfare Commitments and Environmental Commitments, others are neglecting or dismissing the importance of these issues and obligations flowing therefrom in their operations. It highlights a lack of uniformity

in addressing animal welfare and environmental concerns across the industry, with certain stakeholders either failing to recognise or choosing not to recognise nor prioritise these commitments in their roles.

X Reports to Regulatory Bodies Advertising Standards Agencies / Regulatory Bodies / Tribunals

We requested records related to Phase 2 Selected Stakeholders and records related to consumer protection. This included engagement in respect of entities such as the ARB, ASA, NCC, CCSA, CGCSA, among others. Our request specifically sought records related to marketing, advertising, and egg and egg product labelling complaints; and environmental or animal welfare issues.

Phase 2 Selected Stakeholders did not provide such records and/or records relating to other matters with Relevant Advertising Standards Agencies, Regulatory Bodies or Tribunals,⁸⁹⁰ which relate to eggs and/or egg labelling, and/or environmental or animal welfare issues.

INCONSISTENT CLAIMS BY STAKEHOLDERS

Certain Phase 2 Selected Stakeholder made statements that could not easily be reconciled with one another. A few examples are included below.

X Role in Egg Supply Chain

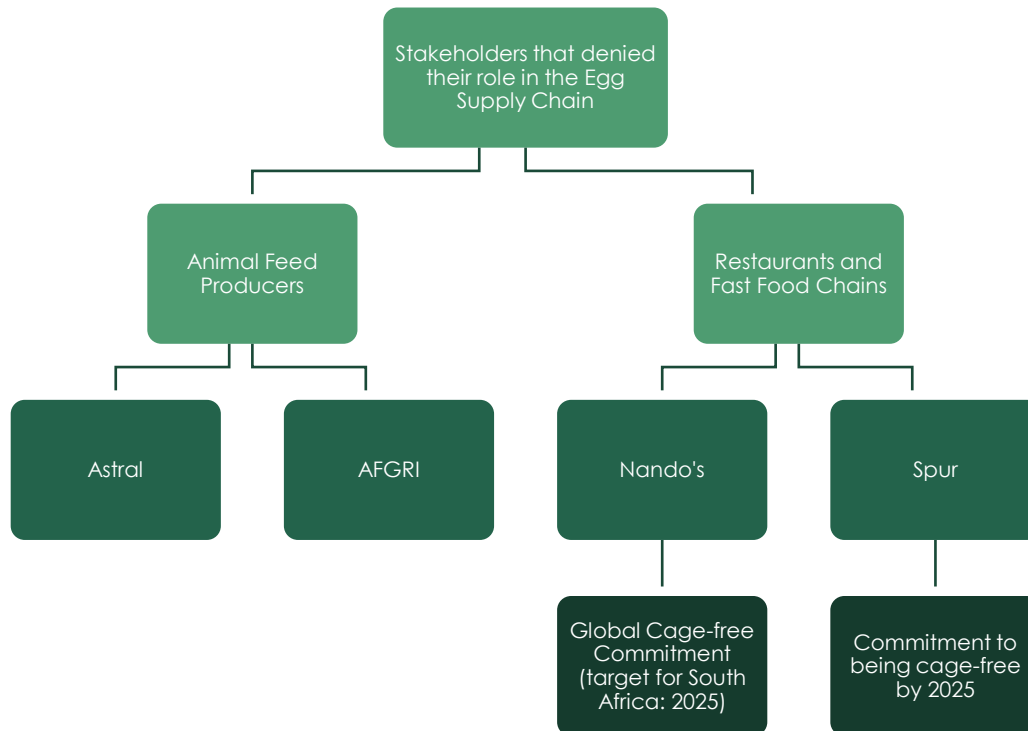
Many of the Phase 2 Selected Stakeholders denied their role in the Egg Supply Chain. This denial was inconsistent with, for example, producing feed for Layer Hen or serving eggs at their operations. Notably, two of the Phase 2 Selected Stakeholders that denied their role in the Egg Supply Chain have made Cage-Free Commitments in respect of eggs.

One of these was Nando's, which not only denied involvement in the Egg Supply Chain, but also denied selling eggs or products containing eggs. However, Nando's has made a Cage-Free Commitment and that its website states the following: "*We believe that by both joining the global drive to source cage-free eggs and working closely with our suppliers we will be able to move to 100% free range eggs in...South Africa by 2025*".⁸⁹¹ It is difficult to reconcile Nando's denial of its role in the Egg Supply Chain with its Cage-Free Commitment.

⁸⁹⁰ Advertising standards agencies / regulatory bodies / tribunals such as the Advertising Regulatory Board of South Africa ("ARB"), the Advertising Standards Authority ("ASA"), the Consumer Protection Commission (part of the National Consumer Commission ("NCC")), the Competition Commission of South Africa ("CCSA"), Consumer Goods Council South Africa ("CGCSA") etc.

⁸⁹¹

<https://www.nandos.co.za/help/3#:~:text=Currently%2C%20cage%2Dfree%20eggs%20are,within%20these%20markets%20by%202030.>



Graphic representation illustrating the Phase 2 Selected Stakeholders that denied their role in the SA Egg Supply Chain.

X Apparently Contradictory Claims

In reviewing information received from Phase 2 Selected Stakeholders, we noticed potentially unsubstantiated claims.

Woolworths, for instance, in its annual sustainability report titled “Good Business Journey Report 2023”, stated that “[i]ndependent bodies regularly visit, inspect, and audit Woolworths’ suppliers to ensure compliance with our animal welfare requirements” and “100% of Woolworths whole eggs and liquid and powdered egg ingredients are free range”. In its email correspondence to ALRSA, Woolworths stated that “95 % of the egg used as an ingredient in our other food products is now also free range”. In the spirit of advancing transparency and accountability, and to address this apparent contradiction, we requested access to any and all records related to these independent bodies’ visits, inspections and audits conducted on Woolworths’ suppliers. However, such records were not provided to us.

X Uncertainty Regarding Company Structure

Due to outdated information contained in certain of the Phase 2 Selected Stakeholders’ PAIA Manuals, uncertainty arose in respect of company structures. This presented an obstacle in issuing requests to the relevant company and required further engagement with Phase 2 Selected Stakeholders in order to ensure the correct company and/or subsidiaries were approached for access to information.

For instance, upon requesting access to information from Famous Brands (related to its Wimpy, Steers, and Mugg and Bean stores), we were informed that its primary operating entity is Famous Brands Management Company (Pty) Limited. Further, we were informed that the entity known as the Wimpy Marketing Fund (Pty) Limited has been deregistered and had never been an operating entity insofar as Wimpy franchised outlets were concerned. Famous Brands also claimed that Steers (Pty) Limited and Mugg and Bean Franchising (Pty) Limited, are solely trademark holding entities with no involvement in the operation of franchised outlets.

Despite this, in terms of the latest publicly available version of Famous Brands' PAIA Manual, Wimpy Marketing Fund (Pty) Ltd is listed as a subsidiary of Famous Brands. The same is applicable for Steers (Pty) Ltd and Mugg and Bean Franchising (Pty) Ltd. Furthermore, when requesting information during Phase 1 of our Project, the responses indicated that these entities were operating as subsidiaries. This was not denied until our engagement with Famous Brands during Phase 2.

X Unverifiable Claims

Certain Phase 2 Selected Stakeholders made claims relating to certain requests but subsequently failed to provide records substantiating these claims.

For example, Famous Brands that claimed that its *“sole directive to franchisees is to utilise approved free-range, cage-free egg suppliers”*. The validity and credibility of this statement cannot be confirmed or substantiated without access to relevant records that verify the directive and sourcing practices of the relevant franchisees and suppliers, which were not provided.

X Non-compliance with Obligations / Misunderstanding PAIA

As with Phase 1, certain Phase 2 Selected Stakeholders failed to comply with their obligations stemming from PAIA. This is particularly evident through the vast number of non-responsive stakeholders, particularly those directly linked to the production of eggs in the industry and suppliers of feed to the millions of Layer Hens in the Egg Supply Chain.

Astral, the largest integrated poultry producer in the country, demonstrated a lack of transparency in its interactions with ALRSA. Astral adopted an obstructive stance towards our PAIA request, disregarding the significance of the requested records for protecting environmental rights. Additionally, Astral claimed that because ALRSA did not pursue the internal appeal process provided in PAIA subsequent to its refusal to provide access to information in Phase 1 of our Project, it should be excluded from Phase 2.

X (Mis)interpretation of the Environmental Right

As with Phase 1, certain Phase 2 Selected Stakeholders expressly failed to recognise the interlinked nature of our request to the environmental right and the consideration of animal welfare, as well as ALRSA acting in the public interest to defend the environmental right, among others. For instance, both Spur and Nando's stated: *“Your request is solely based on animal cruelty and ALRSA is not a statutory body*

empowered by any law to protect, uphold, investigate, or police animal welfare or animal cruelty. As such, ALRSA has no right to protect and/or enforce in this regard... Your request fails to (i) set out a substantive explanation or justification as to why the records are required for the exercise or protection of an enforceable right (if any); and (ii) provide how the requested information would assist ALRSA in exercising or protecting an enforceable right (if any)."

SECTION IV

COMING HOME TO ROOST

FINDINGS & RECOMMENDATIONS



SECTION IV

COMING HOME TO ROOST

This Section IV serves as the conclusion of this Supplementary Report arising from our comprehensive analysis and seeks to synthesise certain critical insights and propose a path forward.

Based on our research, analysis and engagements from Phase 2 (which builds on our findings from Phase 1), Part A contains our list of **13 Recommendations**. Part B contains proposals for further research and potential actions, and Part C contains selected observations and concluding thoughts.

PART A: RECOMMENDATIONS

This Part A contains a list of **13 (thirteen)** recommendations (and sub-recommendations) for different stakeholders relevant to the Egg Industry including Corporations, industry bodies, members of the public, consumers, government and civil society organisations. It contains both legal and non-legal avenues and tools aimed at ensuring increased Corporate Accountability and Corporate Transparency as well as increased protection for animals, the environment and consumers. It should be read with Part B to create a more holistic picture of a potential roadmap and greater understanding.

Our Initial Report contained a list of 17 recommendations, most of which are re-included herein (albeit in a different form), due to the fact that these have not been properly implemented since the release of the Initial Report. Some of these recommendations are repeated, others are updated and some are new in light of findings flowing from Phase 2 and this Supplementary Report.

We have attempted to group our recommendations into issue areas, however there is overlap between and intersection among the different recommendations. Similarly, there is overlap between some legal and non-legal tools, as ideally, many of the recommendations would be incorporated into tangible legal obligations (and/or rights), however, as an interim measure, the role player to which the recommendation relates is recommended to take such actions, even in the absence of a legal requirement to do so.

Certain recommendations relate to only relevant stakeholders and include Corporations; Selected Stakeholders and Phase 2 Selected Stakeholders; other role players in the Egg Industry; industry bodies; government; civil society, and consumers respectively.

Non-legal Avenues and Tools



COMMITMENTS



TRANSPARENCY
AND REPORTING



ENGAGEMENT AND
CO-OPERATION



THIRD-PARTY
CERTIFICATIONS



INTERNAL POLICIES



RESEARCH AND
DEVELOPMENT



INDUSTRY
STANDARDS AND
BODIES



CONSUMER
ACTIONS AND
INITIATIVES

*Graphic Representation of proposed Non-legal Avenues and Tools (above) and
Legal Avenues and Tools (below)*

Legal Avenues and Tools



REFORM ANIMAL
LAWS AND
ENFORCEMENT



REFORM
TRANSPARENCY AND
REPORTING LAWS AND
ENFORCEMENT



REFORM
ENVIRONMENTAL
LAWS AND
ENFORCEMENT



REFORM CONSUMER
LAWS AND
ENFORCEMENT



ESTABLISHMENT OF
GOVERNMENT FORA

Key to Recommendations in this Part:

[Updated] Recommendations are indicated in square brackets – these were included in some form in the Initial Report, but Phase 2 has revealed the need to update them, amend them or provide additional information or requirements on these.

***New* Recommendations** are indicated with asterisks – which were not included in the Initial Report.

^Repeated^ Recommendations are indicated with carets – which have not been amended or updated since their inclusion in the Initial Report, but which are still relevant for purpose of this Supplementary Report.

NON-LEGAL AVENUES AND TOOLS

Although much of the focus of the recommendations in this section, they are not limited to Corporations but extend to and include industry bodies which Corporations are part of, and which act on their behalf, including in the poultry and Egg Industry, the SAPA and the CGCSA (although there are various other industry bodies, associations and organisations) and other industry role-players.



1: COMMITMENTS

[UPDATED] AND *NEW RECOMMENDATION

✓ 1.1 Animal Welfare and Well-being Commitments [Updated] Recommendation

In our Initial Report, ALRSA encouraged the Selected Stakeholders (which would now also include the Phase 2 Selected Stakeholders) who have not yet done so, as well as other stakeholders operating within the Egg Industry in SA, to make commitments to enhance animal protection and welfare.

In our Initial Report, we recommend that “[f]or those Corporations who have already made such Animal Welfare Commitments, these must be fulfilled through transparent reporting on their progress and any deviations therefrom. Stakeholder engagement and compliance with PAIA is one way to monitor fulfilment.”

✓ 1.1.1 Cage-Free Commitments [Updated] Recommendation

A specific and tangible commitment that Corporations can make to reduce animal suffering and promote their welfare and well-being is a Cage-Free Commitment. In our Initial report, we noted “ALRSA encourages the Selected Stakeholders who have not yet done so, as well as other stakeholders operating within the Egg Industry in South Africa to make cage free commitments.”

As an updated component to this recommendation, we further recommend that in respect of any Cage-Free Commitments made, or to be made, for them to legitimate, consistent and to ensure that they do not amount to Corporate Hypocrisy, particularly Humane-washing, they should:

- include all subsidiaries and other entities over which they have control (ideally within their corporate group);

- include all regions in which the Selected Stakeholders and/or Phase 2 Selected Stakeholders operate or have activities;
- apply throughout its supply chain;
- apply to all egg products whether these be whole eggs, liquid eggs, powdered eggs, and/or egg-containing products (in any form); and
- commitments are made within a reasonable timeframe.

Insofar as it relates to properly fulfilling Cage-Free Commitments, we recommend that Corporations:

- regularly report on progress towards going cage-free;
- ensure that reporting is done per specific region and country and not does consist of broad / vague statements; and
- keep adequate records of their progress / challenges and make these available to the public.

Making Cage-Free Commitments and reporting meaningfully on their progress will have positive consumer-facing benefits for Corporations (and their stakeholders) and would also set Corporations apart from their competitors by appealing to ethically and environmentally conscious consumers.

For example, the Corporation could potentially receive good publicity from being featured in and receiving positive ratings / rankings in public reports such as the OWA Africa Ranking Report,⁸⁹² as well as the International Cage Free Equity Index by Mercy for Animals.⁸⁹³

See additional recommendations under Recommendation 4 below.

