

**Submission
No 55**

**PREVENTION OF CRUELTY TO ANIMALS AMENDMENT (VIRTUAL STOCK
FENCING) BILL 2024**

Organisation: Animal Defenders Office

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Animal Defenders Office

Using the law to protect animals

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The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

NSW LEGISLATIVE ASSEMBLY

Committee on Investment, Industry and Regional Development

Inquiry into and report on the Prevention of Cruelty to Animals Amendment (Virtual Stock Fencing) Bill 2024

By email: investmentindustry@parliament.nsw.gov.au

Dear Chair

Submissions from the Animal Defenders Office

1. Thank you for the opportunity to contribute to the inquiry into and report on (**Inquiry**) the *Prevention of Cruelty to Animals Amendment (Virtual Stock Fencing) Bill 2024 (VSFD Bill)* being conducted by the NSW Legislative Assembly Committee on Investment, Industry and Regional Development (**Committee**).

About the Animal Defenders Office

2. The Animal Defenders Office (**ADO**) is a not-for-profit community legal centre that specialises in animal law. The ADO provides pro bono animal law services to the community. The ADO is a member of Community Legal Centres NSW Inc., the peak body representing community legal centres in NSW.
3. Further information about the ADO can be found at www.ado.org.au.

ADO submissions

4. The ADO's submissions to the Inquiry are set out below and focus primarily on paragraphs (a) and (b) of the Inquiry's terms of reference (**TOR**).¹
5. Before turning to the TOR, it is convenient to set out some preliminary observations on the VSFD Bill and *Prevention of Cruelty to Animals Act 1979 (NSW) (POCTA Act)* to provide some background and context.

¹ Accessible at: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3044>.

Preliminary observations on the POCTA Act and VSFD Bill

Purpose of the VSFD Bill

6. The VSFD Bill is a non-government, private members' public bill² introduced by independent MP Mr Philip Donato (Member for Orange) on 8 February 2024.³
7. The VSFD Bill's stated purpose is "to amend the [POCTA Act] to permit the use of virtual stock fencing devices."⁴ How it seeks to do this is discussed further below. For the purposes of these submissions, the ADO adopts the following description for a "virtual stock fencing device" (**VSFD**), taken from the *Report to Department of Agriculture, Fisheries and Forestry: Independent scientific literature review on animal welfare considerations for virtual fencing (DAFF Report)*:⁵

Virtual fencing (VF), when applied to livestock, commonly refers to a system of containment of animals whereby the fenceline is a non-physical boundary that is enforced by giving the animal a warning cue followed by an electrical shock, administered by a device worn by the animal. ...

Virtual fencing technology involves livestock wearing a wireless device that delivers a combination of sensory cues such that animals learn not to approach or cross a virtual boundary. The technology is in the early stages of commercialisation in Australia and may be applicable to a range of livestock animal industries. ...

VF approaches for the containment of livestock typically deploy two types of sensory cues – a non-aversive stimulus that is aimed at warning the animal that it is approaching a boundary and an aversive (typically electrical) stimulus that is designed to turn the animal back from the virtual boundary if it has not responded to the non-aversive stimulus.

The POCTA Act and electrical devices

8. The objects of the POCTA Act are set out in section 3 as follows:

- (a) *to prevent cruelty to animals, and*
- (b) *to promote the welfare of animals by requiring a person in charge of an animal—*
 - (i) *to provide care for the animal, and*
 - (ii) *to treat the animal in a humane manner, and*
 - (iii) *to ensure the welfare of the animal, and*

² To use the terminology from the Parliament of New South Wales website at:

<https://www.parliament.nsw.gov.au/bills/Pages/Legislative-process-explained.aspx>

³ The Notice of Motion was dated 17 October 2023 and the VSFD Bill was introduced on 8 February 2024: see <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=18518>.

⁴ VSFD Bill, long title.

⁵ See pages 1 to 10. The DAFF Report was prepared in December 2022 (and updated in November 2023) by Andrew Fisher, BVSc (Hons) PhD FANZCVS, and Amelia Cornish, Amelia Cornish BA/BSc, MBus (S&T), PhD. It can be accessed at: <https://www.agriculture.gov.au/agriculture-land/animal/welfare/awtg>.

