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19 April 2019

Dear Jonathan

RE: FERTILIZER, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK REMEDIES ACT, 1947 (ACT NO. 36 OF 1947) PROPOSED AMENDMENT OF REGULATIONS RELATING TO FARM FEEDS

We refer to the above legislation published in [Government Gazette No. 4223](#) on 15 February 2019 (the “**Bill**”).

We welcome these efforts by the Department of Agriculture, Forestries and Fisheries to provide for better regulation of these industries. It is absolutely critical that we ensure the safety of food for our animals and humans as well as the environment affected by the Bill and related activities. Please find attached some high-level comments of Animal Law Reform South Africa (“**ALRSA**”) on the Bill.

This Bill inevitably affects the safety and wellbeing of every inhabitant in our country. Furthermore, it affects other countries, to the extent that products, animals and activities are shared across borders. Accordingly, the importance of this Bill and actions in respect thereof, cannot be overemphasised.

We believe this is a good opportunity for the Department to be proactive in protecting the aforementioned groups as well as to learn from best international practice and record same in regulation.

Apologies for the three day delay in our comments. We are available to discuss, should you require.

Yours sincerely,

Amy P. Wilson

Director

Animal Law Reform South Africa

ANIMAL LAW REFORM
SOUTH AFRICA

Registered non-profit company, Number 2017/330930/08
Registered NPO, Number 208-234 NPO



RE: FERTILIZER, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK REMEDIES ACT, 1947 (ACT NO. 36 OF 1947) PROPOSED AMENDMENT OF REGULATIONS RELATING TO FARM FEEDS

1. Introduction

We have only included high level policy considerations, unless otherwise stated. There are numerous comments that could be made in relation to the Bill, its objectives and other considerations, however for purposes of this submission, we have limited our comments to policy considerations. In addition, we do not necessarily have the scientific and technical background, and accordingly our comments relate mostly to the wording of the Bill. We have not been exhaustive, and merely illustrative; thus, we wish our comments to be construed broadly for the purposes for which they were intended (being the protection of humans, nonhuman animals and the environment for a sustainable future).

Due to the importance of the matters covered by the Bill, best international practice should be followed. South Africa has an opportunity to be a world leader in this regard, and set a precedent for the rest of Africa. Due to this, we have included in the final section of this document, certain resources which may be helpful, including the relevant European Union (“EU”) regulation of animal feed and pet feed.

We note that in the USA, the National Association of State Departments of Agriculture (“NASDA”) Food Safety Modernization Act Preventive Controls for Animal Food Technical Working Group, has prepared a “*Model Food Safety Modernization Act Preventive Controls for Animal Food Implementation Framework*”.¹ There are various other international and foreign organisations that have useful resources relating to animal and companion animal feed that should be consulted. This is particularly relevant when regulations in respect of the Bill are being drafted. However, where such resources are lacking, deficient, or otherwise problematic, South Africa has the opportunity to rectify this in their own regulation.

We can also look to litigation and other cases in other jurisdictions such as the USA² (only one example as these cases appear in various jurisdictions globally), to pre-empt similar problems in South Africa. These cases range from liability relating to animal feed, to companion animal food to human health effects of pesticides, metals and others. Other cases include large recalls of both feed and companion animal food (with far reaching economic, reputational, health and other consequences) as well as labelling cases. By turning to other jurisdictions, we may look to protect all relevant groups from unnecessary harm and other economic and legal consequences.

¹ <https://s3.amazonaws.com/nasda2/media/Preventive-Controls-for-Animal-Food-Implementation-Framework.pdf?mtime=20180905103800>

² <https://www.feednavigator.com/Article/2017/01/17/Feed-contamination-lawsuits-may-hinge-on-sampling-science-experts>



Furthermore, South Africa should be aware of new threats such as agricultural bioterrorism³ and take all steps necessary to ensure the safety of all inhabitants of the nation, regardless of whether they are human or nonhuman animals.

We also have the opportunity to be progressive - which allows us to eliminate harmful practices altogether. For example, certain jurisdictions are banning the use of pesticides altogether,⁴ and we see a huge growth in the organic movement globally. The European Union for example is planning to ban various pesticides,⁵ one example being chlorothalonil,⁶ the most used pesticide in the UK. South Africa should similar push for such initiatives, and support the organic movement.

In addition to best practice to be recorded in the relevant law and its regulations, enforcement will be critical. Designated, independent and suitably qualified persons should perform relevant activities. Resources (including financial, intellectual and otherwise) should be provided and allocated. Accountability and transparency is of the utmost importance in this area, given the public nature of this industry and far reaching effects. These effects are not limited to our borders, but extend regionally, and even have a global impact.