✓ 1.1.2: Other Corporate Commitments to Improved Animal Welfare and Well-Being, Including Alternatives [Updated] Recommendation

In our Initial Report, we recommend that *“In addition to making specific Cage Free Commitments, Corporations can make additional commitments which will have positive impacts on animal welfare and well-being. For example, they can introduce an Internal Policy stating that they will only procure free-range eggs or avoid certain products, or that they will not support suppliers who undertake certain Cruel Practices or supply certain products. For example, Woolworth’s Animal Welfare Policy states that they have been assisted in the development of badger-friendly honey and are also supporting the development of wildlife-friendly farming protocols. Notably, Pick n Pay has a sustainable seafood policy and in 2011, it became the first retailer in Africa to make the commitment to only sell sustainable seafood.”*

It is proposed that Corporations make tangible commitments to other animal protection related matters, including the phasing out of Cruel Practices (which reduce animal suffering) and the promotion of positive practices (which promote animal flourishing). These should relate to all animals impacted by or in their operations and not apply only to certain species and / or contexts. These can also be included in Internal Policies (as further discussed below). However, commitments often provide more incentive as there are other stakeholders involved (such as civil society organisations which have assisted in securing

⁸⁹² The Humane League <https://thehumaneleague.org/article/2023-africa-ranking-report> (accessed on 14 August 2024).

⁸⁹³ Mercy for Animals <https://mercyforanimals.org/cagefreeequity/> (accessed on 14 August 2024).

commitments) and they are commitments to do something within a certain timeframe, as opposed to policies, which may apply until they are updated.

In addition, commitments should encompass the abovementioned elements in relation to Cage-Free Commitments, including but not limited to that they should apply to a Corporation's entire supply chain, and all of their operations. It should not only apply to certain regions, as this is inequitable and problematic. Corporations should be open to engaging with civil society organisations in respect of commitments.

In our Initial Report, we recommend that *“Corporations could [commit] to the use of alternatives to animal-sourced foods. This includes, for example, providing non-animal sourced eggs (such as Just Egg) and products containing eggs with egg-alternatives.”*

✓ 1.2: Environmental Commitments *New* Recommendation

To enhance accountability in the Egg Industry, Corporations and industry bodies, and industry representatives alike should adopt robust environmental and sustainability commitments. These could include pollution reduction, ecosystem protection, and net-zero carbon emissions commitments. These commitments will place certain obligations on Corporations and pressure to comply with them within a certain timeframe. For example, to adhere to net-zero carbon emissions, a Corporation could be required to transition to renewable energy usage, among other actions, and report on their progress and limitations towards achieving the commitment. These efforts can drive meaningful change, ensuring a healthier environment and a more sustainable future for egg production.

As with the Cage-Free Commitments recommendation above, there should be certain parameters to commitments, to ensure that they are legitimate, consistent and do not amount to Corporate Hypocrisy, particularly Greenwashing.

✓ 1.3 Consumer Protection Commitments *New* Recommendation

Corporations, industry bodies and industry representatives in the Egg Industry should prioritise and make commitments to protect consumer rights. These could include transparent, clear and accurate labelling and marketing of goods and services; transparency relating to supply chains, Responsible Sourcing, and enhanced, accurate reporting on animal welfare and environmental concerns (among others) which would assist and empower consumers in making informed decisions.

As with the Cage-Free Commitments recommendation above, there should be certain parameters to commitments, to ensure that they are legitimate, consistent and do not amount to Corporate Hypocrisy, particularly Greenwashing.



2: TRANSPARENCY AND REPORTING

[UPDATED] RECOMMENDATION

To enhance Corporate Accountability in the Egg Industry, Corporations, industry bodies and industry representatives (among other stakeholders) can adopt several non-legal transparency measures, including reporting. These initiatives can help build trust with consumers, stakeholders, and the broader

community. It is proposed that many of the below recommendations ultimately be incorporated into law and policy, in order to ensure compliance and accordingly, many of the below recommendations are repeated in the Legal Avenues and Tools section below, with the distinguishing factor of the below measures being voluntary, non-legally binding and non-enforceable, whereas once they are incorporated into legislation, they would be mandatory and enforceable.

Although there are numerous issues of relevance that could be highlighted in support of transparency by industry bodies, several specific recommendations have been included below as minimum requirements in moving towards a more transparent Egg Industry in SA:

✓ 2.1: Environmental Reporting *New* Recommendation

✓ 2.1.1 Aligning Reporting Practices with Foreign and International Standards *New* Recommendation

Corporations could voluntarily adopt environmental reporting practices which align with international frameworks such as the UK's SDR and the EU's SFDR. These regulations aim to standardise sustainability information and enhance accountability in Corporate practices, particularly within the Egg Industry. Directives such as the EU Taxonomy for Sustainable Activities and the CSDDD should be considered to guide local businesses in adopting sustainable practices and reporting mechanisms.

✓ 2.1.2: Including Animal Welfare and Well-being in Sustainability Reporting⁸⁹⁴ *New* Recommendation

Corporations could publish regular sustainability reports that detail their environmental impact, resource usage, and initiatives for reducing carbon footprints (among others). Animal welfare and well-being should be part of these reports to give full effect to the environmental right. This aligns with the increasing demand for transparency regarding ESG and recognises animals and their welfare and well-being as part of the right to environment.

✓ 2.1.3: Integrated Reporting to Monitor Sustainability Performance *New* Recommendation

Corporations could adopt integrated reporting practices can provide a holistic view of a Corporation's performance, combining financial and non-financial data.⁸⁹⁵ This approach allows stakeholders to see how sustainability initiatives affect overall business performance and long-term viability.⁸⁹⁶

⁸⁹⁴ *Supra* note 452.

⁸⁹⁵ Kaya, C.T et al (2016) Essence of integrated reporting: a holistic framework for sustainability and value creation. *International Journal of Academic Research in Accounting, Finance and Management Sciences*, 6(1), pp.29-34, accessible at: https://www.researchgate.net/profile/Ali-Sayar-2/publication/310757801_Essence_of_Integrated_Reporting_A_Holistic_Framework_for_Sustainability_and_Value_Creation/links/.

⁸⁹⁶ *Ibid*.

✓ 2.1.4: Enhancing ESG Reporting Requirements *New* Recommendation

As public (Listed) and state-owned companies transition to mandatory ESG reporting by 2025, it is crucial to ensure that animal welfare and well-being, and environmental impacts are integral components of these reports. This aligns with the increasing demand for transparency from stakeholders. It is further recommended that ESG reporting requirements should not be restricted to the aforementioned entities but should be expanded to include other types of entities which have a significant environmental footprint and impact.

✓ 2.2: Animal Welfare Reporting [Updated] Recommendation

In our Initial Report, we noted, in relation to **Reporting on Animal Welfare**, that “[a]s Corporations operating in the Egg Industry, with an inevitable impact on the welfare and well-being of animals, stakeholders should be transparent about matters pertaining thereto. This can include position statements about Cruel Practices within their supply chains, or policies in respect thereof.”

These recommendations aim to strengthen transparency within the Egg Industry, ensuring that enforcement actions are visible and that consumers have the information they need to make informed decisions. They also emphasise the importance of holding all actors within the supply chain accountable for maintaining high animal welfare and protection standards. They should be enacted in law as they relate primarily to government (DALRRD and the DFFE), as well as a statutory body (the NSPCA). However, in the absence of specific legal requirements, and in accordance with their specific mandates, such entities should nevertheless adopt an open and transparent approach by reporting on certain issues.

✓ 2.2.1: NSPCA and SPCA Reporting [Updated] Recommendation

In our Initial Report we noted that: “The NSPCA (and other bodies enforcing legislation impacting the Egg Industry including but not limited to the APA) should be required to report on enforcement of the APA such as through the requirement to maintain a database of its inspections and any actions taken in respect of citations; warnings; notices; letters; and otherwise (without breaching the provisions of any other law). Consumers and members of the public should be able to access such a database to view which stakeholders and actors within their supply chain are included in the database and for what issues.”

We repeat this recommendation, particularly in light of our engagement with the NSPCA over both Phase 1 and Phase 2 of this Project. It is apparent that reporting on animal welfare and protection matters is severely deficient, making it impossible to understand the true scope of the issue. This reporting should be mandated in law, as a legal obligation on the NSPCA. In addition to the above matters, it should include an up-to-date, publicly accessible database detailing inspection outcomes, violations identified, and corrective actions taken. Such transparency would empower consumers to make informed choices and hold companies accountable for their practices as well as the NSPCA and local Societies for the Prevention of Cruelty to Animals (“SPCAs”) as enforcement bodies.

✓ 2.2.2: DALRRD Reporting *New* Recommendation

As the primary national government department tasked with animal welfare, DALRRD should be required to collect, consolidate and publish animal welfare related information, including in respect of

animals utilised in agriculture. It is difficult to determine relevant statistics, data and other information from current records. Relevant information could relate to the scope of animal usage, import and export information, *market* information, enforcement data, information relating to animal diseases (including Avian Flu), among other issues.

✓ 2.2.3: DFFE Reporting [Updated] Recommendation

In our Initial Report, we noted that: “[i]t is recommended that the DFFE be obliged to conduct increased reporting on animal well-being, and not only wildlife crimes, as part of their NECERs, with express naming and shaming of Corporations that routinely commit Cruel Practices in the Egg Industry. This should be done with a level of urgency and seriousness, akin to the environmental impacts on natural resources such as water, land, water and air quality, and efforts to address climate change.”

Based on the ALP Manifesto and its proposals regarding transparency, we make the following recommendations in relation to mandatory reporting on animal welfare and well-being in the Egg Industry: including Animal Welfare in Environmental Audits. Environmental audits required in terms of Environmental Legislation should include assessments of animal welfare practices, ensuring that stakeholders in the Egg Supply Chain adhere to humane treatment standards.

✓ 2.2.4: Information Systems / Databases [Updated] Recommendation

As is the case with certain environmental laws, animal law should mandate information systems. Consumers should have easy access to information regarding the welfare standards of egg producers. This could be achieved through a centralised platform where consumers can view detailed reports on individual farms or producers, including welfare certifications, compliance records, and any incidents of non-compliance. Labels on egg products should also include QR codes linking to detailed information about the egg's origin and production conditions.

✓ 2.3: Consumer Protection Reporting *New* Recommendation

Regularly publishing reports on compliance with consumer protection laws, and efforts to improve transparency in product labelling, supply chains, etc. can reassure consumers about the quality and safety of products, as well as the environmental and animal welfare impacts of their production.

Engaging with stakeholders through surveys and feedback mechanisms can provide valuable insights into consumer expectations and concerns. Corporations can publish reports detailing the feedback received and how they plan to address these issues, fostering a culture of openness and efforts to promote consumer protection.

In addition, any proceedings (in tribunals, courts, or other fora) which a Corporation is involved with relating to bad corporate practices (for example alleged non-compliance with consumer-related laws) or Corporate Hypocrisy should be made publicly available.

✓ 2.4: Reporting on Adverse Findings ^Repeated^ Recommendation

In our Initial Report, we noted, in relation to Reporting on Adverse Findings, that “Stakeholders should be required to publicly report on their activities to consumers and the public (online or in an otherwise

accessible manner). Reporting should include warnings, citations, notices; letters and other forms of enforcement relating to their supply chains, issued by animal protection organisations including the NSPCA and SPCAs (without breaching the provisions of any other laws)...”.

For purposes of this Phase 2, we propose extending these recommendations to not only apply to animal protection, but also instances of non-compliance with other legislation including environmental and consumer legislation.

✓ 2.5 Community Impact Reporting *New* Recommendation

Corporations can report on their impact on communities, contributions to local communities, including job creation, community projects, and educational initiatives. This demonstrates a commitment to CSR and can enhance community relations. It would provide a fuller snapshot of the impact of a business’ operations, and not only include positive initiatives, but recognise potential negative and harmful actions.

✓ 2.6: Reporting on Sourcing and Supply Chains [Updated] Recommendation

As indicated in our Initial Report: *“Corporations should be transparent about their sourcing and which role-players are part of their supply chains, including the sourcing of their products and animals. In addition to their own position, information relating to the animal welfare practices associated with others in the Egg Supply Chain should be provided. For example, in the case of eggs: the types of systems utilised, the diet of such animals, and otherwise. Consumers and members of the public will then be able to access such information and make more informed decisions about their purchases. Moreover, it is only truly possible to confirm adherence with a Cage Free Commitment on the part of a retailer if they are transparent about their supply chain.”*

Providing information about an entity’s supply chain, including suppliers, sourcing practices and supplier standards, can help build trust. Companies can utilise platforms that allow consumers to trace the origin of their products, enhancing transparency and accountability.

All actors within the Egg Supply Chain should be required to adopt transparent practices, particularly regarding the treatment of Layer Hens. This includes public reporting on farming practices, feed quality, living conditions, and the measures taken to ensure animal welfare. Stakeholders should be encouraged to participate in third-party audits and make the results available to the public.

For purposes of this Supplementary Report, we recommend that Corporations utilise online platforms that allow consumers to trace the origin of their products, enhancing transparency and accountability,⁸⁹⁷ or include QR codes on products for further information.

By implementing these measures, Corporations in the Egg Supply Chain can significantly enhance their accountability and transparency, aligning with global trends and consumer expectations.

⁸⁹⁷ Medium <https://news.morpheus.network/supply-chain-transparency-how-technology-enhances-visibility-and-builds-consumer-trust-55bc87b91d14> (accessed on 14 August 2024).

✓ 2.7: Whistleblower Protections *New* Recommendation

Providing for whistleblower protection programs including for problematic and unethical practices (including potential animal abuse), can encourage employees and stakeholders to report problematic practices without fear of retaliation.

✓ 2.8: Additional Disclosures *New* Recommendation

Financial institutions under the SARB should enhance climate risk disclosures, incorporating animal welfare and well-being considerations into their ESG frameworks.

● 3: ENGAGEMENT AND CO-OPERATION
[UPDATED] RECOMMENDATION

In addition to consumers and members of the public, Corporations, industry bodies and other role-players in the Egg Industry should consider civil society organisations as stakeholders relevant to their business operations and activities, and to whom they owe duties and obligations.

Establishing mechanisms for open dialogue and constructive engagement can help mitigate misunderstandings and foster trust between Corporations and advocacy groups and help align business practices with societal values. By collaborating with civil society to source products that benefit animals, the environment, and people, Corporations can attract more ethically conscious consumers.

✓ 3.1: Increase Positive and Pro-Active Engagement [Updated]
Recommendation

In our Initial Report, we indicated that, *“It is recommended that Corporations within the Egg Industry cooperate and engage with the animal protection sector in an effective manner, as important representatives of civil society (including animal, human and environmental interests) on public interest matters. This includes responding to requests (for information or engagement through meetings) in a manner that is not hostile and remaining open to hear and discuss proposals put forward (including about Animal Welfare Commitments). Civil society organisations play a crucial role in assisting the public with the enforcement of their rights and in particular, alliances of various organisations (such as OWA).”*

✓ 3.1.1: Collaborate on Animal Welfare and Well-being Initiatives
New Recommendation

Corporations, industry bodies and other industry stakeholders should work closely with animal protection organisations and other civil society groups to develop and implement animal welfare and well-being related policies and practices. They should also engage in joint initiatives to improve animal standards and practices across the industry. This would include responding to communications relating to meetings and requests and approaching communications with an attitude of openness and willingness to engage effectively.

Corporations, industry bodies and other industry stakeholders are encouraged to share information, documentation and research relating to issues of importance to civil society organisations. Further, in the interests of transparency, representatives of civil society should be allowed access to facilities and

operations (subject to compliance with relevant procedures and safety requirements) to have insight into realities on farms and in production facilities, and in order to verify claims made by stakeholders.

