Different origins, different priorities but similar objectives

Planning for interstate consistency in key areas of Urban Animal Management planning strategy

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INTRODUCTION

Somebody once said that those who choose not to learn the lessons of the past are doomed to repeat them. To really understand where urban animal management is today and where it may go in the future, it is essential to understand why the States have different approaches and different legislative requirements. To a degree, this is a reflection of the variation in the social fabric of this nation but it is also a reflection of the perceptions of the States and their histories.

HISTORY OF UAM IN AUSTRALIA

Watching '*Survivor*' on television, it is obvious that even very small communities need rules and law. In this program, 10 of the 16 'colonists' were deported within three months of 'settlement'. Even deportation is, in a way, a law. If a person does not measure up for any reason, they are shipped out. Within three months, the group had developed leaders, decision-making processes and, effectively, a system of Government. Had that been established on arrival, perhaps the social experiment would have worked out better for all involved. At least they would have known the rules. Exactly the same would have applied with the settlement of Australia, colonists needed to know the rules before they started. It took three months to reach Australia from Britain and there was no turning back - that is the entire duration of the '*Survivor*' experiment. People had to at least tolerate, if not like each other and law creates mandatory tolerance. There were laws even before colonisation. Australia was a series of British colonies and subsequently, British law applied. In fact, all British statutes that were passed before the date of the foundation acts of each State, were legally binding in the colonies if they were suitable in the prevailing conditions. Therefore, before the first inn was built, a law existed that the inn-keeper had to provide a stable for any horse that had travelled more than a certain distance to reach the inn. People knew the rules and they were the same as the legislation that applied in the 'old country'. This would have given consistency and security in a very foreign land.

The participants of '*Survivor*' are not a cross-section of society either at the time of settlement or today. They are all relatively young and relatively fit. In fact, if 16 Australian citizens were chosen at random, there would be children, elderly people, families and singles amongst them.

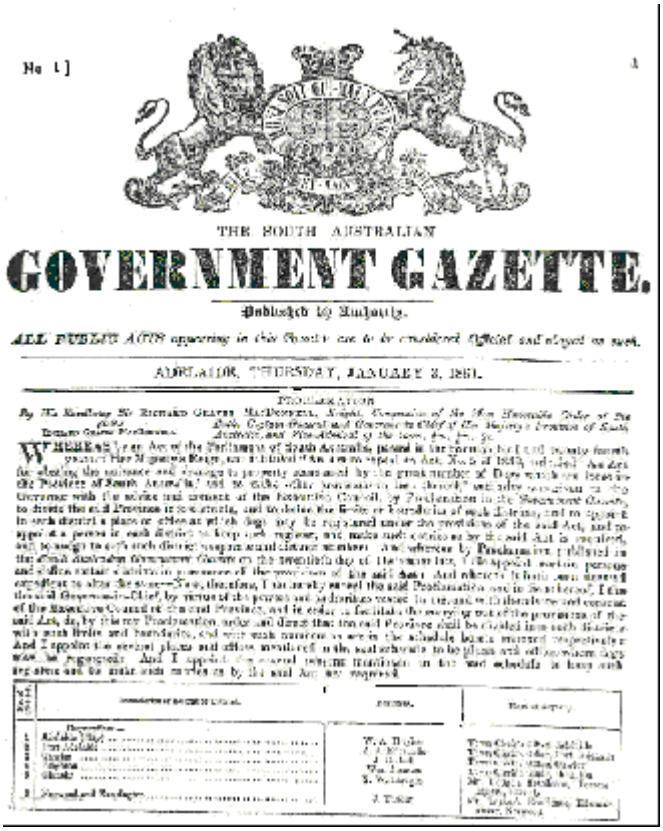
Virtually every society strives to protect its weak and vulnerable. This increases the need for legally mandated behaviour. There would also have been pets. Based on today's Petcare figures, if there were 16 people there would have been 4.5 dogs and 2.25 cats. Even in a micro-society, some regulation of the people and the animals is necessary to make the community function in a satisfactory manner. The only thing worse than rules and regulations is the lack of them.

