

# **The power of the retrospectoscope — cat legislation: what precisely did we learn in South Australia?**

**Deb Kelly**

## **ABSTRACT**

When the Dog and Cat Management Bill was being considered by the Parliament in 1995 the Minister received a thousand letters either describing the legislation as draconian or wishy-washy. It was simultaneously called the Cat Kill Bill and the Cat Protection Bill by opposite ends of the spectrum. Put simply, we have learnt that you can't please all the people all the time particularly if you are dealing with cat legislation. With the power of the retrospectoscope this presentation seeks to explore the strengths and limitations of the legislation and highlight the pitfalls for new players. It will explain why we chose the options we did and why we rejected some of the proposals considered.

## **INTRODUCTION**

In a democracy legislation must be consistent with the wishes of the majority of the people, as reflected by their represented members, at the time it was passed by Parliament. This may seem a very simplistic statement but it is one of the greatest challenges. In a subject such as cat legislation lobby groups can be so loud it becomes difficult to hear what the average Joe Blow really wants. The cat provisions of the Dog and Cat Management Act 1995 were an honest attempt to define and regulate the views of ordinary people in a manner that provides the flexibility for local government to manage cats in accordance with the wishes of their local communities. Now, four years down the track, it is still 'enabling' legislation and is still criticised as being draconian and wishy-washy. On this basis, we probably got it about right for the South Australian community today. If public attitudes change then it is imperative that the legislation be amended accordingly.

## **BACKGROUND TO THE LEGISLATION**

In 1991 a Cat Working Party was established to define the issues surrounding domestic cats and propose solutions. In April 1992, as part of the investigations of that group, a public seminar was held comprising politicians of all the major parties and invited members of the public representing vastly different viewpoints. In her concluding remarks the Minister stated, "We do have an overwhelming commitment to move down the track with legislation and with the things that you have said. We have heard and we have listened". These sentiments were reflected in the final report of the Working Party presented in July of that year. The Report defined the major issues as:

- predation — predominantly the impact of cats on native animal populations;
- public nuisance — fighting, excrement, digging up gardens;
- cat welfare — the welfare of dumped, euthanased, stray and feral cats as an issue;
- disease — both risk to owned cats and the threat of zoonoses to humans and other species; and
- the value and importance of cats as pets in society.

Within months of the report being tabled, there was a new minister. By this time, the government was thoroughly tired of being lobbied by the cat 'lovers' and 'haters' and decided to leave it alone. A year or two later there was an election and a change of government. The new minister was heavily lobbied, as was his predecessor, and doing nothing was one of main sources of criticism. The community was now split three ways, regulate, don't regulate, and please just do something. Hence it was decided to find the middle road and navigate the rather rocky route it presented. Within a year, the cat legislation was in place. It was the first Act of Parliament in the world to provide any form of regulation on pet cats. That, in itself, was an achievement.

## **PROVISIONS OF THE LEGISLATION**

For those unfamiliar with the cat provisions of the Dog and Cat Management Act, the following very brief summary will provide an insight on what the middle road was determined to be. In 'fragile and remote areas', including crown land, national parks, designated sanctuaries or a kilometre from the closest bona fide residence, all cats can be killed, captured, kept or sold regardless of whether or not they are identified.

In other areas an owned cat is one which is identified either by a collar bearing the contact details of the owner or being micro-chipped and having an 'M' tattooed in the ear. Any person may trap a cat with the permission of the land holder and the occupant. If the cat is owned, it must be released. If it is unowned, the trapper may take it to a vet or sanctuary for euthanasia or re-homing or may keep or sell the animal. There is no impounding period. Councils may impose by-laws to manage cats including registration, compulsory desexing, curfews and limitations on numbers subject to the endorsement of the Dog and Cat Management Board.

Many other initiatives were considered and rejected. These, the reasons for the rejection and an assessment of what has changed today make up the bulk of this session.