(c) *to promote the welfare of dogs and cats by requiring information about them to be provided when they are advertised for sale.*

9. Part 2 of the POCTA Act contains criminal offences aimed at prohibiting certain conduct. There are the general offences relating to “cruelty to animals” (section 5) and “aggravated cruelty to animals” (section 6), and more specific offences, which relevantly include section 16, headed “certain electrical devices not to be used upon animals”.

10. Section 16 of the POCTA Act specifically regulates certain conduct in relation to “electrical devices”. It does this by defining the term “electrical device” in section 16(1) – as meaning “a device of a type prescribed by the regulations” – and by setting out the following criminal offence in section 16(2):

(2) *A person shall not—*

(a) *use an electrical device upon an animal, or*

(b) *sell any electrical device, or*

(c) *have in his or her possession or custody any electrical device.*

Maximum penalty—250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

11. An exception to these prohibitions is provided for in subsection 16(3) in relation to animals belonging to a “prescribed species” (of which there currently appears to be none prescribed). There is also a range of defences which may apply to offences under Part 2: see section 24. One such defence relates to carrying out animal research: see section 24(1)(e).

12. The *Prevention of Cruelty to Animals Regulation 2012 (POCTA Regulation)* prescribes electrical devices for the purposes of section 16 of the POCTA Act by listing in a table a number of types of devices, while also carving out their use for certain purposes or in certain circumstances where they would not be considered as electrical devices for the purposes of section 16.⁶ The current table is as follows:

Column 1	Column 2
Type of device	Purpose for or circumstances in which not electrical device
Electro-immobiliser	Restraining cattle, but only if used by a veterinary practitioner for purposes other than as an alternative to analgesia or anaesthesia

⁶ POCTA Regulation clause 35 and Schedule 3.

Electric stock prod	Driving, herding, mustering or controlling weaned cattle or sheep Controlling horses being used in a rodeo, but only for the purpose of getting a horse that has stalled in the chute to exit the chute and not if used on the horse once it has started to exit the chute Loading or unloading weaned pigs onto or from a vehicle for transportation purposes
Electric fence	Confining, controlling or protecting animals (except dogs and cats)
Electro-ejaculator	Collecting semen from conscious cattle or sheep Collecting semen from animals that have been tranquillised and administered with an analgesic or animals that have been anaesthetised
Electric stock grid	Confining stock animals (except poultry)
Electric fightback lure	Training coursing dogs
Electro-fishing device	Catching species of fish under licence, permit or authority under the <i>Fisheries Management Act 1994</i> or in accordance with the <i>Animal Research Act 1985</i>
The device sold under the name Pingg String (including any similar device delivering an electric shock of no greater intensity or duration than a Pingg String)	Confining dogs or cats, but only if used inside a fence through which dogs or cats cannot pass and that is at least 1.5 metres high
Canine invisible boundary	Confining dogs, but only if used inside a fence through which dogs cannot pass and that is at least 1.5 metres high
Electronic bird deterrent device	Deterring birds from roosting on building ledges and other external building surfaces
Any other device producing an electrical discharge that is used in such a way that the animal in relation to which it is being used cannot move away from the device	

13. The ADO understands that it is the final item in the above table which presently, in effect, prohibits the use of VSFDs insofar as they involve the use of a collar or similar device which produces an electrical discharge and from which the animal cannot move away.

The VSFD Bill

14. The VSFD Bill in its original form⁷ is short and seeks to make two amendments to section 16:

- a. First, the definition of “electrical device” in section 16(1) would be amended so that it would provide (proposed amendments underlined for convenience):

electrical device means a device of a type prescribed by the regulations, but does not include a virtual stock fencing device.

- b. Second, a new definition for the term “virtual stock fencing device” would be inserted into section 16(1) as follows (proposed amendments underlined for convenience):

virtual stock fencing device means a device—

(a) consisting of GPS-enabled sensors and collars capable of delivering electric pulses and cues to stock animals, and

(b) used for the purposes of confining, tracking and monitoring stock animals.