As we are aware, South Africa had the world's largest listeriosis outbreak recently (affecting over 1000 people, mostly vulnerable groups), and although this was traced back to the processing plant (and not the animal feed), it is common to find the listeria bacterium in feed. This is not limited to the listeria bacterium, but can include other bacteria, pathogens and harmful substances.

Thus, those responsible for the manufacturing of the feed, as well as all involved in the chain of supply have a duty to ensure that it is safe for human and animal consumption, free from harm, and furthermore, to ensure that they utilise sustainable practices.

We note that one of the objectives of the Bill is food security. We wish to note that no other reference (either implicitly or explicitly) to food security nor measures in respect thereof have been included in the Bill. This sentiment should be reflected in the legislation (or regulations) through measures that promote and ensure same. Such measures may include (as examples)⁷ using fertiliser more effectively, managing water in the various processes, targeting food for direct consumption, the reduction of food waste, etc. Activities in the process must be sustainable and proactive steps must be taken by those involved in the chain.

³ https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-public-health-preparedness/tips/topics/food_security.html

⁴ <https://althealthworks.com/18118/indian-state-banishes-all-pesticides-watches-both-wildlife-and-tourism-flourish/?fbclid=IwAR1uB075iiRxefTtWvypw16WwmYilYAAQu5IKJlKb4-rAWb2V6ZMvubNz7RU>

⁵ <https://www.theguardian.com/environment/2019/mar/29/eu-bans-widely-used-pesticide-over-safety-concerns>

⁶ <https://efsa.onlinelibrary.wiley.com/doi/pdf/10.2903/j.efsa.2018.5126>

⁷ <https://www.treehugger.com/sustainable-agriculture/5-ways-improve-global-food-security.html>



2. General Comments

The use of certain pesticides and other harmful chemicals and substances must be prohibited. We have seen from other jurisdictions the harmful and far reaching effects that these can have. They affect the environment (soil, air, water), pollinators (and other insects), animals (at all levels), humans and the entire ecosystem. Any potential pathogens, harmful bacteria, diseases and other similar hazardous materials must be eliminated from the food system altogether. Such considerations should be contained and emphasised in the Bill as well as any regulations promulgated in respect thereof.

The Bill should be consistent with the objectives of the Animal Protection Act, 1962 as amended and the Animal Health Act, 2002. These acts were put in place “*To consolidate and amend the laws relating to the prevention of cruelty to animals*” and “*To provide for measures to promote animal health and to control animal diseases....*”, respectively. Other relevant legislation that should be referred to (or incorporated by reference) has been included in the end of this document.

It is suggested that quality control measures be put in place by feeds and pet food manufacturers and that these measures be more strictly controlled by legislation, specifically testing and identification of Salmonella and Listeria bacteria, the compounds pentobarbital and ethoxyquin, and the presence of metal pieces and melamine. In this regard, please see further notes on “undesirable substances” and other efforts by the EU.

Salmonella and Listeria family of bacteria are found in raw meat (Enterprise Foods saga of 2018). We are of the view that (*inter alia*) there needs to be more stringent quality control (“QC”) measures put in place to prevent the spread and contamination of feeds and pet foods with these bacteria. Mycotoxins, found in grains in pet foods, need to be monitored, but not eliminated, as high levels of these toxins can cause health issues such as cancer. In the opposite case where grains are eliminated from foods, it could lead to canine heart disease. Proper QC is needed for elevated hormone levels, such as thyroid hormone, which, due to a build-up in the food chain, can cause cancer in humans and animals.

Regular testing should be done with respect to (*inter alia*) pentobarbital, and ethoxyquin (and other proven harmful substances). These compounds have adverse effects on animal health, and indirectly on human health. The detection of metal pieces and melamine, which are plastic compounds, should be regulated and more regularly implemented to decrease the consumption of these dangerous substances and introducing them to the food chain.

Feeds and pet food labels need to be clearly, and truthfully marked with the correct labels, indicating the correct amounts of ingredients present in feeds and pet foods. Marketing of feeds and pet foods should also be more strictly monitored to decrease the false marketing of “raw” foods and other matter. The animal and pet owners have a right to truthful information regarding their animal feeds and pet foods. This links with section 24 (environmental rights), section 27 (health, food and water rights) and section 32 (right to access to information) in Chapter 2 (Bill of Rights) in the Constitution



of South Africa, 1996. Furthermore, the animals themselves have an interest in their health and wellbeing.