## **REGISTRATION**

Obviously registration was one of the most contentious issues. Arguments for registration included:

- dogs are registered, so cats should be as well;
- without registration there is no funding to implement any management program;
- registration could be used to provide a mechanism to encourage desexing (by reducing the fee);
- registration automatically denotes ownership so increases return to owner rates.

Arguments against ran along these lines:

- only responsible owners will register their cats and the responsible people should not be financially disadvantaged for doing the right thing;
- the same six descriptions could apply to virtually any cat (eg. ginger, tabby, black, white) so it is impossible to tell whether the cat with a disc is the one that was registered;
- it is impossible to prove that an unregistered cat belongs to any given person if it is roaming. The alleged owner simply has to say it looks like my cat but it's not;
- councils were losing \$1.5 million per annum on dog registration; they simply refused to register cats.

The final argument was the clincher. The administration of urban animal management was being devolved from state to local government. If local government did not want registration it would not happen. Instead, the Act allowed councils to introduce by-laws to register cats if they so wished. As no council has yet done so, it would seem that little has changed.

## **COMPULSORY CONFINEMENT**

There was considerable debate on whether cats should be required to be confined either at all times, or just at night.

Arguments for included:

- dogs have to be confined, cat owners should be just as responsible;
- cats at night tend to fight, causing public nuisance and are often hit by cars. Confinement is in the best interest of the cat as well as the community;
- people have to keep native animals confined to protect them from other people's cats. It should be the other way around;
- if any cat at large were automatically a stray and put down there would be no dispute over whether or not the cat was owned.

Again, arguments against were equally convincing:

- nobody has the resources to enforce such legislation. Councils had no intention of having cat police scouring the suburbs at night;
- cats are notoriously hard to catch and wild cats are more difficult than pets. Hence pet cats would be killed but not ferals;
- even the most responsible cat owner has had the experience of the cat slipping out the door. Elderly people could be injured searching in the dark for their pets.

The divergence in opinion made it impossible to please everyone and, without a funding source, it was unreasonable for councils to be expected to enforce such a requirement. The best that was possible was to allow councils to introduce by-laws where appropriate rather than attempt to have one statute that applied to the whole state. No council has introduced such a by-law so it would seem that the issue cannot be resolved at a local, let alone a state, level.

## **COMPULSORY DESEXING**

Most people agree that desexing is the ultimate key to reducing the number of stray cats. The issue of whether or not it should be compulsory was another matter.

Arguments for:

- it should be an offence to sell a kitten that is not desexed unless it is to a registered breeder. This would reduce the number of unwanted cats;
- stray cats feed into the feral population and increase the pressure on wildlife;
- strays do not live well. The average male only lives about eighteen months. It is in the interests of the cats to be desexed;
- entire cats cause far more social problems, such as fighting, than desexed cats. To reduce the problem we simply need to reduce the number of entire cats;
- if people cannot afford to have a cat desexed, they can't afford the cat. Economic arguments do not stand up to scrutiny.

And those against:

- not all desexed cats are tattooed. It is impossible to tell if a female cat is desexed without surgically checking. This is not a reasonable option for a council officer. If tattoos were to be compulsory the law could not be invoked for twenty years when the present population of pets would have died;

- People are allowed to breed children without bureaucratic licenses. We do not need regulation that is more restrictive for having kittens than for having children;
- to limit population growth, 95% must be desexed. This level of compliance is unattainable;
- if all owned pet cats were desexed, the only kittens available would be feral or strays or expensive pure bred cats. This would reduce the suitability of domestics as pets and result in only pure breeds being desirable. Consequently cat ownership may be beyond the financial capacity of many people.

The most convincing argument was that such legislation is not enforceable. Even if a desexing certificate were required, the same one could be used for every tabby cat and most people tend to purchase the same coloured cat each time. Hence, it is possible that one certificate could be used over and over again for years. Therefore desexing is encouraged and, if councils wish to enforce it, they may through by-laws. Again no council has introduced such a requirement so it is likely that the issue cannot be resolved even on a local level.