[NOTE: “stock animals” is already defined in section 4(1) of the POCTA Act to mean “an animal which belongs to the class of animals comprising cattle, horses, sheep, goats, deer, pigs, poultry and any other species of animal prescribed for the purposes of this definition”.]

15. Certain amendments for consideration were proposed⁸ to the above definition of “virtual stock fencing device” to add a third paragraph (c) as follows (proposed amendments underlined for convenience):

(c) complies with—

(i) relevant standards published by Standards Australia from time to time, and

(ii) requirements published by the Secretary from time to time.

16. Accordingly, the VSFD Bill seeks to allow the use of VSFDs by expressly excluding them from the definition of a (prohibited) “electrical device”. As discussed further below, this approach departs from and is inconsistent with the current practice of dealing with these matters in the POCTA Regulation (clause 35 and Schedule 3) rather than directly in the POCTA Act.

⁷ Accessible at <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=18518>.

⁸ Accessible at <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=18518>. See also the second reading debate speech by Mr Dugald Saunders (Member for Dubbo) (10:52) where reference to this is made (Legislative Assembly Hansard, 21 March 2024, accessible at: <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-140037>).

TOR paragraph (b): the animal welfare, biosecurity and community safety implications of permitting virtual fencing

17. It is convenient first to set out the ADO's submissions in relation to TOR paragraph (b), specifically animal welfare implications of permitting virtual fencing, before turning to TOR paragraph (a).
18. The ADO submits that, taking into account animal welfare matters and the objects of the POCTA Act, it is appropriate to continue to prohibit the use of VSFDs under the POCTA Act. Accordingly, the POCTA Act should not be amended as proposed by the VSFD Bill. In summary, the reasons for this view are:
 - a. AWTG process: The use of VSFDs is currently being examined by the Animal Welfare Task Group (**AWTG**).⁹ This involves consideration of animal welfare issues and this process is ongoing.
 - b. Evidence of animal welfare issues: Evidence indicates the use of VSFDs raises animal welfare issues, including issues which require further research and consideration.
19. These reasons are explained in more detail below.

AWTG process

20. The use of VSFDs, including animal welfare issues, is currently being examined by AWTG in response to a referral from the Agriculture Senior Officials' Committee (**AGSOC**).¹⁰ A subgroup of AWTG is examining regulatory issues associated with virtual fencing technology.
21. As part of this work, AWTG commissioned the DAFF Report to provide an independent scientific literature review on animal welfare considerations for virtual fencing for livestock. By April 2024,

⁹ See: <https://www.agriculture.gov.au/agriculture-land/animal/welfare/awtg#daff-page-main>. The AWTG promotes the national consistency of farm animal welfare regulations across jurisdictions and oversees the development and review of standards and guidelines for farm animals. It resolves animal welfare policy and regulatory matters which have national and inter-jurisdictional scope and delivers on animal welfare priorities of national interest referred to it by the Agricultural Senior Officials' Committee. Membership is made up of representatives from each of the state and territory government departments responsible for animal welfare and the Department of Agriculture, Fisheries and Forestry. The New Zealand Ministry of Primary Industries participates in an observer capacity.

¹⁰ AGSOC comprises all department heads and CEOs of Australian / State / Territory and New Zealand Government agencies responsible for primary industries policy issues. It is chaired by the Secretary of the Australian Government Department of Agriculture and Water Resources. AGSOC provides for cross-jurisdictional cooperative and coordinated approaches to matters of national interest. It also supports the Agriculture Ministers' Forum (AGMIN) in achieving its objectives. AGSOC has a number of sub-committees and task groups that report to it for defined work. See: <https://www.directory.gov.au/portfolios/agriculture-water-and-environment/department-agriculture-water-and-environment/agriculture-senior-officials-committee>.

AWTG was in the process of setting up a stakeholder reference group to facilitate harmonisation of virtual fencing regulations.¹¹

22. Noting the role of AWTG to promote national consistency of farm animal welfare regulations across jurisdictions, and the ongoing consideration of animal welfare issues, to the ADO submits that it would be premature to take any legislative or regulatory steps in relation to VSFDs prior to the conclusion of this process.