In addition, it is proposed that the NSPCA and SPCAs engage and cooperate with other animal protection organisations. Our observations indicate that the current approach of these entities is a stumbling block towards accountability and transparency and is hindering animal protection efforts.

✓ 3.1.2: Initiate and Implement Multi-Stakeholder Dialogue⁸⁹⁸
New Recommendation

Multi-stakeholder dialogue is a collaborative process that brings together diverse role-players from a particular industry (or various industries), including Corporations, governments, industry bodies, consumers, and civil society, to address common challenges and foster mutual understanding.⁸⁹⁹ It entails structured discussions aimed at problem-solving, consensus-building, and collective learning among participants, facilitating partnerships and influencing policies related to pressing global issues such as sustainable development and responsible business practices.⁹⁰⁰

✓ 3.1.3: Establish Joint Working Groups and Platforms for Engagement *New* Recommendation

Joint working groups and platforms should be created that include representatives from civil society organisations, advocates (including animal, environmental and rights), and industry stakeholders. These groups can discuss the most pressing issues, focus on developing best practices, share knowledge, and address common concerns including in relation to animal welfare and sustainability in the Egg Industry.

These groups or platforms should host regular meetings and/or forums where parties can raise and discuss issues, share insights, and collaboratively develop solutions. This approach ensures that diverse perspectives are considered, fostering mutual understanding and cooperation.

✓ 3.1.4: Incorporate Civil Society Feedback *New* Recommendation

Corporations, industry bodies and other industry stakeholders are encouraged to consider and meaningfully incorporate feedback from civil society organisations when developing and updating policies and practices, including in relation to animal, environmental and consumer practices.

✓ 3.1.5: NSPCA and SPCA Engagement *New* Recommendation

Our analysis and experience in both Phase 1 and Phase 2 have revealed that the current approach of NSPCA and SPCAs in respect of engaging and collaborating effectively with other animal protection organisations is a major stumbling block towards accountability and transparency and is hindering broader animal and environmental protection efforts. It is proposed that the NSPCA and SPCAs adopt a more collaborative and open approach to other animal protection organisations operating in SA.

⁸⁹⁸ *Supra* note 865.

⁸⁹⁹ *Ibid.*

⁹⁰⁰ *Ibid.*

✓ 3.2: Reduce Negative Engagement [Updated] Recommendation

In our Initial Report, we indicated that, *“On the other side of the spectrum, threatening litigation including strategic litigation against public participation (SLAPP suits) should not be countenanced, and where possible open channels of communication for legitimate requests and respectful interactions should be maintained.”*

Corporations, industry bodies and other industry stakeholders which threaten non-profit organisations for engaging with Corporations in good faith, and/or in the public interest to obtain commitments to better practices (such as for example, Cage Free Commitments for Layer Hens) are at risk of appearing as oppressors of fundamental rights. It is not in the interests of industry to take a hostile stance to such efforts, as it might appear contrary to principles and values in the Constitution. Such threats may do more harm than good - resulting in lengthy litigation, which could end badly for the initiator, as it could cause consumers to lose faith in the industry and lead to greater (negative) publicity and public action.



4: THIRD-PARTY CERTIFICATIONS

[UPDATED] RECOMMENDATION

Third party certifications can encourage consumer confidence as there is an independent valuation process with standards. However, there are potential risks associated with such certifications as there can still be Corporate Hypocrisy involved and such confidence may be unfounded. Third-party certifications can sometimes serve as marketing tools rather than genuine indicators of good practices in reality (in respect of animals, and the environment, among other issues). Thus, it is crucial that standards are available for critically assessment and interrogations to ensure claims are legitimate and verifiable.

✓ 4.1: Public Release of Third Party Certifications *New* Recommendation

Third-party certifications, specifically that impact rights, such as the environmental (which includes animal welfare and well-being), should be publicly available and non-confidential.

Specifically, the SABS as a statutory body which develops standards should release these standards to members of the public instead of requiring these to be purchased. This is particularly important for animal- and environmental- standards which are not publicly available.

✓ 4.2: Obtain Third Party Certifications *New* Recommendation

To the extent applicable to them and their operation (including their products, such as eggs), Corporations are encouraged to initiate, apply for and obtain third-party certifications. Such third-party certifications should be made publicly available for transparency and auditing purposes, or they risk being meaningless. In addition, auditing and compliance (or non-compliance) with such standards should be made available

✓ 4.3: Commit to Sourcing from Suppliers with Third Party Certifications [Updated] Recommendation

In our Initial Report we noted that, *“It is recommended that Corporations make commitments to source from certified sources with higher welfare standards and aligned with best international practices. For*

example, Woolworth's Animal Welfare Policy states that they do not permit animal testing and their entire private label range of toiletries and cosmetics are endorsed by Beauty Without Cruelty (BWC)." This requires that Corporations know their suppliers and practices very well.

✓ 4.4: Consumer Education and Awareness in respect of Third-Party Certifications [Updated] Recommendation

In our Initial Report we noted that, *"Consumers should be informed of the existence of different Third-Party Certifications and what these standards actually require of producers, specifically in relation to eggs. This information should be made available by those stakeholders who supply eggs directly to the public – for example retailers, restaurants, fast food chains, hotels and others. This will ensure Consumers have knowledge of such Third-Party Certifications and what they mean."*

Stakeholders in the Egg Supply Chain, including retailers and food service providers, should actively inform and educate consumers about the various third-party certifications available, and those that they endorse, and the true meaning of the certifications, as well as the potential risk of trusting the certifications blindly. This education should clarify what these certifications entail, particularly regarding animal welfare and egg production standards. Consumers must understand that these certifications, while indicative of certain welfare practices, are not legally binding and do not guarantee compliance with the highest welfare standards.

✓ 4.5: Assist with the development of Robust and Progressive Third-Party Certification Standards (and Regular Revision) *New* Recommendation

Corporations, industry bodies and other industry stakeholders should work together with civil society organisations as representatives of members of the public and consumers to develop (and adapt, if necessary) robust third-party certifications that ensure high standards and progressive measures in relation to animal, environmental and consumer protection.

5: INTERNAL POLICIES [UPDATED] RECOMMENDATION

✓ 5.1: Development of Robust and Progressive Internal Policies (and Regular Revision) [Updated] Recommendation

In our Initial Report, we noted that, *"It is recommended that Corporations develop, publish and implement robust internal policies relating to animal welfare, environment, and issues implicated in the other Pillars (such as in relation to consumer protection; food safety and health, and social issues and rights)."* It is further recommended that such internal policies are developed in consultation with civil society organisations to ensure the highest standards.

In our Initial Report, we noted that, *"Corporations should further reinforce their commitments and respective stances for enhancing animal welfare with the development of their own Internal Policies. This could include comprehensive Progressive Measures to address Cruel Practices, specifically regarding Layer Hens and Chicks. Internal Policies should contain specific references to harmful welfare practices and the stakeholder's response towards permitting, phasing out or, optimistically, the complete prohibition of*

common yet harmful Cruel Practices. Furthermore, these Internal Policies should be further monitored, updated and enforced regularly to its suppliers and customers, as applicable.”

Corporations should establish a clear process for reviewing and updating their Internal Policies regularly, especially if significant changes occur relevant to their operations, within the industry, regulatory landscape, or stakeholder expectations. The review process should involve consultation with internal and external stakeholders, including civil society organisations such as animal welfare and environmental organisations, consumer groups, and industry peers; benchmarking against industry best practices and international standards; and assessing the policy's effectiveness in driving positive change and identifying areas for improvement.

As Corporations review and update their Internal Policies, they should ensure that they address emerging issues and challenges related to animal welfare, environmental sustainability, and other key areas. This may include addressing new scientific findings on animal sentience and welfare; incorporating innovative technologies and practices to improve animal welfare and environmental outcomes; and responding to evolving consumer preferences and expectations.

✓ 5.2: Public Release of Internal Policies [Updated] Recommendation

Internal Policies, and specifically those that impact rights, such as the environmental (which includes animal welfare and well-being), should be publicly available and non-confidential. Corporations should avoid using confidentiality clauses or other measures that restrict the accessibility of these policies to stakeholders and the general public.

✓ 5.3: Commit to Sourcing from Suppliers with Internal Policies *New* Recommendation

Corporations should commit to sourcing from suppliers with robust and progressive Internal Policies, particularly as these relate to animal, environmental and consumer protection. This requires that Corporations know their suppliers and practices very well.

✓ 5.4: Consumer Education and Awareness in respect of Internal Policies ^Repeated^ Recommendation

In our Initial Report, we noted that, “Consumers should be informed (by those stakeholders who supply eggs directly to the public – for example retailers, restaurants, fast food chains, hotels and others) of the Internal Policies of such stakeholders. Specifically, what the animal welfare, environmental and other internal policies say. Consumers can then demand and put pressure on Corporations to require them to source from and sell products including eggs that have the relevant third-party certification.”

✓ 5.5: Reporting on and Enforcement of Industry Standards Internal Policies [Updated] Recommendation

Corporations should be required to report publicly on their internal policies, including compliance or non-compliance therewith.

6: RESEARCH AND DEVELOPMENT

NEW RECOMMENDATION

✓ 6.1: Release the NAMC Study *New* Recommendation

The NAMC Study must be made publicly available, with any appropriate information redacted. As has been highlighted in this Supplementary Report and our Initial Report, this study is being utilised to influence law and policy and is being shared by industry bodies such as the CGSA to influence its members. The executive summary is not sufficient to interrogate the study and its results. Due to the significant potential impact of this study on animal practices, environmental protection and consumer and human rights, it should be released publicly.

✓ 6.2: Conduct and Release Research *New* Recommendation

Due to the dearth of information relating to certain aspects of the Egg Industry in SA (and animal agriculture more generally), it is critical that further research is undertaken to understand the South African context. Part B of the Section IV below suggests some initial aspects which require further research. It is important that this research is not funded or funded solely by role players within the Egg Industry, and that impartial, independent research is undertaken. Funding could skew results in favour of certain outcomes, and this is not necessarily in the best interests of the broader public, and/or vulnerable beings.

Industry bodies representing the Egg Industry should publish reports related to the environmental impacts, treatment of animals, and measures in place to mitigate against these harms. Furthermore, in the event that the Egg Industry conducts industry-specific research, such as the **NAMC Study**, they should ensure that this information is made available to the public.

Industry bodies should establish a public database where information related to the industry, especially information that could affect consumers' ability to make informed decisions, is easily accessible. This would include reports, studies, sources of information relied upon by industry, Egg Supply Chain details, overviews of current practices related to the treatment of animals, and the protection of the environment, along with justifications (including sources) for poor/ inhumane treatment of animals.

✓ 6.3: Investment in Developing of Improved Technologies *New* Recommendation

As indicated in our Initial Report, “*South Africa (particularly the Poultry Industry and Egg Industry) should initiate efforts in respect of ovo-sexing as well as investments into research and development for such technologies as other countries have done (as further described in the Animal Welfare Pillar in Section III above). Including requirements for this in legislation will ensure these efforts and investments are critical to reduce the suffering and killing of male Chicks.*”

7: INDUSTRY STANDARDS AND BODIES

***NEW* RECOMMENDATION**

✓ 7.1: *Industry Bodies* *New* Recommendation

Corporations are encouraged to join relevant industry bodies provided that such bodies are transparent and accountable not only to the industry but members of the public more broadly. While it recognised that such bodies generally represent industry interests including economic aims, it is submitted that such interests should encompass the consideration of external stakeholders, as well as the impact of their activities (which would include in relation to consumers, the environment and animals). Industry bodies are encouraged to engage and cooperate with civil society organisations and be committed to the highest standards, which would ultimately benefit corporate activities.

✓ 7.2: *Development of Robust and Progressive Industry Standards (and Regular Revision)* New* Recommendation

Industry bodies should develop, publish and implement robust standards relating to animal welfare and well-being, environment, and issues implicated by their operations (such as in relation to consumer protection; food safety and health, and social issues and rights). It is further recommended that these are developed in consultation with civil society organisations to ensure the highest standards.

It is submitted that industry standards should include Progressive Measures to address Cruel Practices, specifically regarding Layer Hens and Chicks. They should contain specific references to harmful welfare practices and the industry's response towards permitting, phasing out or, optimistically, the complete prohibition of common yet harmful Cruel Practices. Furthermore, these standards should be further monitored, updated and enforced regularly to the industry role players and members of such bodies.

✓ 7.3: *Public Release of Industry Standards* *New* Recommendation

Industry Standards and specifically that impact rights, such as the environmental (which includes animal welfare and well-being), should be publicly available and non-confidential. Industry Bodies should avoid using confidentiality clauses or other measures that restrict the accessibility of these standards to stakeholders and the general public.

✓ 7.4: *Consumer Education and Awareness in respect of Industry Standards* *New* Recommendation

Consumers should be informed (including by those stakeholders who supply eggs directly to the public – for example retailers, restaurants, fast food chains, hotels and others) of Industry Standards. Specifically, what the animal welfare and well-being, environmental and other standards say. Consumers will in turn have a better understanding of industry practices, expectations and realities.

✓ 7.5: Reporting on and Enforcement of Industry Standards **New* Recommendation*

Corporations should be required to report publicly on their compliance or non-compliance with Industry Standards, and industry bodies should similarly report on enforcement measures to ensure the integrity of these standards and bodies.

8: CONSUMER ACTIONS AND INITIATIVES

**NEW* RECOMMENDATION*

Consumers (including with the assistance and support of civil society organisations and other stakeholders) are encouraged to utilise (both legal and) non-legal avenues to have their voices heard and ensure their rights and interests are protected. This is particularly so in the case of apparent Corporate Hypocrisy, and instances where they may perceive harmful practices such as Greenwashing, Humane-washing, Blue-washing and Health-washing to be occurring.

We make the following recommendations to consumers:

✋ 8.1: Education Around Products, Practices and Impacts **New* Recommendation*

Consumers are encouraged to do research within their means to find out more about animal welfare and well-being and environmental practices in animal agriculture. They can view our [Project website](#) for more information and easy to understand infographics. More specifically, in the context of the Egg Industry, consumers are encouraged to do research into aspects such as: Animal Welfare (and Cruel Practices involved in the Egg Supply Chain that cause suffering and pain to Layer Hens including, but not limited to the use of Battery Cages, beak trimming, de-toeing or toe clipping, and/or overstocking within cages and in relation to male Chicks – culling; Environmental Concerns; Food Health and Safety matters; Social Issues and Rights; Consumer Protection and/or Business and Corporate obligations.

✋ 8.2: Advocate for Cage-Free Commitments **New* Recommendation*

Encourage Corporations to commit to and follow through on cage-free egg production, monitoring and reporting their progress. In our Initial Report we noted that, “*Consumers can and should demand that Corporations source from and sell products including eggs that have the relevant third-party certification with higher welfare standards.*”

✋ 8.3: Demand Transparency from Corporations **New* Recommendation*

Call on Corporations to be transparent about their operations including sourcing practices, animal welfare standards, and environmental impacts.

✋ 8.4: Initiate or Participate in Organised Campaigns **New* Recommendation*

Consumers can initiate or participate in campaigns that educate the public about the conditions under which eggs are produced, and their environmental impact. This can involve social media outreach, community workshops, or informational flyers that highlight the importance of animal welfare and

ethical production practices. Consumers could also initiate or participate in petitions including the FOUR PAWS petition calling for the release of the NAMC Study,⁹⁰¹ and the Animal Law Project's petition calling on the government to adopt the ALP Manifesto.⁹⁰²

8.5: *Participate in Boycotts and Protests* *New* Recommendation

Organise or participate in boycotts against brands that do not adhere to ethical production standards or engage in Corporate Hypocrisy. Public protests can also raise awareness and pressure Corporations to improve their practices.