## **MICROCHIPS AS IDENTIFICATION**

Microchips were considered as a means of cat identification and are incorporated into the legislation, but only if the cat has an 'M' tattooed in the ear. Superficially, microchips appear to be the solution to animal identifications. They are:

- permanent;
- not transferable from one animal to another;
- specific;
- non-invasive; and
- do not affect the appearance or behaviour of the animal.

However, there are major problems with using microchips as the sole mechanism for the legal identification of the animal. Namely:

- at the time the legislation was passed not one council had a microchip scanner. There is no point in having an enforceable means of identification if those responsible for the enforcement cannot read the chip;
- there were four brands of chip available and in use in South Australia. The readers for one brand could read one of the other brands (poorly). The others were totally incompatible. Consequently, if a council bought a Brand A scanner, and a resident already had their animal identified with a Brand B chip, the chip would be useless. Similarly, if one council chose Brand A and a resident moved to another municipality where Brand B was used, the animal would require chipping. State government cannot legally demand one brand in preference to all others any more than government could demand Beta or VHS video systems. This would create a monopoly and be in total contravention of competition policy and freedom of choice;
- a microchip means that the animal was once identified. It does not mean that the owner is still alive, nor that the address is current, nor that the subscription fees have been paid and the animal is still on the register. In any of these circumstances, the identification is really non-identification;
- microchips are invisible. If an animal is hit by a car or wandering at large and its phone number or address are attached in some manner, the owner can be notified and the animal treated or returned home immediately. A chip does not provide such an immediate source of information; and
- the variation in price made compulsory chipping non-viable. At the time of the legislation, prices varied between about \$7.00 and \$45.00 depending on which veterinary surgery implanted the chip. Life long registration was a significant and additional expense. In comparison, a cheap collar can be purchased from about \$5.00 upwards, depending on quality and size.

There was also some confusion on whether or not inserting a chip was a veterinary act. If a council employee could perform the procedure, more councils may have been interested. Local government cannot create monopolies any more than state government. Therefore it was extremely difficult for councils to choose one or two local vets to insert chips on their behalf on a contract basis.

The only way microchips can reach their full potential as an identification system would be if:

- the scanners became compatible. There is a multi-scanner that can recognise the presence of a chip but this provides no information on the brand or more importantly, the details of the owner. To obtain this information the correct brand of scanner must be used;
- a registration system were adopted where the animal were registered for life with the council by microchip for an up-front fee with an enforceable requirement to update change of address.

Even under these circumstances micro-chipping could not be compulsory because it is expensive (with life long registration), some people are concerned about placing a lump of metal inside their pet and some form of visible identification is necessary for emergencies. All council animal management officers would have to carry a scanner and interim arrangements would have to be made for the animals which already have the 'wrong' brand of chip. Consequently the legislation states that if a cat has an 'M' in the ear, it is assumed to be micro-chipped and owned and a reasonable effort must be made to locate the owner. To the best of my knowledge none of these problems has been resolved so microchips remain a useful addition to compulsory identification and an insurance policy for the owner but they are not valid as a legal identifier of an animal.

### **AN 'M' INSIDE THE EAR**

The requirement to tattoo an 'M' inside the ear was deemed to be the only compromise to determine if a cat was micro-chipped in the absence of council scanners. A cat needs an anaesthetic for the tattoo so it can be as expensive as the chip, however if the procedure is done when the cat is desexed, there is minimal extra charge. The 'M' can be a disfiguration for a show cat but such animals are generally confined all their lives so need not be identified anyway. This provision was necessary to make microchips a viable option.

### **COLLARS AS IDENTIFICATION**

Domestic animals have been collared for centuries as a means of identifying both the owner and an individual animal within a flock. Yet even such a basic form of identification is not without controversy. Collars have been, and are, used because:

- they are inexpensive and easily made or purchased;
- details can be altered cheaply and quickly;
- they are easily replaced if lost; and
- they provide an immediate source of information.