Regulatory approach to VSFDs in other Australian jurisdictions

23. The approach to VSFDs across Australian States and Territories is not consistent. Currently, the use of VSFDs is regulated as follows (as at the time of writing):

Jurisdiction	Permitted: yes/no?	Reference
ACT	No, not permitted.	<i>Animal Welfare Act 1992 s13(1). Animal Welfare Regulation 2001 reg 5 and Sch 1.</i>
QLD	Yes, permitted.	<i>Animal Care and Protection Act 2001 ss 18(2)(e) and 37A. Animal Care and Protection Regulation 2023.</i>
NT	Yes, permitted.	<i>Animal Protection Act 2018 s 30. Animal Protection Regulations 2022 Sch 2 Item 8.</i>
SA (current)	Partially permitted. Only in research into the use of such collars.	<i>Animal Welfare Act 1985 s 15. Animal Welfare Regulations 2012 reg 8(1)(a).</i>
SA (proposed)	[Likely to follow current approach but cannot confirm as the detail will be in the regulations and they haven't been drafted yet.]	Animal Welfare Draft Bill (2024) (proposed) s 9.
TAS	Yes, permitted.	<i>Animal Welfare Act 1993 (no reference).</i>
VIC (current)	Partially permitted. Only on specified farmed animals under licensed research.	<i>Prevention of Cruelty to Animals Regulation 2019 reg 23(b).</i>
VIC (proposed)	[May be permitted or prohibited. Will be done in regulations which are not drafted yet.]	Draft Animal Care and Protection Bill
WA	Partially permitted (very limited). One type of VFSD may be used on cattle.	<i>Animal Welfare Act 2002 s 19(2)(b), s 29. Animal Welfare (General) Regulations 2003, regs 3(a) and 7.</i>

¹¹ See: https://www.agriculture.gov.au/agriculture-land/animal/welfare/awtg#_2024.

24. The ADO submits that rather than adding yet another regulatory approach to VSFDs, NSW should work with other jurisdictions to reach a uniform regulatory approach to the use of the devices, especially given the possibility that their use may cross jurisdictional borders.

Evidence of animal welfare issues

25. The ADO's submissions in relation to animal welfare are primarily drawn from:

- a. the DAFF Report;
- b. a paper entitled *Electric shock control of farmed animals: Welfare review and ethical critique (Welfare Review and Ethical Critique Paper)*;¹² and
- c. a UK Government report by the Animal Welfare Committee entitled *Independent report: Opinion on the welfare implications of using virtual fencing systems to contain, move and monitor livestock (UK AWC Report)*.¹³

26. The DAFF Report identified and examined (based on a literature review) a wide range of animal welfare matters associated with VSFDs. The DAFF Report is organised into different thematic parts, with each discussing different animal welfare issues where relevant. These different parts (which provide an indication of the nature and breadth of animal welfare issues raised by the use of VSFDs) can be summarised as follows:¹⁴

- a. **Part A:** Characteristics of virtual fence usage that may impact animal welfare, including issues relating to:
 - i. audio/non-aversive cues;
 - ii. electric/aversive cues (including strength and duration, time-outs and frequency);
 - iii. inbuilt limits/safety features and animal welfare (e.g. when and how electrical pulses should cease); and

¹² Authored by D Grumett and A Butterworth in *Animal Welfare, Volume 31, Issue 3* (Cambridge University Press), August 2022. Accessible at: <https://www.cambridge.org/core/journals/animal-welfare/article/electric-shock-control-of-farmed-animals-welfare-review-and-ethical-critique/99A5195D4BDAF6C0CC136AB774796A7E>

¹³ Published 10 October 2022 and accessible at: <https://www.gov.uk/government/publications/awc-opinion-on-the-welfare-implications-of-using-virtual-fencing-for-livestock/opinion-on-the-welfare-implications-of-using-virtual-fencing-systems-to-contain-move-and-monitor-livestock>.