8.6: *Advocate for Responsible Sourcing* *New* Recommendation

Encourage Corporations in the Egg Supply Chain to implement strict Responsible Sourcing policies for eggs and egg products.

8.7: *Utilise Consumer Feedback Mechanisms* *New* Recommendation

Consumers can provide feedback directly to Corporations through surveys or public forums. This feedback can influence corporate policies by showing that consumers prioritise ethical practices in their purchasing decisions.

8.8: *Support Civil Society Organisations* *New* Recommendation

Engage with and support civil society groups that focus on animal welfare, environmental protection, and transparency in food production. This can include donations, volunteering, or amplifying their messages through personal networks. Consumers can also join action networks (such as SAFCEI's Fast Action Network)⁹⁰³ to participate in ongoing efforts to ensure environmental and animal protection. Consumers can follow organisations online to ensure they are aware of information and actions they are sharing.

8.9: *Lay complaints* *New* Recommendation

Consumers can monitor claims by Corporations, and if they believe there are misleading claims made by Egg Industry role-players about their practices, consumers can lay complaints with bodies like the ARB to address these concerns. Alternatively, complaints and concerns can be voiced in other fora including on social media platforms.

8.10: *Support Legislative Reform* *New* Recommendation

Advocate for stronger protections for Layer Hens including minimum space requirements and prohibitions on inhumane practices and **mandatory**, stricter regulations on labelling claims. When public comment periods are open, submit your concerns to the relevant body and have your voice heard.

⁹⁰¹ FOUR PAWS, <https://help.four-paws.org/en/egg-industry-laws-being-influenced-secret-report> (accessed on 14 August 2024).

⁹⁰² Animal Law Project, <https://animallawproject.org.za/>.

⁹⁰³ SAFCEI: <https://safcei.org/what-we-do/active-citizens-network> (accessed on 14 August 2024).

LEGAL (AND REGULATORY) AVENUES AND TOOLS

The following avenues and tools are legal in nature, and therefore require action by one of the three branches of government: legislature, executive and/or judiciary. Nevertheless, members of the public, consumers and civil society organisations play a key role to play in getting these issues on the political agenda and/or bringing them to the attention of Corporations in the Egg Supply Chain. Furthermore, some of the recommendations relate to compliance with existing law, which includes obligations for Corporations and other recommendations include legal tools which members of the public, consumers, civil society organisations and others can utilise to ensure the enforcement of their rights, legal protections and obligations and duties of relevant stakeholders.

9: REFORM ANIMAL LAWS AND ENFORCEMENT [UPDATED RECOMMENDATION]

As highlighted specifically in our Initial Report, as well as in this Supplementary Report, the current animal regulatory regime leaves much to be desired. There are several critical legislative reforms which should be enacted and enhanced enforcement for greater animal protection within the Egg Industry as further expanded on below.

✓ 9.1: Prohibited Activities [Updated] Recommendation

In our Initial Report we noted that several activities prevalent in the Egg Supply Chain in SA should be enacted as legislative bans and specific reference was made to other countries which had enacted bans on such practices, as well as practices for which alternatives exist (see for example note on ovo-sexing efforts below). We repeat our requests for banning certain practices and provide a few additional thoughts.

✓ 9.1.1: Prohibitions: Battery Cage Bans ^Repeated^ Recommendation

In our Initial Report we noted that “*South Africa should enact a legislative ban on the use of Battery Cages for Egg Laying Hens as several other countries have done...*”

✓ 9.1.2: Prohibitions: Beak Trimming ^Repeated^ Recommendation

In our Initial Report we noted that “*South Africa should enact a legislative ban on the practice of beak trimming as several other countries have done...*”

✓ 9.1.3: Prohibitions: Male Chick Culling ^Repeated^ Recommendation

In our Initial Report we noted that “*South Africa should enact a legislative ban on the culling of male Chicks as well as the methods of killing them as several other countries have done...*”

✓ 9.1.4: Prohibitions: Other Cruel Practices ^Repeated^ Recommendation

In our Initial Report we noted that “*South Africa should enact legislative bans on other Cruel Practices not specifically mentioned above but which are considered to be cruel and/or for which alternatives are available. This could include but not be limited to de-toeing...*”

✓ 9.1.5: Additional Prohibitions: *New* Recommendation

One of the key recommendations of the ALP Manifesto⁹⁰⁴ is the inclusion of so-called “**prohibited activities**”. These Prohibited Activities align with existing provisions in the APA and reflect the foundational values and guiding principles outlined in the ALP Manifesto.⁹⁰⁵ By explicitly including these Prohibited Activities in the new Animals Act (or as appropriate in the relevant legislation), SA can strengthen its commitment to animal welfare and ensure that the well-being and flourishing of non-human animals are protected.

✓ 9.2: Mandatory Positive Legal Standards [Updated] Recommendation

As indicated in our Initial Report: “*South Africa should enact positive legal standards for chickens implicated in the Egg Industry, including setting out requirements aligned with the Five Domains. This is in addition to negative standards such as the prohibition of cruelty. Such standards must be legally binding and enforceable. These cannot exist merely as “soft laws” or voluntary standards.*” While we have recommended in the ‘Non-Legal Avenues and Tools’ section above that standards including voluntary and industry standards, and other soft law tools should be enacted, in order to ensure legally binding and enforceable standards, these must be incorporated into legislation or regulation. As a baseline, a set of responsible minimum standards must ensure that animal interests are accounted for while animal flourishing is progressively realised. These ideas are similarly reflected in the ALP Manifesto which notes that **minimum** standards should be developed based on the best available science relating to animal capacities, sentience, and other relevant factors. These standards must be regularly updated and incorporated into law and regulation. They should not be set solely by animal-use industries with inherent conflicts of interest, but with input from all stakeholders. Progressive realisation requires immediate and continuous progress towards the full realisation of animal protection and flourishing.

✓ 9.3: Explicit Recognition of Sentience: [Updated] Recommendation

As indicated in our Initial Report, “*South Africa should expressly recognise the sentience of animals in law as many other countries have done, as further elaborated on in the Animal Welfare Pillar in Section III.*”

This recognition is crucial for advancing animal welfare and ensuring that legal protections reflect the inherent capacities of animals, including to have both positive and negative experiences. In addition, recognising the specific capacities of chickens can ensure that these are adequately and appropriately considered when developing standards, policies and legislation relating to them. By enshrining the concept of sentience in law, SA can enhance its commitment to humane treatment and protection of animals, fostering a more compassionate society that values the well-being of all living beings. This legal acknowledgment will also serve as a foundation for implementing more robust animal welfare and protection measures. The proposal to recognise animal sentience is incorporated as one of the three ‘Foundational Values’ within the ALP Manifesto.

⁹⁰⁴ *Supra* note 468.

⁹⁰⁵ *Ibid.*

✓ 9.4: Ovo-Sexing Legislative Efforts ^{^Repeated^} Recommendation

As indicated in our Initial Report “*Including requirements for this [ovo-sexing efforts, investments into research and development] in legislation will ensure these efforts and investments are critical to reduce the suffering and killing of male Chicks.*”

✓ 9.5: Enforcement of Animal Laws ^{*New*} Recommendation

Enforcement is a major barrier to increased animal welfare and well-being. As the NSPCA and individual SPCAs are primarily tasked with enforcing existing laws, and their enforcement is unsatisfactory for various reasons,⁹⁰⁶ this is an area which require immediate reform and attention. Increasing the number of entities and persons (subject to relevant requirements and training) which can undertake inspections will ensure greater enforcement capacity. Furthermore, by requiring stringent reporting on inspections (including making these publicly available), it will create additional transparency and accountability for Corporations and other role players in animal agriculture, including the Egg Supply Chain.

✓ 9.6: Additional Reforms ^{*New*} Recommendation

The ALP Manifesto contains a list of 20 recommendations which, if implemented, could have far-reaching implications for all animals in SA, including those implicated in the Egg Industry. The recommendations advocate for a transformative approach that aligns with constitutional values and principles, ensuring a robust framework for animal protection. It is recommended that the government give adequate consideration to the proposed recommendations to ensure that animal laws reflect constitutional developments, contemporary values and ethical considerations in the treatment of animals.

10: REFORM TRANSPARENCY AND REPORTING LAWS AND ENFORCEMENT [UPDATED] RECOMMENDATION

✓ 10.1: PAIA-related Recommendations [Updated] Recommendation

In our Initial Report, we recommend, in relation to PAIA that “*Corporations in the Egg Supply Chain enhance their understanding of and compliance with the PAIA process. At the most basic level, this means all actors within the Egg Industry should have an easily accessible and readily available PAIA Manual on their websites. This PAIA Manual should further comply with the requirements of PAIA, which demands that the manual give details of a designated information officer, as well as a comprehensive list of legislation and regulation in respect of which information may be requested. Animal Legislation and Environmental Legislation ought to be listed, given the adverse impacts of the Egg Supply Chain on animal welfare and the environment.*⁹⁰⁷ Information officers should undergo training as to what their duties are in terms of PAIA and other legislation.”

⁹⁰⁶ For more on NSPCA Enforcement issues, refer to Appendix I of this Supplementary Report, Appendix I of the Initial Report, the Animal Welfare Pillar of the Initial Report. See also: the ALP Manifesto

⁹⁰⁷ Additional legislation referred to in this Initial Report, including in terms of the specific Pillars, should also be included for the sake of completeness, given the far-reaching implications of stakeholders operating in the Egg Industry in SA.

In our Initial Report, we also recommend that *“Corporations should undergo training, including on PAIA; issues of animal welfare; and the impact of the Egg Supply Chain on constitutional rights. Various Selected Stakeholders seem to have adopted an interpretation of the environmental right which excuses them of any obligation in respect of animal welfare, with some Selected Stakeholders viewing animal welfare as not being protected by the environmental right. This interpretation is not correct, in light of the [Constitutional Court judgment] which confirmed that the environment and animal welfare are intertwined values.”*

We also recommended that, *“Corporations [should] seek advice to better understand their role in animal welfare. This includes understanding how the environmental right links with animal welfare, and what this means for their obligations, including in terms of PAIA.”*

We repeat these recommendations for purposes of this Supplementary Report and note that stakeholders should consistently uphold the objectives of PAIA, which include promoting transparency, accountability, and the public’s right of access to information. When engaging with requests for access to records—particularly those submitted by civil society organisations acting in the public interest—stakeholders (including industry bodies) should prioritise reasonable and constructive engagement. This engagement should focus on the substantive merits of the request rather than becoming unduly fixated on procedural elements. By doing so, stakeholders can foster a more collaborative and transparent environment that aligns with the spirit of PAIA.

Furthermore, the Information Regulator has a critical role to play in the enforcement of PAIA and must seek to enhance transparency and accountability.

✓ 10.2: Increased Animal Welfare and Well-Being Reporting [Updated] Recommendation

These recommendations aim to strengthen transparency within the Egg Industry, ensuring that enforcement actions are visible and that consumers have the information they need to make informed decisions. They also emphasise the importance of holding all actors within the supply chain accountable for maintaining high animal welfare and protection standards.

✓ 10.2.1: NSPCA and SPCA Reporting [Updated] Recommendation

In our Initial Report we noted that: *“The NSPCA (and other bodies enforcing legislation impacting the Egg Industry including but not limited to the APA) should be required to report on enforcement of the APA such as through the requirement to maintain a database of its inspections and any actions taken in respect of citations; warnings; notices; letters; and otherwise (without breaching the provisions of any other law). Consumers and members of the public should be able to access such a database to view which stakeholders and actors within their supply chain are included in the database and for what issues.”*

We repeat this recommendation, particularly in light of our engagement with the NSPCA over both Phase 1 and Phase 2 of this Project. It is apparent that reporting on animal welfare and protection matters is severely deficient, making it impossible to understand the true scope of the issue. This reporting should be mandated in law, as a legal obligation on the NSPCA. In addition to the above matters, it should

include an up-to-date, publicly accessible database detailing inspection outcomes, violations identified, and corrective actions taken. Such transparency would empower consumers to make informed choices and hold companies accountable for their practices as well as the NSPCA and SPCAs as enforcement bodies.

✓ 10.2.2: DALRRD Reporting *New* Recommendation

As the primary national government department tasked with animal welfare, DALRRD should be required to collect, consolidate and publish animal welfare related information, including in respect of animals utilised in agriculture. It is difficult to determine relevant statistics, data and other information from current records. Relevant information could relate to the scope of animal usage, import and export information, *market* information, enforcement data, information relating to animal diseases (including Avian Flu), among other issues.

✓ 10.2.3: DFFE Reporting [Updated] Recommendation

In our Initial Report, we noted that: “[i]t is recommended that the DFFE be obliged to conduct increased reporting on animal well-being, and not only wildlife crimes, as part of their NECERs, with express naming and shaming of Corporations that routinely commit Cruel Practices in the Egg Industry. This should be done with a level of urgency and seriousness, akin to the environmental impacts on natural resources such as water, land, water and air quality, and efforts to address climate change.”

Based on the ALP Manifesto and its proposals regarding transparency, we make the following recommendations in relation to mandatory reporting on animal welfare and well-being in the Egg Industry: including Animal Welfare in Environmental Audits. Environmental audits required in terms of Environmental Legislation should include assessments of animal welfare practices, ensuring that stakeholders in the Egg Supply Chain adhere to humane treatment standards.

✓ 10.2.4: Information Systems / Databases [Updated] Recommendation

As is the case with certain environmental laws, animal law should mandate information systems. Consumers should have easy access to information regarding the welfare standards of egg producers. This could be achieved through a centralised platform where consumers can view detailed reports on individual farms or producers, including welfare certifications, compliance records, and any incidents of non-compliance. Labels on egg products should also include QR codes linking to detailed information about the egg's origin and production conditions.

✓ 10.3: Increased Environmental Reporting *New* Recommendation

✓ 10.3.1 Aligning Reporting Practices with Foreign and International Standards
New Recommendation

The DFFE should mandate environmental reporting practices which align with international frameworks such as the UK's SDR and the EU's SFDR. These regulations aim to standardise sustainability information and enhance accountability in Corporate practices, particularly within the Egg Supply Chain. Directives such as the EU Taxonomy for Sustainable Activities and the CSDDD should be considered to guide local businesses in adopting sustainable practices and reporting mechanisms.

✓ 10.3.2 Including Animal Welfare and Well-being in Sustainability Reporting⁹⁰⁸
New Recommendation

Corporations should be required to publish regular sustainability reports that detail their environmental impact, resource usage, and initiatives for reducing carbon footprints (among others). Animal welfare should be part of these reports to give full effect to the environmental right. This aligns with the increasing demand for transparency regarding ESG and recognises animals and their welfare and well-being as part of right to environment.

✓ 10.3.3: Integrated Reporting to Monitor Sustainability Performance *New* Recommendation

Corporations should be required to adopt integrated reporting practices can provide a holistic view of a Corporation's performance, combining financial and non-financial data.⁹⁰⁹ This approach allows stakeholders to see how sustainability initiatives affect overall business performance and long-term viability.⁹¹⁰

✓ 10.3.4: Increasing the Scope of Environmental Reporting and Auditing
[Updated] Recommendation

The DFFE should establish mandatory environmental reporting requirements for *all* entities involved in the Egg Supply Chain, focusing on their environmental impact and animal welfare practices. This would include regular audits to ensure compliance with ethical standards.