It would seem to be the ideal means of identifying a dog or cat. Typically, nothing is that easy. Critics of collaring cats put forward the following arguments:

- cats can hang themselves on trees etc if the collar is too tight;
- they can lose the collar if it is too loose;
- occasionally cats unused to a collar get their paw or jaw stuck while trying to remove it;
- collars can cause matting in long coated breeds;
- a person can maliciously remove the collar and claim the animal is a stray; and
- cat collars often have bells attached, which annoy dogs at night and exacerbate the barking dog problem.

These arguments are all valid but the simple fact is more cats have been saved through identification than have been killed or injured because of it. At the time the legislation was under development a child died when he fell asleep in the car booster seat and slipped down so he suffocated. That is tragic but nobody disputes that overall car booster seats and seat belts preserve the lives of young children.

## **THE IDENTIFICATION COMPROMISE**

To address these problems, the legislation provides for choice.

A person may choose to identify their cat by collar bearing their contact details or they may choose to have a microchip inserted and have an 'M' inside the ear. Animal rights groups argued that the only reason to identify a cat was to kill those which are not identified and such an action is intrinsically wrong. Opponents seeking more stringent controls argued that merely identifying a cat does not mean that the owner is responsible or cares for it and that any cat which strays from its own property should be impounded and killed.

## **CATS IN 'FRAGILE AND REMOTE' AREAS**

The vast majority of the land surface of South Australia is virtually uninhabited. A total of about 21% of the state consists of national reserves. In such areas it can be safely assumed that any cat is unowned. The object of the legislation was not to prevent feral cats from being destroyed. The National Parks and Wildlife Act already contained provisions permitting a ranger to kill any feral animal within a park. Consequently the legislation states that any cat, identified or not, which is on crown land or more than a kilometre from any dwelling may be killed. In suburban parks rangers invariably letter drop neighbours advising that cat trapping is to be undertaken on a given date and asking that pets be kept safely confined during this period.

In general people who choose to live on the boundaries of parks are environmentally aware and support these programs.

It is impossible to see a collar or an 'M' through rifle sights and it is equally impossible to devise a baiting program which only affects feral cats. Therefore the legislation permits any person to kill a cat in remote areas. The provisions of the Prevention of Cruelty to Animals Act require that if an animal is killed it must be done in a manner which causes death or unconsciousness as quickly as possible. This requirement applies to cats whether or not they are owned. There have been no complaints about the destruction of cats on crown lands or in remote areas so the legislation must be about right.

## **CATS IN SUBURBIA**

The entire issue of cat management becomes more vexed in populated areas. The great cat debate seemed to divide the community into cat haters and cat lovers. To me, this was the greatest cost of developing the legislation but is probably an inevitable consequence of heightened awareness of the issues. People who choose not to own a cat, quite reasonably, expect to live without being hassled by neighbouring or stray cats. People who own dogs have learned that they must be responsible for their dog's actions. Also, quite reasonably, they expect cat owners to have respect for neighbours. Nothing is more annoying than receiving a council complaint about your dog barking than knowing the reason for the barking is the intrusion of the neighbour's cat (often, the same neighbour who complained about the dog). Many cat owners cannot or will not confine them and, quite reasonably, do not expect their neighbour to kill their cat. During the debate, a strong lobby group also argued against the removal and killing of strays. There was no panacea that would meet the needs of the whole community and I do not believe that anything has changed.

Legislation is about developing a just set of ground rules that are applicable across the entire jurisdiction. The needs of the various areas of South Australia differ widely so the ability to introduce by-laws was seen to be the only mechanism to achieve a fair and just compromise. The legislation allows any person to trap a cat with the consent of the occupier of the land on which the trap is set. If the cat is identified, it must be released, if it is not it, it is unowned. An unowned cat may be kept, sold, surrendered to a pound or vet, euthanased or rehomed. Critics considered that if a cat lost its collar it would be at risk and that pet cats are easier to catch than wild cats so would be victimised. In fact, this has not happened.