¹⁴ The DAFF Report also identifies a number of specific animal welfare risks (and assesses and rates them) related to VSFDs: see Table 8 "Animal welfare risk management assessment for virtual fencing" on pages 67 and 68. Based on their examination of the various matters in the DAFF Report, the authors ultimately recommend a number of specific characteristics for virtual fencing technology and deployment required to minimise welfare impacts: see page 2.

- iv. characteristics of wearable devices and their maintenance that may impact animal welfare, including:
 - 1. the weight and material of a device;
 - 2. the prevention of pressure lesions and strangulation;
 - 3. protection from electrical components and electrical faults;
 - 4. interactions of a device with an animal's hair or wool;
 - 5. species and breed-specific considerations;
 - 6. the management of growing animals;
 - 7. the impact of weather and climate;
 - 8. monitoring of animals; and
 - 9. the energy efficiency of a device (e.g. the need to replace batteries, which require livestock to be gathered and restrained, which causes stress).

- b. **Part B:** Animal welfare impacts in relation to animal learning and virtual fencing, including issues relating to:
 - i. learning phase impacts;
 - ii. individual animal differences in learning and temperament;
 - iii. effects of age and breed; and
 - iv. effects of group size and previous experience.

- c. **Part C:** Assessment of long-term animal welfare impacts, during use and when not in use, and the likelihood of chronic stress.

- d. **Part D:** Best management practices for using animal welfare monitoring indicators to minimise stress during acclimatisation, training and ongoing use.

- e. **Part E:** The product/company approach to customer selection, training, and ongoing monitoring and user support aimed at improving animal welfare outcomes.

- f. **Part F:** Animal welfare impacts during routine usage for stock movement control including food/water provisions, access to hazards such as waterways or roads/railways, limitations on fence dimensions and shape, device malfunction or system failure and ongoing monitoring of welfare indicators. Welfare comparison to traditional electric fencing and other animal movement control methods such as quad bikes, horses, dogs, and helicopters.
- g. **Part G:** Animal welfare impacts of extension applications such as efficient pasture utilisation, dynamic herding and group segregation, in particular consideration of social behaviour and motivation to breach fencing due to hunger and frequency/speed of fencing change.
- h. **Part H:** Assessment of differing animal welfare considerations in the livestock industries which may use the technology.
- i. **Part I:** Management of animals that cross the virtual barrier, including returning to the herd using dynamic fencing strategies and animal welfare impact of these strategies.
- j. **Part J:** Considerations for vulnerable animals such as young at foot, and ill or injured animals.
- k. **Part K:** Strategies for managing animal welfare during adverse events such as fire, flood, or storms.
- l. **Part L:** Considerations of animal welfare issues unique to permeable fences including straying, risk of predation or trespass.
- m. **Part M:** Strategies to mitigate deliberate misuse of the virtual fencing technology to negatively impact animal welfare.
- n. **Part N:** Potential positive animal welfare impacts of usage such as movement control during extreme weather and better feed management. Assessment of value proposition of capacity to include additional capabilities such as remote health and welfare monitoring systems in the wearable device.
- o. **Part O:** The animal welfare impacts of virtual fencing on non-target species including native wildlife.
- p. **Part P:** Assessment of any other issues or gaps identified in the literature review, including:
 - i. the management of animals [who] show an inability to learn;
 - ii. mounting a device on only the lead animals within a herd; and

iii. ethical considerations.

27. The above summary indicates the nature and breadth of animal welfare issues relating to the use of VSFDs. While the DAFF Report acknowledges that “the understanding of the animal factors that enable effective and minimal-stress virtual fencing has advanced significantly in the past 10 years, along with the developments in the technology itself and the understanding of how to deploy it and train human operators”,¹⁵ it is also clear from the DAFF Report that research is ongoing and there are areas where further consideration is necessary, including in relation to other animals (beyond cattle).

28. Further, the Welfare Review and Ethical Critique Paper notes:¹⁶

Some important welfare implications of virtual fencing are unclear and require further research...At present, a precautionary principle is justified that permits commercial development in the context of ongoing research to understand and limit potential negative impacts on health and behaviour. ...

The...collars linked to virtual fencing and containment systems require further welfare assessment because they coerce animals into rapid changes in their normal behaviours and modes of learning.