✓ 10.3.5: Enhancing ESG Reporting Requirements *New* Recommendation

As public (Listed) and state-owned companies transition to mandatory ESG reporting by 2025, it is crucial to ensure that animal welfare and environmental impacts are integral components of these reports. This aligns with the increasing demand for transparency from stakeholders. It is further recommended that ESG reporting requirements should not be restricted to the aforementioned entities but should be expanded to include other types of entities which have a significant footprint and impact.

⁹⁰⁸ *Supra* note 452.

⁹⁰⁹ *Supra* note 895.

⁹¹⁰ *Ibid.*

✓ 10.4: Consumer Protection Reporting *New* Recommendation

Corporations should be required to regularly publish reports on compliance with consumer protection laws, and efforts to improve transparency in product labelling, supply chains, etc. can reassure consumers about the quality and safety of products, as well as the environmental and animal welfare impacts of their production.

In addition, any proceedings (in tribunals, courts, or other fora) which a Corporation is involved with relating to bad corporate practices (for example alleged non-compliance with consumer-related laws) or Corporate Hypocrisy should be made publicly available.

✓ 10.5: Reporting on Adverse Findings [Updated] Recommendation

In our Initial Report, we noted, in relation to Reporting on Adverse Findings, that *“Stakeholders should be required to publicly report on their activities to consumers and the public (online or in an otherwise accessible manner). Reporting should include warnings, citations, notices; letters and other forms of enforcement relating to their supply chains, issued by animal protection organisations including the NSPCA and SPCAs (without breaching the provisions of any other laws)...”*

For purposes of this Phase 2, we propose extending these recommendations to not only apply to animal protection, but also instances of non-compliance with other legislation including environmental and consumer legislation. ✓ 10.6: Community Impact Reporting *New* Recommendation

Corporations should be required to report on their impact on communities, contributions to local communities, including job creation, community projects, and educational initiatives. This demonstrates a commitment to CSR and can enhance community relations. It would provide a fuller snapshot of the impact of a business’ operations, and not only include positive initiatives, but recognise potential negative and harmful actions.

✓ 10.7: Reporting on Sourcing and Supply Chains [Updated] Recommendation

As indicated in our Initial Report: *“Corporations should be transparent about their sourcing and which role-players are part of their supply chains, including the sourcing of their products and animals. In addition to their own position, information relating to the animal welfare practices associated with others in the Egg Supply Chain should be provided. For example, in the case of eggs: the types of systems utilised, the diet of such animals, and otherwise. Consumers and members of the public will then be able to access such information and make more informed decisions about their purchases. Moreover, it is only truly possible to confirm adherence with a Cage Free Commitment on the part of a retailer if they are transparent about their supply chain.”*

Providing information about an entity’s supply chain, including suppliers, sourcing practices and supplier standards, can help build trust. Companies can utilise platforms that allow consumers to trace the origin of their products, enhancing transparency and accountability.

All actors within the Egg Supply Chain should be required to adopt transparent practices, particularly regarding the treatment of Layer Hens. This includes public reporting on farming practices, feed quality,

living conditions, and the measures taken to ensure animal welfare. Stakeholders should be encouraged to participate in third-party audits and make the results available to the public.

For purposes of this Supplementary Report, we recommend that Corporations utilise online platforms that allow consumers to trace the origin of their products, enhancing transparency and accountability,⁹¹¹ or include QR codes on products for further information.

By implementing these measures, Corporations in the Egg Supply Chain can significantly enhance their accountability and transparency, aligning with global trends and consumer expectations.

✓ 10.8: Whistleblower Protections *New* Recommendation

Whistleblower protections should be included in legislation (such as has already been done in NEMA in relation to environmental risks and practices), and expanding these to other instances, for example in the case of animal abuse or other unethical practices, can encourage employees and stakeholders to report problematic practices without fear of retaliation.

11: REFORM ENVIRONMENTAL LAWS AND ENFORCEMENT [UPDATED] RECOMMENDATION

✓ 11.1: NEMA- and SEMA-related reforms [Updated] Recommendation

✓ 11.1: Full Scoping and Impact Assessment [Updated] Recommendation

In our Initial Report we noted that “*NEMA and various SEMAs impose duties of care upon stakeholders (including Layer Hen farms) to take reasonable measures to protect the environment, water resources, air quality, and to manage waste responsibly. However, the development of a poultry farm only requires the submission of a basic assessment for the environmental authorisation application under NEMA, while atmospheric emissions and waste management activities relevant to Layer Hen farms do not require any licences under NEM:AQA or NEM:WA.*”

We provided an updated recommendation: NEMA and various SEMAs impose duties of care upon stakeholders (including Layer Hen farms) to take reasonable measures to protect the environment, water resources, air quality, and to manage waste responsibly. While the development of a poultry farm typically requires only a basic assessment for environmental authorisation under NEMA, certain waste management activities in the Egg Supply Chain may require a WML under NEM:WA. These activities include waste storage, processing, recycling, recovery, treatment, and disposal, depending on their category and scale. Additionally, atmospheric emissions from egg production facilities may necessitate an AEL under NEM:AQA if they exceed specified thresholds.

⁹¹¹ Medium <https://news.morpheus.network/supply-chain-transparency-how-technology-enhances-visibility-and-builds-consumer-trust-55bc87b91d14> (accessed on 14 August 2024).

✓ Recommendation 11.2: Listed Activities [Updated] Recommendation

In our Initial Report we noted that *“Given the significant environmental impacts of factory farming, a full scoping and impact assessment should be required in order that the full extent and impact of the egg production process be properly assessed and considered by the DFFE and, where possible, legislative amendments should be considered to include the various activities undertaken by Layer Hen farms as listed activities under the applicable acts so that they are subjected to comprehensive licensing processes, including in terms of NEM:WA and NEM:AQA NEM:WA. NEM:WA, which provides for the management of contaminated land, and this, at least, is potentially a tool that can be used to compel Layer Hen farms to assess the extent of contamination caused by the activities on their farms, and to enable the relevant authorities to order for the remediation of such sites. However, this harm should be managed proactively, rather than reactively.”*

✓ 11.2: Animal well-being as a license / permit consideration [Updated] Recommendation

In our Initial Report we noted that, *“In addition, Animal well-being should also be expressly included as a consideration in the application process as well as in the licence conditions. This should be done in order to fulfil the DFFE mandate in respect of animal well-being as part of the constitutional environmental right.”*

✓ 11.3: Animal Well-being Proposals *New* Recommendation

In our Initial Report we noted that, *“It is recommended that the DFFE develops a uniform animal well-being framework in respect of all animals including wildlife and domesticated animals, especially animals used in industrial animal agriculture such as Layer Hens in the Egg Industry.”*

The DFFE should utilise provisions in NEMBA (as amended by NEMBA) to prohibit certain activities which negatively impact on animal well-being.

The DFFE should create a comprehensive framework for animal well-being that encompasses animals utilised in animal agriculture (as part of the environment, and in relation to activities that fall within environmental legislation), to ensure consistent standards across the industry. This framework should be developed in accordance with the recommendations and proposals from the ALP Manifesto, which calls for new mechanisms and powers including summary abatement, inspection access, seizure and impoundment with “bond or forfeit” provisions, referral for prosecution, administrative penalties, legal standing for animal representation, limitation of adverse costs, case monitoring, animal advocates in court, and the right to private prosecution. Prioritising animal well-being in the Egg Industry reduces environmental harm by establishing consistent, high standards of care. Healthier, less stressed animals are less prone to disease outbreaks, decreasing the need for antibiotics, and other issues, which have adverse environmental effects. A uniform well-being framework also promotes sustainable practices, like rotational grazing and improved waste management, enhancing soil health and lowering GHG emissions. Integrating animal well-being into environmental policies fosters a holistic understanding of the interconnectedness of human, animal, and environmental health, encouraging ethical consumer choices that drive sustainability in egg production.

✓ 11.4: Mitigation Measures in Climate Law and Policy Specific to Animal Agriculture [Updated] Recommendation

In our Initial Report we indicated that “*It is recommended that climate change law and policy reform should introduce specific mitigation and adaptation measures due to the significant contributions of livestock systems to GHG emissions. These could include 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).*”⁹¹²

✓ 11.5 Establishing Dedicated Fora for Adjudicating Environmental Matters *New* Recommendation

In order to assist with the enforcement and adjudication of environmental-related issues (arising from *inter alia* animal agriculture) specialised environmental courts or tribunals could be established. Such fora would have specific expertise in environmental, climate change and/or animal agriculture related-issues,⁹¹³ allowing for such matters to be brought and heard quicker than in the traditional court system. These fora would have jurisdiction over cases related to environmental harm (including that caused by the Egg Industry and other forms of animal agriculture); employ judges and technical experts with specialised knowledge of agricultural environmental impacts; and streamline the legal process for addressing environmental violations (in the Egg Industry).⁹¹⁴

✓ 11.6: Regulating on Matters relating to Climate Change *New* Recommendation

Given the increasing trend to regulate matters pertaining to climate change, and some of the current non-applicability or exclusions relating to animal agriculture, certain proactive actions should be considered and further researched and explored, to determine their feasibility and efficacy. These could include for example: sectoral emissions targets to apply to animal agriculture as a sector, and the Egg

⁹¹² The IPCC Special Report on Climate Change and Land: Food Security, available at <https://www.ipcc.ch/srccl/chapter/chapter-5/>.

⁹¹³ According to Down to Earth <https://www.downtoearth.org.in/environment/from-australia-to-el-salvador-to-vietnam-the-environment-is-finally-getting-its-day-in-court-60437> (accessed on 14 August 2024), more than 40 countries have established environmental court systems including Kenya, Egypt, India, Chile, Australia, and Vietnam.

⁹¹⁴ While not related to the Egg Industry, this guide by UNEP is useful to policymakers: Yanti Sulistiawati, L et al (2021) Environmental courts and tribunals 2021: a guide for policymakers, accessible at: <https://biblio.ugent.be/publication/8760986>.

Industry as a sub-sector;⁹¹⁵ climate change impact assessments⁹¹⁶ for animal production (including large scale animal production facilities in the Egg Industry); carbon budget systems;⁹¹⁷ climate smart agriculture practices; enhanced Nationally Determined Contributions (NDC) commitments relating to the animal agriculture sector; climate focused-feed regulations; water climate nexus policies; climate education and training requirements, and a just transition in animal agriculture.⁹¹⁸

12: REFORM CONSUMER LAWS AND ENFORCEMENT

NEW RECOMMENDATION

The use of words and imagery that can be misleading to consumers must be eliminated from the Egg Industry. There should be clear requirements for labelling and marketing of egg and egg-related products. Where laws do exist, they must be properly enforced.

✓ 12.1: Enforcement of Existing Labelling Laws including APSA Egg Labelling Regulations *New* Recommendation

Although there is already regulation relating to the labelling of eggs, including in terms of APSA, the enforcement of this law is unclear, and it is difficult to find information relating to enforcement. Similarly, although there are strong consumer protection laws and regulations, these are underutilised to enforce consumer rights and ensure accountability. In order to ensure existing legislation and regulations are effective, a few proposals are included below.

✓ 12.2: Amendments and Clarifications relating to Egg Labelling Regulations *New* Recommendation

Currently, the APSA Egg Labelling Regulations apply to containers of eggs, and not products with eggs as ingredients or other forms of eggs. These regulations should be expanded to include labelling requirements for products containing eggs to ensure that the purposes of consumer protection are achieved.

⁹¹⁵ S 25(1)(a) of the CCA requires that the Minister of the DFFE must, within one year of the CCA coming into operation, by notice in the *Government Gazette*, list the GHG emitting sectors and sub-sectors that are subject to sectoral emissions targets. Anticipating the process, the Minister of DFFE released the draft SETs Report (supra note 478) for public comment in April 2024, while the CCA was still a Bill awaiting Presidential assent. The draft SETs Report identifies agriculture as a sector. However, as per the CCA, the Minister of DFFE must publish a notice confirming the relevant sectors and sub-sectors that require SETs.

⁹¹⁶ According to Murcott, M.J and Vinti, C (2024) The Judge-Made ‘Duty’ to Consider Climate Change in South Africa. *Journal of Human Rights Practice*, 16(1), pp.125-145, accessible at: <https://academic.oup.com/jhrp/article/16/1/125/7591114>, recent environmental law precedents have established that there is a duty on government decision-makers and environmental authorities to assess climate change impacts as part of their environmental decision-making processes, particularly under NEMA and the EIA Regulations. However, climate change impact assessments are not formally recognised in environmental legislation.

⁹¹⁷ In terms of the CCA.

⁹¹⁸ Supra note 478.

Moreover, as it is not currently mandatory to label eggs with their production method (“cage”, “barn”, or “free-range”) in terms of the Egg Labelling Regulations (it is voluntary), we recommend that the regulations be amended to ensure that including egg production methods on packaging is mandatory to ensure transparency and allow consumers to make informed choices, in line with consumer protection objectives.

In addition, there are aspects of the Egg Labelling Regulations which are not fully clear, and clarity should be provided in the wording of certain provisions to avoid misunderstanding and interpretation. This includes for example, the provisions relating to cage-eggs in regulation 8(4), which states: “Eggs shall only be marked with the expression “cage eggs” if such eggs are produced by poultry that are kept in cages throughout their laying period: Provided that -- (a) cages shall be within a shed and may include a nest box, perch and a dust bath; and (b) birds shall have adequate space to feed and lay.” It should also be determined whether these regulations are effective at ensuring consumer understanding, given that they may not be familiar with methods of productions and the implications of these – e.g. how is a “barn” egg different from a “cage” egg or a “free-range” egg.

✓ 12.3: Regular Auditing and Compliance Checks *New* Recommendation

Should the Egg Labelling Regulations be amended to make the inclusion of egg production methods on packaging mandatory, and/or be expanded to include labelling for products containing eggs, routine audits of should be undertaken to ensure compliance with the Egg Labelling Regulations. These audits should be unannounced to accurately assess practices in real-time.

✓ 12.4: Implementation of Strict Penalties for Non-Compliance *New* Recommendation

Should the Egg Labelling Regulations be amended to make the inclusion of egg production methods on packaging mandatory, and/or be expanded to include labelling for products containing eggs, harsher penalties for non-compliance with mandatory labelling requirements should be introduced including fines and/or restrictions on marketing activities. Penalties should act as a deterrent for stakeholders, as opposed to simply a cost of doing business. Regulatory bodies must be sufficiently empowered to enforce these requirements and ensure that stakeholders are fulfilling their obligations to consumers about different egg production methods.

✓ 12.5: Regulatory Mechanisms and Bodies to Enforce Consumer Rights *New* Recommendation

Consumers (including with the assistance of civil society organisations and lawyers) are encouraged to utilise legal avenues, such as PAIA and complaints to bodies like the ARB and the Information Regulator to enforce their rights. This is particularly so in the case of instances where they believe that they might be being misled by Corporations through harmful practices and Corporate Hypocrisy, including Greenwashing, Humane-washing, Blue-washing and Health-washing.