There always have been, and always will be, people who kill cats on their property with or without legal sanction. In most cases it is very difficult to establish in law that a missing cat has been maliciously killed or who killed it. No legislation can prevent this from happening but the Act does create an offence to remove the identification from a cat.

## **IMPOUNDING OF CATS**

The Victorian legislation contains a compulsory impounding period before a stray cat is euthanased. This is funded by registration fees. In South Australia we did not have a mandate to collect those fees so impounding would need to be financed either by local government or the owners of the reclaimed cats. At the time the legislation was developed less than 1% of impounded cats were returned home. If the cost of holding a cat is \$5.00 per day, which is minimal on a cost basis, the owners of the 1% who claim their cat would have to pay for the 99% who do not. An impounding fee of \$500.00 per day is somewhat excessive. Even if state or local government volunteered to foot the bill, the morality of such a decision is questionable. Wild cats should never be caged. To do so would be blatant cruelty. Similarly, it is futile to hand rear abandoned or feral kittens for a specified time period and then put them down. An owned cat is physically indistinguishable from an unowned cat and any law passed applies equally to both.

Consequently, the decision was taken that no impounding period would apply. The pounds retain saleable cats for as long as feasible and most vets attempt to find homes for kittens. This occurs without a legislative requirement to the right thing. It was not in the best interests of cats or the community to demand impounding periods.

## **ENFORCEMENT**

The Act is enabling legislation. It provides the uniform base throughout the state upon which councils can develop regulatory regimes, which meet the needs of their community.

Without registration there is no funding so most councils are not prepared to undertake any cat management programs despite the fact that every council receives cat complaints every day of the week. If individual communities demand that their elected representatives address a problem of obvious concern to residents, those communities must be prepared to pay for it and the council must be prepared to respond to their electors. Payment could be through registration or from general revenue with the community's acknowledgement that the funding will have to come from somewhere else. That may mean that the library upgrade will have to wait a while, or new play equipment will not be installed just yet, or maybe the council parks will not be quite as well maintained. The council must determine, on behalf of ratepayers, the priorities of the community.

Under the guidance of the Dog and Cat Management Board, councils have started to acknowledge that there is an issue out there that should be addressed and are starting to look at ways in which it can be done. This is evolution. With evolution, standards and expectations change.

## **SO ... WHAT HAVE WE LEARNED?**

I think we learned why no other jurisdiction in world had succeeded in the introduction of cat legislation before the Dog and Cat Management Act. It is emotive and you can't please everyone. We could have worn the flak and chosen a harder or softer line rather than seeking the middle road. Had we done this, the debate would have dragged on for years. Through choosing to develop enabling legislation rather than mandatory laws we could get something on the statute books and provide a base for other jurisdictions in Australia and overseas to work from and, in some cases, exceed. With time and evolution the legislation will change. As one of the original formulators I can only hope that changes are in accordance with community wishes and in the best interest of cats and other animals.

## **ABOUT THE AUTHOR**

Deb Kelly

Dept of Environment & Heritage SA

GPO Box 1047

Adelaide SA 5001

Ph 08 8204 9176

Fx. 08 8204 9178

Email. [dkelly@dehaa.sa.gov.au](mailto:dkelly@dehaa.sa.gov.au)

Deb Kelly is Manager, Animal Welfare and Manager, Resource Protection, within the South Australian Department of Environment, Heritage and Aboriginal Affairs. She is a veterinarian and has been actively involved in pounds, shelters and wildlife since childhood. Deb Kelly was instrumental in the development of the Dog and Cat Management Act 1995 and is still responsible for the legislative aspects of the Act on behalf of state government. To fulfil this responsibility she works closely with the Dog and Cat Management Board, the RSPCA, Animal Welfare League and community groups.

---

[UAM 99 Index Page](#)