There needs to be sufficient punitive measures for those contravening the Bill, regulations and others. This should include both civil and criminal liability. Additional measures must be included where there is intention, gross negligence or the relevant perpetrator should have been aware of existing conditions (as an example). Strict liability must be included, where relevant. Provisions of the Consumer Protection Act, 2008 must be incorporated and its objectives promoted.

We note that provision has not been made for genetically modified foods in the Bill. Although governed by other legislation in South Africa (such as the Genetically Modified Organisms Act, 1997), it is particularly relevant in this context and must be properly regulated. In this regard, see notes regarding European Union legislation below.

Further, it should be noted that in addition to feed, there is practice to feed animals to other animals as food. For example, fish are often used to feed other fish in aquaculture, as well as other animals raised for food. This needs to be properly regulated in legislation and enforced, for similar reasons as to why feed should be regulated. There should be prohibitions from feeding herbivores any animal matter or material in their food whatsoever. We note that there has been practices including animal matter in feed that is fed to animals who are natural herbivores. Furthermore, any form of cannibalism (i.e. feeding animals of a species matter or material from the same species) must be outright prohibited.

It is unclear to what extent this Bill amends the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947). Clarity should be provided in this regard.

Ideally, we would like to see provisions in the Bill that require the relevant products (feed, pet food, etc.) to be fit for purpose – i.e. there must be “suitability” requirements.

3. Certain specific Comments

Entire Bill

References to “animal and human health” should be amended wherever they appear, to include reference to environmental health. The right to a healthy environment is contained in section 24 of the Constitution and such right is implicated by this Bill.

Preamble [page 1]

One of the objects of the Bill should be to ensure accountability of those who manufacture the feed as well as for the proper enforcement of the Bill. In addition, as mentioned in Section 1. of this Letter, records regarding the importance of this Bill not only for animals and humans, but also the environment and the health of our ecosystems.



Section 1 [pages 4 – 6]

“Animal” must be defined broadly to include all animals. In order to ensure the objects of the Bill as stated in the preamble are met, no animals shall be excluded, and the remaining provisions of the Bill will assist in the specific interpretation of the relevant provisions.

A definition similar to that contained in EU legislation of “undesirable substances” should be included in section 1: *“Undesirable substances” in EU legislation on animal nutrition means any substance or product, with the exception of pathogenic agents, present in and/or on the product intended for animal feed which presents a potential danger to human health, animal health or the environment or do not adversely affect livestock production.*⁸

Such term should then be utilised in the relevant sections of the Bill relating to (*inter alia*), Prohibitions (section 7); Product Requirements (section 8); Non-compliant products (section 30); and various others.

The term “buy” should be similarly construed to the word “sell” which is more broadly defined. Furthermore, the term “buy” must include “bought” and “sell” must include “sold” as these terms are used in the Bill.

The definitions of “exotic animals”; “feed” and “companion animals” when read together appear to exclude protections for exotic animals kept as companion animals. It is unclear why the distinction has been made for exotic animals. Clarity should be given in this regard.

Section 3 [page 7]

Subsection (2) setting out the categories of the advisory committee should include the fields of animal welfare, environmental wellbeing and an expert in human health (particularly as it relates to the consumption of animals).

Section 4 [pages 7 - 9]

Any assignees must not be conflicted in exercising powers and authorities. Any potential conflicts of interest or other matters which may fetter their discretion must be declared upfront and on an ongoing basis. Furthermore, they must be suitably qualified with the requisite knowledge, skill, experience, etc. This comment applies generally to persons throughout the chain exercising duties, activities, discretions and other matters in terms of the Bill.

Section 7 [page 12]

We note that the prohibitions relate mostly to licensing requirements, and no substantive provisions regarding other prohibitions have been included. This section should (at a minimum) expressly reference section 8, and indicate that no person shall be in contravention of the product requirements as contained in Section 8 (or elsewhere in the Bill or regulations). Section 8 should then be more robust in terms of the actual product requirements.

⁸ https://ec.europa.eu/food/safety/animal-feed/undesirable-substances_en



Section 8 – 18 [pages 12 – 21]

A permit for import and export must specify ingredients in universal units (SI units). The ingredients/products must be tested before export and be accompanied by experimental documents before permit is issued. The same applies for imports where ingredients/products are tested before resale, administering to animals, or incorporating into feeds or pet foods.