✓ 12.6: *Mandatory Eco-Labeling* *New* Recommendation

As other jurisdictions are beginning to do, certain products should contain information and/or warnings relating to their potential impacts.⁹¹⁹ By requiring certain products to display an information and/or warning label informing consumers about the environmental impacts of the product, such as GHG emissions, water usage, and habitat destruction, consumers can begin to better understand the implications of their choices. The warning label should be prominently placed and use clear, concise language to convey the potential harm to the environment. In this case, such labels could be included on egg cartons, and products containing eggs as ingredients.

13: ESTABLISHMENT OF GOVERNMENT FORA

NEW RECOMMENDATION

✓ 13.1: *Farmed Animal Protection Forum* *New* Recommendation

Just as the DFFE has initiated the Wildlife Well-being Forum as a platform for engagement with the animal protection sector in relation to wild animals, DALRRD and/or other appropriate governmental entities (including the DFFE) should establish a dedicated forum for animals under its custodianship. Most notably, this would be for farmed animals, who are by far the largest number of animals under human control in the country.

Such forum will facilitate engagement processes within animal use, including animal agriculture and with other relevant stakeholders including farmers, consumers, and local communities to discuss sustainability and ethical practices. Regulations could outline the procedures for stakeholder involvement, ensuring that all relevant parties have a voice in decision-making processes.

✓ 13.2: *National Advisory Forum for Animals* *New* Recommendation

More generally, as it relates to animals, it is suggested that a dedicated forum be established. As proposed by the ALP Manifesto, the Animal Protection Office (“**APO**”)⁹²⁰ should establish a National Advisory Forum for Animals (“**NAFA**”),⁹²¹ to facilitate effective engagement between stakeholders, including government, civil society, and industry representatives. The NAFA could guide the formation of inspectorates, set minimum welfare standards, and advise on matters like future standard-setting and emerging alternatives to using animals.

⁹¹⁹ See for example, *supra* note 503.

PART B: FUTURE RESEARCH AND POTENTIAL ACTIONS

ITEMS FOR FURTHER RESEARCH AND ACTIONING/ ADDITIONAL CONSIDERATION

As we aim to progress towards greater (Corporate) Accountability and (Corporate) Transparency in animal agriculture, specifically within the poultry and Egg Industry, it is essential to build upon the insights and recommendations outlined in both the Initial Report and this Supplementary Report.

The following items have been identified for further research and/or actioning which seek to enhance our understanding of the egg and poultry industries in (South) Africa, and the roles and responsibilities of various stakeholders. [Researching, Understanding and Engaging Key Stakeholders](#)

- **Corporations and role players in the Egg Industry:** including but not limited to the Phase 2 Selected Stakeholders and Selected Stakeholders to ensure best practices, obtain information, and pursue other avenues towards greater Corporate Accountability and Corporate Transparency.
- **SAPA:** as a mouthpiece for the poultry and Egg Industry, and with regard to its role in egg levies, and chicken welfare standards, SAPA is a key stakeholder to understand in pursuing greater animal protection. SAPA is particularly important for purposes of accessing and interrogating the NAMC Study, and for developing and amending industry standards (such as the SAPA Codes).
- **CGCSA:** as an industry body with thousands of members operating within the Egg Industry, it has taken a concerning stance to efforts by civil society organisations in pursuit of greater animal and environmental protection measures, including seeking to engage Corporations which are their members on Cage-Free Commitments.
- **NAMC:** As a statutory body involved with animal agriculture, and which undertakes research for the poultry and Egg Industry, including which can influence certain decision-making, such as the NAMC Study, it is critical to understand this entity.
- **Information Regulator:** As a statutory body tasked with promoting information rights, the Information Regulator plays an important role in ensuring Corporate Transparency and ultimately, Corporate Accountability. By researching, reviewing and understanding approaches, actions and decisions of this body, proposals for reform and actioning can be developed. This is particularly important where stakeholders do not understand or comply with their obligations in terms of PAIA, and POPIA, among others.
- **NSPCA and SPCAs:** As a statutory body tasked with animal welfare in the country, it is critical that there is cooperation and coordination among the animal protection sector. To explore opportunities for greater animal protection, including in terms of enforcing existing legislation

(such as the APA, among others) it is necessary to critically assess and engage with the NSPCA's role in monitoring and enforcing animal protection law in the animal agricultural sector, specifically the Egg Industry and to propose strategies for strengthening their efforts, which can assist towards achieving and ensuring compliance.

- **SABS:** As a statutory body tasked with setting standards, including standards relating to animal welfare issues, SABS is a key stakeholder to improve animal treatment and conditions. In particular, it is important to understand the current status developments regarding the SABS Draft Poultry Welfare Standards, to ensure compliance and best practices. Further, the SABS has a role in respect of regulating problematic practices constituting Corporate Hypocrisy, including practices such as Greenwashing; Humane-washing; Blue-washing and Health-washing. The standards developed by SABS (SANS) must be made publicly available, especially as these relate to animal- and environmental- related issues.
- **DALRRD:** As the primary custodian of animal welfare and key animal welfare regulation, DALRRD is a key stakeholder for improved animal protection standards. In addition, DALRRD is of the two main bodies in control of the Poultry Sector Master Plan⁹²² (and proposed Egg Master Plan),⁹²³ which has and will have an immense impact on the Egg Industry going forward. Further, DALRRD has the power to promulgate laws and regulations which can prohibit and regulate Cruel Practices occurring within the Egg Industry.
- **DFFE:** As the national custodian of environmental protection matters and environmental legislation, the DFFE has a major role to play in ensuring environmental protection. Specifically, understanding challenges relating to existing legislation and enforcement can promote reform. Further, the DFFE has the power to promulgate laws and regulations which can prohibit and regulate practices that (negatively) impact on animal well-being and the environment.
- **Advertising Regulatory Board:** As a body which administers the widely-accredited Code of Advertising Practice which regulates the content of South African advertising, this entity plays an important role in identifying and adjudicating on practices which constitute Corporate Hypocrisy, including practices such as Greenwashing; Humane-washing; Blue-washing and Health-washing.
- **Third Party Certifiers:** As entities which provide certifications to industry role players and develop standards intended to enhance good practices, including in the Egg Industry, understanding these stakeholders and the standards they are responsible for administering is a key consideration to enhance Corporate Accountability and Transparency

⁹²² DTIC <https://www.thedtic.gov.za/wp-content/uploads/Poultry-Master-Plan.pdf> (accessed on 14 August 2024).

⁹²³ Reference is made in several different statements and reports by SAPA to an "Egg Master Plan". Despite conducting searches online, this policy document could not be found, and it is unclear whether it has been finalised at this stage. The most recent information is available at *supra* note 31.

- **Financial Institutions:** Investigate how financial institutions can influence animal, environmental and consumer protection efforts through their investment choices. Developing criteria for sustainable investment that align with various stakeholders' goals is a potential avenue to explore further.
- **Consumers:** As the purchasers and consumers of goods and services, specifically in the context of the Egg Industry, consumers are a vital component of ensuring good practices. Informed consumers are empowered to make decisions which align with their interests. By providing them with accurate, complete, relevant, timely, and reliable information that they can understand, they can participate as stakeholders and demand high standards.
- **Other Regulatory Bodies:** The NCC, CPF and CCSA as bodies regulating aspects applicable to the Egg Industry should be further researched and explored.
- **Other Stakeholders:** Recognising that there are many individuals, entities, government departments and agencies (including at a national, provincial and local level), and other stakeholders with roles to play and responsibilities in respect of the Egg Industry in SA, it is important to research them for further engagement.

Researching, Understanding and Actioning Key Issues

- **Economic Analysis of Transitioning to Cage-Free Egg Production:** Explore the financial implications for producers to transition to more ethical and sustainable practices within the Egg Industry, specifically as it relates to methods of production. This research could provide insights into barriers to change and potential solutions. It is important to have non-industry funded research to ensure independence and mitigation of biases. This analysis is particularly relevant in light of the findings from the NAMC Study, as discussed in both the Supplementary and Initial Reports.
- **Economic Analysis of the True Cost of Current Systems:** Explore the true cost of current egg production and different systems, factoring in externalities, as well as support and subsidies, to provide a complete and more accurate picture of the economic costs to produce eggs in SA. This research is vital to interrogate whether eggs are affordable in the context of greater potential harms and impacts.
- **Environmental Impacts of Egg Production:** Investigate the various environmental factors associated with egg production in South Africa, including resource and water usage, land degradation, environmental impacts (such as waste, pollution and carbon emissions, among others). This research should address specific areas of non-transparency identified in our Supplementary Report read with the Initial Report.
- **Consumer Awareness of Industry Practices:** Assess consumer knowledge and attitudes relating to the practices within the Egg Industry, focusing on animal welfare, environmental harm, sustainability, food safety, health and ethical sourcing. Understanding consumer perceptions can help drive reform. This could be done by conducting surveys and studies to

gather empirical data on consumer preferences related to egg production methods as well as their willingness to pay for ethically and responsibly produced products.

- **Corporate Claims:** Perform desktop research on claims made by stakeholders in the Egg Industry to interrogate whether Corporate Hypocrisy is occurring. This could involve analysing discrepancies between labelling, marketing and/or messages and actual realities and practices.
- **Legal Case Studies:** Examine specific case law related to the egg and poultry industries, including cases involving stakeholders in the Egg Industry adjudicated in tribunals, courts and by regulatory bodies including but not limited to the courts, environmental tribunals, the ARB, and the Competition Commission, among others.
- **Egg Master Plan Evaluation:** Assess the current status of DALRRD's and the DTIC's Egg Master Plan (as part of the Poultry Sector Master Plan) and identify potential interventions that may be necessary.
- **Feedback from Stakeholders:** Address any responses received from Selected Stakeholders and others regarding the Initial Report, as well as Phase 2 Selected Stakeholders and others regarding the Supplementary Report to ensure all perspectives are considered.
- **The Role of the Information Regulator in Enforcing Corporate Transparency:** Investigate the role and efficacy of the Information Regulator in ensuring corporate transparency in the agricultural sector, with a focus on the Egg Industry. Analyse case studies where ALRSA filed complaints, the outcomes, and potential areas for reform.
- **Legal Obligations and Industry Practices in SA:** Examine the legal, policy and governance frameworks governing Corporate Accountability for animal protection in SA, comparing industry practices in the Egg Supply Chain with international standards. Propose enhancements to existing laws, policies and standards.
- **Third-Party Animal Welfare and Environmental Certifications:** Analyse the standards of third-party animal welfare and environmental certifications used in SA's Egg Industry. Assess whether these standards are adequate for protecting animal welfare and suggest improvements or alternatives.
- **The Intersection of Environmental Law and Animal Welfare: Legal Strategies for Holistic Corporate Accountability:** Explore the links between environmental law and animal welfare, focusing on how integrated legal strategies can enhance corporate accountability in the Egg Supply Chain. This could include the development of tools for environmental and welfare audits.
- **Media Strategies for Advancing Corporate Accountability in Animal Welfare:** Analyse the efficacy of media campaigns in holding corporations accountable for animal welfare. Study past campaigns, such as ALRSA's efforts, and propose strategies for future media engagement.

- **Legal and Policy Tools for Banning Caged Egg Production in SA:** Explore the legal and policy mechanisms available for advocating a ban on caged egg production in SA. This could include drafting model legislation and comparing it with successful bans in other countries.
- **Further research into Pillars:** including the 6 main pillars identified in the Initial Report (as built on in this Supplementary Report including Animal Welfare; Environmental; Social and Rights; Food Safety and Health; Consumer Protection; Business and Corporate.
- **Learning from Foreign Research:** To enhance our understanding of the SA egg and poultry industries, targeted research that replicates and builds upon key existing international and foreign studies would allow the contextualisation of global findings with the unique context of SA.

PART C: SELECTED OBSERVATIONS AND CONCLUDING THOUGHTS

Our research, analysis, and engagement with Phase 2 Selected Stakeholders reveals that there are various potential challenges as they relate to Corporate Accountability and Corporate Transparency in respect of the Egg Industry in South Africa. Our investigation in Phase 2 revealed shortcomings in meaningful engagement and disclosures. This can ultimately lead to difficulties for consumers seeking to make informed decisions based on ethical and regulatory considerations, including in relation to animal and environmental protection.

Two initial general observations are that most Phase 2 Selected Stakeholders either provided no response to us or provided limited information, and that Selected Stakeholders (chosen for both phases) were not necessarily more responsive in Phase 2, suggesting that civil society engagement and rating exercises of this nature do not necessarily incentivise transparency.

OBSERVATIONS IN RESPECT OF CORPORATIONS, INCLUDING CERTAIN PHASE 2 SELECTED STAKEHOLDERS

Examples of shortcomings and challenges we observed include that certain Phase 2 Selected Stakeholders:

- ✗ were not aware of their PAIA obligations / not willing to comply with their PAIA obligations;
- ✗ did not view certain animal and environmental related issues and legislation as applicable to their operations within the Egg Supply Chain, despite their role (including numerous retailers, hotels, wholesalers, and even producers involved in egg production);
- ✗ were willing to provide certain records during engagement during Phase 1, for our Initial Report, but were reluctant to do so during our engagement in Phase 2, for this Supplementary Report;

X did not provide records relating to their activities and impacts which might support and substantiate statements that consumers might receive in respect of their operations and values (specifically as these relate to animal and environmental matters);

X provided comprehensive sustainability measures, in respect of certain environmental issues, such as waste management and/or climate change mitigation efforts, but not in respect of animal welfare/ well-being measures. This disconnect is indicative of the lack of understanding of obligations in respect of animal welfare and well-being as it relates to the environment and environmental protection;

X adopted *passive* non-disclosure practices (which involves Corporations intentionally omitting their sustainability and/or animal information to avoid scrutiny or accusations from consumers/ other stakeholders. This passive approach can obscure genuine efforts and mislead consumers about a Corporation's environmental impact. This passive approach must be distinguished from *active practices* such as Greenwashing, Blue-washing, Health-washing, and Humane-washing (*Corporate Hypocrisy*). Such measures involve active deception, where Corporations make false claims or exaggerate their environmental or social responsibility to enhance their public image. Understanding these distinctions helps consumers navigate corporate claims and fosters greater transparency in sustainability efforts.

ENVIRONMENTAL OBSERVATIONS

X Activities occurring within the Egg Supply Chain have a potentially significant environmental footprint, including waste generation, water usage, energy usage, and resource competition. Measures which enhance Corporate Accountability in the Egg Industry are essential to address environmental concerns and promote sustainable practices.

X Corporations in the Egg Supply Chain do not appear to be doing enough to mitigate against the environmental harms of egg production nor are they willing to share information about their efforts.

X Despite many of the Phase 2 Selected Stakeholders having environmental policies in place, these policies do not extend to the protection of animals, despite animal welfare being recognised as interconnected with the environmental right,⁹²⁴ and animal well-being included in environmental legislation.

X There is insufficient information in the public domain relating to the (non-economic) impacts of Avian Flu in SA, including the environmental impacts. For example, while there is some information about the number of animals killed (as reported on in mainstream media),⁹²⁵ there is insufficient information relating to the disposal of culled birds.

X It is not completely clear which stakeholders in the Egg Supply Chain conduct NEMA Listed Activities (as these records were not provided to us), which is an important component of determining obligations and rights.

⁹²⁴ *Supra* note 128.

⁹²⁵ *Supra* note 317.