29. The UK AWC Report also notes:¹⁷

Further research is needed to reliably assess the probability and importance of potential welfare gains resulting from virtual fencing, as well as the risk and magnitude of possible negative welfare impacts on livestock health and mental state. ...

There is significant scope for livestock welfare to be compromised if users of virtual fencing systems do not fully understand how the technology works, its technical limitations and how to respond in the event of problems.

Other matter – potential animal welfare benefits

30. The DAFF Report also identifies certain potential animal welfare benefits from the use of VSFDs, particularly for target and non-target species (e.g. native species) by not using (or by using fewer) physical fences, such as the reduction of risks of injury, entanglement and habitat or migration disruption. This was also mentioned in the second reading debate.¹⁸ These potential benefits underscore the need for comprehensive and careful animal welfare and ethical

¹⁵ See page 2.

¹⁶ See pages 381-382.

¹⁷ See the “Conclusions” section, accessible at: <https://www.gov.uk/government/publications/awc-opinion-on-the-welfare-implications-of-using-virtual-fencing-for-livestock/opinion-on-the-welfare-implications-of-using-virtual-fencing-systems-to-contain-move-and-monitor-livestock#conclusions>.

¹⁸ Legislative Assembly Hansard, 21 March 2024, accessible at: <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardFull.aspx#/DateDisplay/HANSARD-1323879322-140033/HANSARD-1323879322-140058>. See especially comments from Mrs Helen Dalton (Member for Murray) (12:21) regarding ‘native animals such as kangaroos [who] are often caught in conventional fences’.

consideration regarding the use of VSFDs, as is also acknowledged in the Welfare Review and Ethical Critique Paper and the UK AWC Report.

TOR paragraph (a): the provisions of the bill

31. The ADO's primary submission is that, taking into account animal welfare matters and the objects of the POCTA Act, it is appropriate to continue to prohibit the use of VSFDs under the POCTA Act. Accordingly, the POCTA Act should not be amended as proposed by the VSFD Bill.

32. However, for completeness, the ADO also makes the following submissions on the provisions of the VSFD Bill (and related legislative and regulatory issues).

Inconsistent legislative method

33. As noted in paragraphs 8 to 16 above, the approach of the VSFD Bill – to seek to regulate this matter through the POCTA Act rather than the POCTA Regulation – departs from and is inconsistent with the current legislative method.

34. Utilising the POCTA Act to regulate this matter is legally open, and does have the advantage of parliamentary scrutiny – as opposed to prescribing matters in the POCTA Regulation, which is an act of executive power by the relevant repository of power. However, adopting such an inconsistent approach is inherently not desirable, and further it could give rise to interpretive issues, where certain electrical devices (VSFDs) are dealt with in the POCTA Act while others are prescribed in the POCTA Regulation. A consistent approach – whether via the POCTA Act or POCTA Regulation – should be taken.

Insufficient regulatory detail

35. Noting the nature and breadth of animal welfare issues discussed in paragraphs 24 to 31 above, the ADO notes the VSFD Bill lacks sufficient regulatory detail, in particular:

- a. The VSFD Bill uses the very broad definition of “stock animals”. The DAFF Report notes that, in the Australian context, the processes and associated animal welfare safeguards are much more advanced for cattle than for sheep or other animals.¹⁹ Any legislative measure to permit the use of VSFDs should be specifically limited to animals – if there are any – for whom animal welfare issues have been appropriately considered and safeguarded.
- b. The DAFF Report recommends a detailed set of requirements that VSFDs should meet to minimise animal welfare issues (noting that this is still being actively considered through the AWTG process outlined above). None of these requirements is reflected in the VSFD Bill, though there is some attempt potentially to provide for the inclusion of certain standards in the amendments for consideration discussed in paragraph 15 above. Any legislative measure to permit the use of VSFDs should contain appropriate

¹⁹ See page 2.

regulatory controls, informed by evidence and appropriate consideration of animal welfare issues.

The ADO thanks the Committee for the opportunity to contribute to the Inquiry.

Please contact us if you require any further information.

Sincerely

Ken Powell and Tara Ward

Solicitors

Animal Defenders Office