Raw ingredients need to be tested before and upon import and export for known pathogens, such as (among others) Salmonella and Listeria bacteria.

In addition, we are of the view that this section should generally be more robust. For example, it should include that the included persons shall not include any “undesirable substances” as defined (see comment in Section 1 above) in the feed/pet food.

Section 9 [pages 13 - 14]

We are concerned with the exemption provisions. If one considers the objectives of the Bill, regardless of the size and nature of a manufacturing facility, it may still pose a threat to animal, human and environmental safety. In addition, the other categories for which an organisation may be exempt from the requirements do not align with the objectives of the Bill. We thus suggest that this entire section be removed.

If any exemptions are to be granted under this Bill, any applications in respect thereof should be made public and the public shall have an opportunity to comment on such application and thereafter challenge any decisions of the decision-making body.

Section 11 [page 15]

Local and foreign suppliers must submit to periodic quality tests (every 12 – 24 months) to retain a permit.

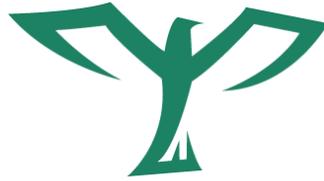
Section 12 [page 16]

We are of the view that there should not be an exemption provided for. As an example, please see note above regarding the potential threat of agricultural bioterrorism.

If such exemption is provided, it must be severely restricted to a certain amount and such exemptions should be made publicly available for the sake of transparency. It is still possible that smaller quantities of the products included, or for the purposes mentioned could be harmful, and thus at a minimum, section 11(3) should not be exempted in terms of section 12.

Section 17 [page 20]

It needs to be specified which ingredients are on the exempted and registered lists, else, where these ingredient lists can be freely and publicly obtained. The regulated amounts of ingredients must also be made known and publicly accessible.



Section 20 [page 22]

The Prohibition Against Disclosure as currently construed, does not ensure a transparent system. This section should be removed or amended to include provisions that promote transparency and access to information. This is critical in ensuring accountability.

The public, as a matter of necessity, should have access to information as it relates to them, their health and wellbeing and matters of public interest. There should be an assumption in favour of access to information unless there is a reason not to disclose same. The current wording offers an assumption in favour of non-disclosure. This should be amended. In order to ensure traceability and accountability, there needs to be transparency.

Section 22 [page 23]

This section must be mandatory and thus the wording “*as may be required in terms of its licence, registration document, or as may be prescribed*” must be removed from subsection (1).

An additional paragraph (f) should be included:

“*and comply with any additional requirements of its licence, or as prescribed by law or regulation*”.

A hazard analysis and control plan must be made known to the Registrar upon applying for a license and any subsequent renewal. Ideally, such plans could be accessible on request and their minimum requirements for contents specified in legislation (this would ensure a more uniform approach).

Section 23 [page 23]

This section is extremely important in achieving the objectives of the Bill and thus should be more robust. Many of the cases we have seen relating to the subject matter of the Bill in other jurisdictions have related to labelling of products and related matters. It is absolutely essential that the labelling requirements are complied with, but that such requirements reflect all necessary matters. For example, all ingredients must be listed; any GMO products identified; any harmful substances highlighted; etc. Ideally, the source of such ingredients should be included. No false, deceptive, misleading or otherwise problematic statements, imagery or packaging must be present.

Punitive consequences should be specified fine system should be in place for when labels on feeds and pet food products are not complied with or are misleading, deceptive or otherwise false. This information should be freely and publicly available.

The wording of this section should be broadened to include marketing activities and any activities in respect of the products. The above comments relate to traceability and record keeping *mutatis mutandis*. Reference should also include to the release of such information.

Section 25 [page 25]

Inspectors must naturally not have any conflicts of interests (including for example any involvement with an entity he/she/they are inspecting).

Section 25(b) must also include reference to being suitably qualified.



Section 29 [pages 29 - 30]

Please see comments above regarding offenses – for example in relation to “undesirable substances”. There should be offences for labelling and marking as set out.

In addition, the offences relate mostly to licensing requirements. As the objectives of the Bill are to ensure not only a system of traceability, but also relate to food safety, nutrition and food security, this needs to be reflected fully in the offenses.

Thus, generally, the offenses should refer to all stages including manufacturing, as well as keeping, selling, buying, advertising, promotion, utilizing, etc. and should not be limited to licensing but also relate to the contents of the products, the facilities, the methodology, labelling and so on and so forth.

It is noted that no fine specifications have been set out. This needs to be clarified and specified and same should also specify whether punishment is per infringement, time period, incident, etc.