- ✗ There are potential inefficiencies in resource use, despite opportunities for more sustainable practices within the Egg Industry.
- ✗ There appears to be a narrow focus on economic gain, rather than the long-term environmental costs of current practices. This can be construed as a barrier to adopting more sustainable and ethical practices.
- ✗ The environmental framework as it relates to reporting in SA is inadequate and inconsistent.

CONSUMER PROTECTION OBSERVATIONS

- ✗ Due to the lack of information on the true impacts (including on animals and the environment) of stakeholders within the Egg Supply Chain, it is not possible to verify whether claims made by entities are genuine. Accordingly, there is a risk that stakeholders may appear to be more ethically, environmentally and/or socially responsible than they actually are. In turn, this can lead to Corporate Hypocrisy, including practices, such as Greenwashing and Humane-washing, among others, which contributes to consumer uncertainty and confusion, impacting purchasing decisions.
- ✗ Public awareness and advocacy play a crucial role in addressing animal welfare and environmental concerns and enhancing consumer protection and is critical to ensure information is accessible and available.
- ✗ Consumers have many rights, including the right to freedom of expression⁹²⁶ and protest,⁹²⁷ which are protected by the Constitution and legislation,⁹²⁸ and which allow them to voice their concerns and influence change. This is particularly important in the context of food system reform, of which the Egg Industry forms part. The CPA, for example, promotes consumer participation in decision-making processes that affect them, which can empower individuals to express their concerns about products, services, and business practices, which aligns with the broader rights of expression. It also provides mechanisms for consumers to seek redress for grievances, which can include collective actions or protests against unfair practices in the marketplace.
- ✗ Good consumer practices involve being informed and proactive in making purchasing decisions, emphasising the importance of clear information and accurate advertising. Consumers have rights to access certain information, without such access, they may not be able to make informed decisions.
- ✗ There are social, and business risks related to consumer trust. If Corporations do not meet consumer expectations for ethical treatment of animals and have strong measures in place to mitigate against environmental harm, they risk losing market share to competitors which prioritise these issues. Additionally, there is a risk of public backlash and activism, which could further damage the industry's reputation.
- ✗ Marginalised and vulnerable groups bear the brunt of the harms caused by harmful production systems. Given our socio-political history, we have a societal duty to protect these groups from such

⁹²⁶ S 16 of the Constitution.

⁹²⁷ S 17 of the Constitution.

⁹²⁸ For example, the CPA and the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, accessible at: https://www.gov.za/sites/default/files/gcis_document/201409/a4-001.pdf.

harm. This is particularly so when such groups of the victims of poor environmental practices, and/or when they lack the ability to properly understand the impacts of problematic systems and products.

CONCLUDING THOUGHTS

This Supplementary Report has sought to provide a deeper analysis of the Egg Industry in South Africa, with a particular focus on environmental protection and consumer rights. Building upon our Initial Report, we have expanded our investigation to include critical issues such as Corporate Transparency, Corporate Accountability, and tactics that have the potential to mislead and harm consumers, which we refer to collectively as “Corporate Hypocrisy”.

Key observations from this phase of our Corporate Accountability Programme include a lack of transparency among many Corporations in the Egg Supply Chain, despite constitutional guarantees and legal mechanisms designed to ensure access to information, and a lack of effective engagement on key issues, which impact on other rights and protections.

We have observed that there may be a disconnect between corporate claims and actual practices, particularly in areas of animal welfare, environmental sustainability, and consumer protection. Without adequate information, it is not possible to determine the prevalence or extent of practices that may constitute Greenwashing, Humane-washing, Health-washing, and Blue-washing. It further prohibits consumers from making truly informed and empowered decisions when purchasing products. We have accordingly identified a need for more robust disclosure and reporting requirements by stakeholder within the Egg Industry, to understand the true realities and impacts of egg production on animals, the environment and consumers, among other stakeholders.

Our stakeholder analysis, which rated 36 (3 dozen) selected Corporations against carefully selected Rating Criteria and Indicators, reveals a mixed picture of corporate practices, transparency and accountability. This Supplementary Report underscores the importance of strengthening legal frameworks to mandate certain requirements, as well as non-legal tools that can be used in the absence of such frameworks.

As we move forward, it is crucial that all stakeholders – including but not limited to Corporations, industry bodies, consumers, government bodies, and civil society organisations – work together to address the challenges identified in this Supplementary Report (as read with our Initial Report). By working collaboratively, we can promote more sustainable and ethical practices which enhance animal flourishing, protect the environment, promote human rights, provide safe and healthy foods, uphold consumer rights and maintain Corporate Accountability. This Supplementary Report serves as a call to action for continued research, advocacy, engagement, cooperation and collaboration to drive positive change in the South African food system.

APPENDIX I

RULING THE ROOST?

N S P C A E N G A G E M E N T



ANIMAL LAW REFORM
SOUTH AFRICA

APPENDIX I: RULING THE ROOST

NSPCA AS A SEPARATE ‘STAKEHOLDER’

Although not forming part of our 36 (3 dozen) Phase 2 Selected Stakeholders and rating process against the Supplementary Criteria and Indicators for purposes of the Stakeholder Component in Section III of this Supplementary Report (nor one of the 36 Selected Stakeholders from the Initial Report), ALRSA approached the NSPCA to request information under PAIA over a period between November 2022 and November 2023 due to the important role they play in enforcing animal protection legislation in SA.

Selected PAIA correspondence and engagements with the NSPCA as part of Phase 2 are detailed in this Appendix. The initial correspondence and engagements with the NSPCA as part of Phase 1 are detailed in Appendix 1 of our Initial Report).

This appendix does not cover the entire scope of our engagement and should be read in conjunction with Appendix I of the Initial Report as well as Section III, Part D of the Animal Welfare Pillar of the Initial Report. For the full engagement with the NSPCA during this Corporate Accountability Programme (each of Phase 1 and Phase 2), please see our dedicated website.⁹²⁹

ROLE AND IMPORT OF NSPCA

The NSPCA is an important statutory body constituted under the Societies for the Prevention of Cruelty to Animals Act (“**SPCA Act**”).⁹³⁰ It is mandated to prevent cruelty to animals and promote their welfare. The SPCA Act establishes the NSPCA as the overarching authority for SPCAs in SA, empowering it to *inter alia* enforce animal welfare laws and conduct inspections.⁹³¹ In 2016, the Constitutional Court reiterated the significant role that the NSPCA and individual SPCAs play in animal protection, stating that the NSPCA has the statutory power to institute private prosecutions against offenders of animal welfare laws.⁹³²

In light of the NSPCA’s roles and responsibilities, it is particularly important to recognise the link between animal welfare and the environmental right.⁹³³ By ensuring animal welfare within agricultural practices, the NSPCA is indirectly supporting the environmental right in the Constitution.

The ALP Manifesto advocates for reforming animal protection laws to align with constitutional values, urging among other proposals, the recognition of animals as sentient beings with intrinsic value and the

⁹²⁹ *Supra* note 33.

⁹³⁰ The Societies for the Prevention of Cruelty to Animals Act 169 of 1993 (“SPCA Act”), accessible at: https://www.gov.za/sites/default/files/gcis_document/201409/act169of1993.pdf.

⁹³¹ Section 6(2) of the SPCA Act.

⁹³² *Supra* note 128.

⁹³³ *Ibid*.

creation of a comprehensive legal framework for the protection of their interests.⁹³⁴ In the context of Layer Hens, it recognises the cruelty of Battery Cages, the failure to enforce cruelty laws in respect thereof, and questions the justifiability thereof. The ALP Manifesto further emphasises the need for integrating animal welfare into all legal and policy areas including enforced enforcement roles.⁹³⁵ It stresses the importance of public participation, transparency, and education in advancing animal welfare.⁹³⁶

Due to the important role and status of the NSPCA, members of the public are also calling for greater transparency and accountability from it, as reflected in petitions demanding investigations into its practices.⁹³⁷ A 2024 petition (with close to 5,000 signatures) urges the Minister of Agriculture to require the NSPCA to report national statistics annually, conduct an audit of its practices—including concerns about unnecessary euthanasia, branch closures, and financial management—and replace the current board and executive with impartial leaders.⁹³⁸ This effort aims to enhance public trust and ensure the NSPCA more effectively fulfils its legislative mandate.⁹³⁹

NSPCA ENGAGEMENT IN PHASE 1

Engagement with the NSPCA in Phase 1 revealed issues with transparency and accountability in enforcing animal welfare standards within the Egg Industry.⁹⁴⁰ ALRSA's requests for records during Phase 1 included in relation to inspections and actions taken by the NSPCA within the Egg Industry and uncovered vague, problematic, and unreliable reporting and an inconsistent stance on practices such as Battery Cages, among others.

UPDATES SINCE PHASE 1

Since the original publication of our Initial Report in August 2023 (updated in September 2024), the NSPCA released their **2023 NSPCA Annual Report**.⁹⁴¹ This report highlighted key statistics and information, including:

Enforcement

The NSPCA Farm Animal Unit conducted **715 inspections**, which included, among others, poultry farms and cull outlets. It is not clear exactly how many were such facilities, as this was not indicated.

The report noted in relation to law enforcement (for all animals, not farmed animal specific) that:

⁹³⁴ *Supra* note 468.

⁹³⁵ *Ibid* at page 17-19.

⁹³⁶ *Ibid*.

⁹³⁷ Change.org <https://www.change.org/p/petition-for-investigation-of-the-nspca-by-the-minister-of-agriculture> (accessed on 14 August 2024).

⁹³⁸ *Ibid*.

⁹³⁹ *Ibid*.

⁹⁴⁰ *Supra* note 33 at pages 267-275.

⁹⁴¹ NSPCA <https://nspca.co.za/wp-content/uploads/2024/04/2023-Annual-Report.pdf> (accessed on 14 August 2024).

- 374 warnings were issued for animal care improvements;
- **6 successful prosecutions were secured;** and
- 111 court cases were pending.

The report indicates that 1,313,673 farm animals were assisted in 2023. However, it is unclear which facilities, industries or practices the above law enforcement statistics relate to, as there is insufficient information in the report.

SABS Standards

The report also noted that the SABS is in the process of developing the Poultry Welfare Standards, among others.

Concerns Over Funding

While the issue was raised in our Initial Report, in 2023 the NSPCA continued to receive funding from the largest integrated poultry producers in SA,⁹⁴² namely, Astral. There has been increased financial support from Astral to the NSPCA in recent years, such as R1 million in donations in 2022,⁹⁴³ and additional funds in 2023.⁹⁴⁴ The NSPCA has not disclosed details about this funding (for 2022 and 2023), leading to concerns about its independence in animal welfare advocacy.

Avian Flu

The report contained an extensive recordal in respect of Avian Flu, noting (emphasis added throughout):

“Avian Influenza Outbreak: A Welfare Concern. Avian Influenza is a highly contagious viral disease, with a high mortality rate, that affects both domestic and wild birds and can be readily transmitted between birds causing suffering and death. The suffering of poultry due to avian influenza is an often overlooked aspect of this devastating disease. The virus attacks the respiratory and digestive systems leading to severe respiratory distress, coughing, sneezing and difficulty breathing. The pain and discomfort these birds endure are often hidden from the public eye but their unnecessary suffering is real. Culling infected birds is the most effective method to prevent the spread of avian influenza within poultry populations. However, it is crucial to emphasise that humane methods must be employed during the culling process to minimise the suffering of affected birds. The National Council of SPCAs strongly opposes the inhumane methods being utilised to combat the virus like ventilation shutdown and forced moulting.

⁹⁴² Astral <https://www.astralfoods.com/groupstructure.html#> (accessed on 14 August 2024).

⁹⁴³

Astral

<https://www.astralfoods.com/assets/Documents/Investor%20Centre/2022/Integrated%20Report%20for%20the%20year%20ended%2030%20September%202022.pdf> (accessed on 14 August 2024).

⁹⁴⁴

Astral

https://www.astralfoods.com/assets/Documents/Investor%20Centre/2023/9156_Astral%20IR%202023_WEB%20FA%20%28small%29.pdf (accessed on 14 August 2024).

*In August 2023, Inspectors from the Farm Animal Protection Unit and local SPCAs monitored **the culling at three infected farms where a total of 65,000 layer hens had to be culled.** This culling of diseased animals is not the function of the SPCA, however, when the authorities and farmers fail to act, we cannot stand by and let the animals suffer and allow the disease to spread and cause further suffering and death to other birds. Our role is to ensure that where the culling of diseased animals is necessary it is undertaken in the most humane manner.*

Outbreaks ravaged poultry flocks across South Africa, causing widespread devastation. The National Council of SPCAs actively engaged in response efforts, assisting in the humane culling of affected animals. In some distressing cases, our interventions have prevented producers from resorting to desperate measures or inhumane culling methods

*One of the farmers who has environmentally controlled houses **threatened to cull an infected house with 15,000 hens by pumping the house with Phostoxin which is a pesticide and then mechanical shutdown which involves shutting off the ventilation, which causes asphyxiation of the birds.** This was halted by the National Council of SPCAs, and we will not hesitate to prosecute any person who resorts to such inhumane methods of culling as such methods cause pain and suffering and contravene the provisions of the Animals Protection Act 71 of 1962.*

The National Council of SPCAs has formally addressed the Department of Agriculture, Land Reform and Rural Development, and other key stakeholders, expressing grave concern over the government's delay in authorizing the importation of Highly Pathogenic Avian Influenza (HPAI) vaccines.

This critical situation is exacerbated by bureaucratic hurdles in accessing HPAI vaccines, potentially leading to a significant welfare disaster. The National Council of SPCAs aligns itself with the South African Veterinary Association and urgently called upon the government to expedite the evaluation for the evaluation for emergency importation of HPAI vaccines and facilitate swift local registration of these life-saving vaccines.”

Opposition to Live Animal Exports

In February 2024, there was major public outcry in SA over a vessel (ship) in Cape Town transporting animals internationally. The NSPCA has taken a stand against live animal exports practice and inspected the Al Kuwait vessel, which arrived in Cape Town carrying 19,000 cattle under harsh conditions.⁹⁴⁵ In April 2024, the High Court affirmed the NSPCA's right to inspect animals destined for export, reinforcing its authority in this area.⁹⁴⁶

⁹⁴⁵ FreightNews <https://www.freightnews.co.za/article/inspections-conducted-board-livestock-carrier-docked-cape-town> (accessed on 14 August 2024).

⁹⁴⁶ NSPCA <https://nspca.co.za/al-mawashi-and-bruce-page-land-face-first-as-high-court-affirms-nspcas-mandate/> (accessed on 14 August 2024).

ALRSA & NSPCA ENGAGEMENT FOR PURPOSES OF PHASE 2

ALRSA's request

On 10 April 2024, ALRSA submitted a PAIA request to the NSPCA. In our request, we sought comprehensive records related to inspections, funding, and complaints concerning the poultry and Egg Industry for the period from 1 December 2022 to 30 November 2023. The request included, among others, details on inspected facilities, internal guidelines, enforcement actions (charges laid), court proceedings, prosecutions and justifications for not pursuing specific enforcement actions.

Furthermore, we sought clarification in respect of vague language used in the responses received during Phase 1 from the NSPCA regarding inspections. We placed emphasis on the need for transparency in the NSPCA's operations and decision-making regarding animal welfare.

NSPCA's Response

On 9 May 2024, the NSPCA requested an extension to respond to our request in terms of PAIA. On 9 June 2024, a law firm indicating that it acted on behalf of the NSPCA ("**NSPCA's attorneys**"), responded to our PAIA request. Below contains a summation of their response. Upfront, the letter indicated that: "*our client has determined that access will be refused to ALRSA in respect of most, but not all, of the items set out in the PAIA Request, as read with your Letter.*" (emphasis added). The letter details which requests the NSPCA would provide records for and which requests were refused.

Records provided

The NSPCA granted access to a limited amount of information / documentation and provided a list of items which the NSPCA would not grant access to, as well as reasons therefor.

The records provided include:

- i. A list of each SPCA that the NSPCA oversees, including their contact details;
- ii. Redacted records containing warnings issued to or other actions in respect of any Corporation in the poultry and egg industry, in respect of violations of animal protection and welfare legislation and standards, including among others, instances of ill-treatment, abuse, neglect and death of chickens;
- iii. The NSPCA further provided:
 - Its position statement on systems development which states that the SPCA is opposed to the development of farming systems which causes or may cause pain, suffering, distress or lasting harm;
 - A pamphlet on the transporting of chickens;
 - A pamphlet on chicken care; and
 - The NSPCA's cruelty complaint form and inspector's report.

Notably, and unlike in Phase 1, the **NSPCA did not provide its inspection records.**

In its covering letter, the **NSPCA's attorneys** stated “[o]ur client has instructed us that it issued 13 warnings relating to instances of “ill-treatment, abuse, neglect and death of chickens” during the period 1 December 2022 to 30 November 2023”. The provided warnings highlighted issues including, but not limited to inadequate lighting during bird handling, delayed culling of injured birds, rough handling causing injury, and poor conditions for chickens and the crates in which they live. Additional concerns included the need for immediate removal of birds from crates, provision of clean water, and humane handling practices. Specific violations noted birds left without access to water or shade, improper handling by staff, and the delay of euthanasia for compromised animals. The warnings cite violations of the APA and emphasised potential prosecution for non-compliance on the part of redacted violators.

These records indicated that while the NSPCA were undertaking inspections and attempting to ensure at least certain compliance and/or adherence to animal welfare, a general failure on the part of the removal of many Cruel Practices were omitted, particularly in reference to Battery Cages.

Records refused

The NSPCA refused to grant access to most requested records and relied on various grounds of refusal in PAIA.

In its covering letter, NSPCA's attorneys state that the following records were refused by the NSPCA on the basis of the requests being non-compliant with PAIA:

- i. Details of charges laid by the NSPCA against corporations in the poultry and egg industry;
- ii. Details of court proceedings relating to the Corporations in the poultry and Egg Industry which the NSPCA has been involved with to any extent;
- iii. Details of any successful or unsuccessful prosecutions in respect of the APA in respect of Corporations in the poultry and Egg Industry;
- iv. Details of *nolle prosequi* certificates issued by the NPA to the NSPCA in respect of cases related to any Corporations in the poultry and Egg Industry;
- v. Details of the existence of any non-disclosure agreements that have been entered into between NSPCA and/or any Corporations in the Egg Industry;
- vi. The rationale behind the NSPCA's decision to pursue certain matters in terms of the APA (as set out in our PAIA request), while seemingly not indicating that they have similarly taken action against the cruel use of Battery Cages and other Cruel Practices within the Egg Supply Chain.
- vii. The request for “other actions” in respect of our request for “reports, lists, tables, spreadsheets and other information relating to any non-compliance, warnings and citations or other actions in respect of any Corporation, in respect of violations of animal welfare legislation and standards regarding chicks including ill-treatment, abuse, neglect and death of chicks”.

In brief, NSPCA's attorneys alleged that the above requests fall outside the scope of PAIA stating that we sought information rather than specific records from the NSPCA with reference to s 11 of PAIA and the definition of a record contained in PAIA.

The following records were refused under s 44(1)(a) of PAIA with NSPCA's attorneys stating that a record can be refused if it contains (i) an opinion, advice, report or recommendation obtained or prepared, or (ii) an account of a consultation, discussion or deliberation that has occurred, for the purpose of, amongst others, taking a decision in the exercise of a power or performance of a duty conferred or imposed by law:

- i. Reports, lists, tables, spreadsheets and other information relating to any non-compliance in the poultry and Egg Industry; and
- ii. Reports, lists, tables, spreadsheets and other information relating to any non-compliance, warnings and citations or other actions in respect of any Corporation, in respect of violations of animal welfare legislation and standards regarding chicks including ill-treatment, abuse, neglect and death of chicks.

Furthermore, NSPCA's attorneys stated that the NSPCA is entitled to refuse the above requests in terms of section 23 of PAIA on the basis that other than reports, no "lists, tables or spreadsheets" are in the NSPCA's possession or exist. The request was refused in accordance with s 23 of PAIA, and an affidavit in terms of s 55 of PAIA was provided.

Our request for records relating to donations received by the NSPCA was refused in terms of s 42(3)(b) of PAIA. According to NSPCA's attorneys, the NSPCA alleges that such records contain financial and/or commercial information of the NSPCA, and would "*prevent the NSPCA from, or limit or restrict the NSPCA's ability to, receiving funding in the future*" and thus disclosure "*would be likely to cause harm to the commercial or financial interests*" of the NSPCA. Corporations or entities typically donate to the NSPCA to enhance their public image. It is therefore unclear how transparency in this regard would jeopardise future funding unless these donors have interests misaligned with the principles of animal welfare and protection.

Relying on s 23 of PAIA as the ground for refusal, the NSPCA claimed that the following records do not exist or cannot be located:

- i. A list of facilities which the NSPCA know to be Corporations in the poultry and Egg Industry;
- ii. A list of facilities inspected (during the period above) which are Corporations in the poultry and Egg Industry;
- iii. Enforcement reports concerning any Corporation in the poultry and Egg Industry;
- iv. Correspondence with the National Prosecuting Authority ("**NPA**") regarding charges against any stakeholder in the Egg Industry;
- v. Records related to the NSPCA's justification for not pursuing enforcement action in terms of the APA or other Relevant Legislation for the use of cages in the Egg Supply Chain;
- vi. Citations or other actions in respect of any Corporation, in respect of violations of animal welfare legislation and standards regarding chicks including ill-treatment, abuse, neglect and death of chicks; and
- vii. Pleadings, notices, affidavits, orders, judgments, or any other court records relating to the Corporations in the poultry and Egg Industry which the NSPCA has been involved in.

The NSPCA provided an affidavit in terms of s 55 of PAIA confirming that certain records do not exist and / or are not, and have never been, in the NSPCA's possession.

During our engagement with the NSPCA in Phase 1, we noted that in terms of the records provided by the NSPCA, specifically a spreadsheet containing information related to inspections conducted at poultry and egg production farms ("**NSPCA spreadsheet**"), certain records remained limited and lacked sufficient details to draw conclusions in respect of consistency, particularly in relation to the housing and treatment of Layer Hens. In our Phase 2 PAIA request, we asked for clarity related to specific information. Some requests were refused in terms of section 23 of PAIA, namely:

- i. Additional records in respect of the "welfare concerns found" in the NSPCA spreadsheet that could explain or provide greater detail on specific terms listed in our PAIA request as they relate to inspections conducted, including in relation to any further actions taken (such as warnings, citations, charges, or otherwise that were issued by the SPCA and NSPCA and subsequent follow ups, correspondence and related documentation); and
- ii. Records that indicate, in relation to instances where access to premises to conduct inspections were refused, what actions are typically taken upon such refusal, and the bases on which facilities tend to refuse entry.

Furthermore, the following records related to the NSPCA spreadsheet were deemed requests for information rather than records by the NSPCA in terms of s 11 of PAIA and the definition of a record in PAIA:

- i. Records relating to the "welfare concerns found" which the NSPCA considers to be offences or violations in terms of the APA and which provisions of the APA the NSPCA believes have been triggered;
- ii. Whether the use of certain terms by the NSPCA, in its spreadsheet, such as "none" and / or "no welfare concern", and / or "good" or blank (i.e. no wording) indicates that there were no welfare concerns found in relation to any of the animals at the facilities inspected;
- iii. Records related to the types of welfare concerns found in such instances, such as how many animals were experiencing such issues, which actions were taken in response, including documentation relating to warnings, citations, numbers of animals, etc.; and
- iv. Records relating to the following questions which relate to reporting and criteria for animal welfare inspections conducted by the Farm Animal Inspection Unit ("**FAPU**") inspectors, including:
 - a. Whether inspectors are required to report the total number of animals affected by welfare concerns or simply note the presence of issues, and if there are any criteria for quantifying the number of impacted animals.
 - b. What circumstances would necessitate reporting the number of animals during inspections.
 - c. If there are policies, standards, or procedures outlining when a welfare concern becomes reportable or actionable, and what steps inspectors must take when concerns are identified, including monitoring and compliance measures.

We also requested detailed records from individual inspections that were summarised in the NSPCA spreadsheet, along with an explanation of the methodology used during inspections. The NSPCA relied on s 44(1)(a) of PAIA to refuse our request and alleged that “records produced following individual inspections” amounts to reports.

The covering letter from NSPCA’s attorneys included the following statements (emphasis added):

*“[O]ur client wishes to record that ALRSA’s PAIA Request and the [requests related to the NSPCA spreadsheet]: (i) are **manifestly frivolous and/or vexatious** in so far as they have been made without due regard to the provisions of PAIA and/or the NSPCA’s previous response to ALRSA’s PAIA request; and (ii) require the NSPCA to undertake an amount of work which substantially and unreasonably diverts its resources. Accordingly, should the NSPCA receive requests in the future which have not been made within the scope and/or ambit of PAIA, are not described with sufficient particulars to enable the NSPCA to easily respond to the request or identify the requested record, and/or do not take into consideration the NSPCA’s responses to ALRSA’s previous PAIA requests, the NSPCA notes that it may be entitled to refuse such requests on the basis of section 45 of PAIA. Further, and notwithstanding our client’s response to the [requests related to the NSPCA spreadsheet] as set out above, any further such requests of a similar nature will not be entertained in the future”.*

Observations

While we appreciate that there are specific reasons for which requests can be refused, the overall approach by the NSPCA to our PAIA requests and engagements is concerning. As can be seen from the Annual Reports of the NSPCA, including the most recent 2023 report referred to above, it is impossible to determine the actual enforcement of laws relating to animals, specifically farmed animals in the country. In this instance where there are over 700 inspections were conducted at farmed animal facilities across the country, with some facilities holding up to tens of thousands of animals, the lives of millions of farmed animals are implicated. The NSPCA and SPCAs are one of the few entities that have insights into these facilities and specifically, the treatment of animals. From the annual report, only **6 successful prosecutions** occurred in the reporting year. When it is apparent that there are Cruel Practices occurring, there needs to be greater transparency from the entities with a legislative mandate to protect the interests of these animals.

The current reporting mechanisms are severely inappropriate, and our attempts are to achieve greater transparency and accountability from enforcement bodies. The NSPCA’s lack of transparency towards us and other animal protection non-profit organisation acting in the public interest, significantly hinders efforts to build a united movement for safeguarding the vulnerable chickens implicated in the poultry and Egg Industry. Broad statements such as “1,313,673 farm animals were assisted in 2023” are meaningless without independently verifiable information to back them up, which were not provided.

We have reserved our right to respond to the NSPCA in detail, and in the appropriate forum, should the need arise. As mentioned in our Recommendation section, Section IV of this Supplementary Report, reporting by entities such as the NSPCA in respect of all measures adopted for animal

protection, including enforcement actions undertaken should be mandatory and made available to the public.

LEGAL AND DISCLAIMERS

These disclaimers are to be read in conjunction with the Disclaimers in the Initial Report and as contained on our dedicated website: www.eggssouthafrica.org.

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 Supplementary 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 SA 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 Supplementary 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 Supplementary Report.

As an organisation focused primarily on animal law, this is the predominant lens through which this Supplementary Report (as read with the Initial Report) has been drafted and should be considered, i.e., the centering of animals, their interests, and their intrinsic worth in the dialogue. This Supplementary Report (as read with the Initial Report) is further aimed at providing information related to the environment and consumer protection as interrelated to animal protection. 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. Should the contents of this Supplementary Report (as read with the Initial Report) affect the reputation or business interests of any company, organisation, government entity, or individual mentioned, it constitutes the truth and fair comment and is stated in the public interest.

This Supplementary Report (as read with the 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 30 September 2024 (with selected updates in February 2025) 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, human rights, environmental law, consumer protection, and Corporate Accountability, particularly as it relates to food systems, and requires 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.

The focus of this Supplementary Report is on industrialised animal agricultural operations and practices occurring therein. Given the various types of such systems, these all have different considerations and consequences. Statements, observations and recommendations may / do / 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 in relation thereto. 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 Supplementary Report (as read with the Initial Report). Statements made will not apply to all facilities and stakeholders and should not be construed as such.

This Supplementary Report (as read with the 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 Supplementary 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 Supplementary Report (as read with the 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 Supplementary Report (as read with the Initial Report) and neither ALRSA nor the co-authors or commenter accept responsibility or liability to any party, whether in contract, delict (including negligence) or otherwise relating hereto.

This Project has been conducted and this Supplementary Report (as read with the 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 right of freedom of expression as contained in the Constitution of the Republic of SA, 1996.

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ALRSA aims to promote constructive dialogue and encourage responsible and ethical practices concerning animals, human and environmental rights, consumer protection, corporate transparency and accountability, among others.

*REVISION NOTE: FEBRUARY 2025

This revision note formally documents the substantive updates to the report *Scrambling for the Truth: Eggsposing Corporate Hypocrisy and Non-Transparency*, published by ALRSA in September 2024 (“**Supplementary Report v1**”). The substantive revisions address references to the “Egg Labelling Regulations” that implied or indicated that disclosing production methods (such as “caged,” “barn,” or “free-range”) on egg labels is mandatory rather than voluntary.

Amendments specifically addressing these changes are detailed in the table below and as far as possible included in red text in the Supplementary Report. Minor edits, such as referencing, spelling, numbering, grammar corrections and footnote consistency, are not reflected in the table.

SUBSTANTIVE CHANGES MADE TO (v1) SUPPLEMENTARY REPORT IN THIS v2

The following amendments have been made in v2 of the Supplementary Report in respect of the Egg Labelling Regulations:

Page No.	Short Description of Amendment
140	Changed “must” to may. Noted that because labelling is not mandatory it may lead to consumer confusion. Noted that even where methods of production are included, it may still be confusing or misleading for consumers who are unfamiliar with the specific definitions. Noted that one of ALRSA’s proposals is to make labelling mandatory.
148	Changed that eggs may be labelled in accordance with the regulations. Noted that egg production method labelling is not mandatory in SA as it is in some other countries.
149	Changed wording to reflect non-mandatory nature of egg labelling regulations. Included additional information in reflection of non-mandatory nature of egg labelling regulations. Noted recommendation relating to mandatory labelling.
175	Added new heading and paragraph relating to mandating production method labelling.
242	Included the term “mandatory” in relation to Egg Labelling Regulations in Recommendation 8.10.
254	Amended Recommendation 12.2 to note that the Egg Labelling Regulations should be made mandatory.
254	Amended Recommendations 12.3 and 12.4 to include reference to proposed mandatory nature of the Egg Labelling Regulations.
274	Reference to updates made in February 2025 to Supplementary Report



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