Section 30 [pages 29 - 30]

The same period of imprisonment shall apply as in section 29. In addition, see previous comments regarding offenses.

Section 35 [page 33]

Prohibited ingredients in 2019 might not have been prohibited 5 decades ago. Lists need to be updated and reconciled with currently veterinary knowledge.

4. Other resources

There are a number of useful resources which should be consulted, some of which have been included here (note: this is a non-exhaustive list and further resources can be provided if necessary):

a. European Union Legislation, Regulations and Directives

There are specific regulations that should be consulted. See: Animal Feed in EU Legislation⁹ which is further divided into:

1. Feed Hygiene¹⁰
2. Feed Marketing¹¹
3. Feed Additives¹²
4. Medicated Feed¹³
5. Undesirable Substances¹⁴

⁹ https://ec.europa.eu/food/safety/animal-feed_en

¹⁰ https://ec.europa.eu/food/safety/animal-feed/feed-hygiene_en

¹¹ https://ec.europa.eu/food/safety/animal-feed/feed-marketing_en

¹² https://ec.europa.eu/food/safety/animal-feed/feed-additives_en

¹³ https://ec.europa.eu/food/animals/health/veterinary-medicines-and-medicated-feed_en

¹⁴ https://ec.europa.eu/food/safety/animal-feed/undesirable-substances_en



6. Genetically Modified Feed¹⁵

There are also pet feed best practices, such as FEDIAF Code of Good Labelling Practice for Pet Food by the EU Standing Committee for Animal Nutrition.¹⁶

b. South African Sources

1. In the Media¹⁷
2. Research (SA)¹⁸

In addition to legislation already mentioned above:

1. [Animals Protection Act](#)
2. [Animal Health Act](#)
3. [Consumer Protection Act](#)
4. [Food For Children Regulations](#)
5. [Food Hygiene Regulations](#)
6. [Foodstuffs Cosmetics And Disinfectants Act](#)
7. [HACCP 2003](#)
8. [HACCP 2009 Amendment](#)
9. [Hazardous Biological Agents Regulations](#)
10. [Meat Safety Act](#)
11. [National Health Act](#)
12. [Occupational Health And Safety Act](#)
13. [Poultry Regulations](#)
14. [Powers And Duties Of Inspectors Regulations](#)
15. [Red Meat Regulations](#)
16. [Regulation Hygiene Perishable Foodstuffs](#)
17. [Regulations Governing Microbiological Standards For Foodstuffs And Related Matter](#)
18. [Regulations Of Notifiable Diseases](#)
19. [Regulations Of Processed Food](#)
20. Others as applicable

c. International and Regional legislation and Efforts

South Africa must ensure compliance with all relevant international conventions and efforts to which it is a party. For example, compliance with World Animal Health Organisation (“**OIE**”) and the Food

¹⁵ https://ec.europa.eu/food/safety/animal-feed/genetically-modified-feed_en

¹⁶ <http://www.fediaf.org/press-releases/2744:labeling-endorse.html>

¹⁷ <https://www.businesswire.com/news/home/20180904005385/en/Manufacture-Prepared-Animal-Feeds-Pet-Food-South>

¹⁸ https://www.researchandmarkets.com/research/8fdpht/the_manufacture?w=4



and Agricultural Organisation of the United Nations (“**FAO**”)¹⁹ and other relevant initiatives and conventions.

At a regional level as part of the African Union (“**AU**”), relevant obligations must be complied with.

Additionally, we would suggest that South Africa, where possible initiate efforts to improve policies, regulations and other documents where same are lacking and assist with efforts in other African countries, where possible.

d. United States of America

Some additional sources from the USA include:

1. Safety Recalls in USA²⁰
2. Federal Drug Administration Resources²¹

[Note: We are happy to provide any additional resources that may be required.]

END.

¹⁹ <http://www.fao.org/food/food-safety-quality/capacity-development/food-regulations/en/>

²⁰ <https://www.avma.org/News/Issues/recalls-alerts/Pages/pet-food-safety-recalls-alerts.aspx> and

<https://www.fda.gov/animalveterinary/safetyhealth/recallswithdrawals/default.htm> and

<https://www.feednavigator.com/Article/2018/12/05/ADM-recalls-select-cattle-feed-products>

²¹ <https://www.fda.gov/animalveterinary/products/animalfoodfeeds/petfood/default.htm> and

<https://www.fda.gov/animalveterinary/products/animalfoodfeeds/ucm347941.htm>