At the time of settlement, the Victorian legislation 'Dogs in the Colony' (Victoria 4, 5) provided the 'urban animal management' legislation for all States. There actually *was* a time when we did have uniform animal management laws. However, the needs of the colonies, and their perceptions of themselves varied even then. By way of example, South Australia was the first colony that was not a penal settlement. Consequently, when the South Australian Foundation Act was passed in 1834, it was considered that this 'colony of free and honest men' did not require a police force. That was perception, not fact. In 1840 legislation was passed to authorise the building of the Adelaide Goal and by 1841, the building was complete.

Given that each State had pre-existing legislation addressing animal control, there must have been some real or perceived inadequacy in the British law for the States to bother repealing it and introducing their own legislation. By 1851, South Australia had the Dog Act, by 1866 the New South Wales Government had enacted the *Dog and Goat Act* yet it was not until 1883 that Western Australia introduced their *Dog Act.*

The South Australian legislation required registration of dogs but not tags. However, dogs did have to wear collars. The Act was changed ten years later.This divided the State into districts and appointed the first dog registrars.

Given that dog control legislation was introduced less than 20 years after colonisation, dog control must have been a high priority issue in the colony. Perhaps it evoked the same community interest and emotion that it does today. Registration disks were not introduced for another 25 years. Like the original legislation, the form was amended less than ten years after the introduction of the concept. It is ironic that the colony which was to be a classless society of 'free and honest men' was the first to have a structured professional police force (appointed two weeks after proclamation); had the first High Constable of police dismissed for 'selling sly grog'; and was the first colony to register and control dogs.



THE SOUTH AUSTRALIAN

GOVERNMENT GAZETTE.

Figure 1 - 1861 Gazettal of amended South Australian Dog Act

The irony is compounded when one considers that one of the original proponents of this social experiment, namely Edward Gibbon Wakefield was in prison at the time. Such is the difference between perception and reality.

REASONS FOR INTRODUCING UAM LEGISLATION

Given all the issues facing the new colonies, dog control was surprisingly high on the political agenda even then. The issues of 150 years ago are basically the same as today, namely:

- protection of stock;
- public nuisance;
- human health and safety;
- identification and registration;
- property rights - the right to dog ownership;
- environmental impact; and
- animal welfare.

Environmental impact and dog welfare were issues that should have been considered even then, but they were not thought to be important and certainly did not raise sufficient concern in the general public to warrant legislation. Each of the States seemed to identify one of these issues as the trigger to abandon the British law and introduce their own. In Queensland stock attacks appear to be the trigger (the precursor to the Rural Lands Protection Act), in South Australia public nuisance and safety (Dog Act) and in New South Wales it was ownership rights and responsibilities (Dog and Goat Act).

The 1861 South Australian legislation clearly shows its intent as 'An Act for abating the nuisance and damage to property occasioned by the great number of Dogs which are loose in the Province of South Australia'. Really, even today, an individual's own dogs, children (and possibly goats) are assets but other people's tend to be liabilities. As each State developed legislation for differing reasons, it is not surprising that the provisions of the Acts were different. Some States chose to include most or all of the provisions under the Local Government Act, as Councils were the main enforcement bodies (Northern Territory and Queensland), others decided to introduce specific legislation. The manner of the legislation was not as critical as the restrictions it contained. If the law met community needs, it served every purpose intended.

There was no need for consistency. People did not move between colonies and animals did not stray that far. To suggest that each colony needed to consider the legislation of the others before enacting their own laws would be as absurd as saying that Norwegian law should have some bearing on Australian legislation today.

Norway exists but it is not a major factor in domestic issues such as animal management. Similarly, 150 years ago, what happened in one colony had little or no influence on the others.

It is important to realise that we did start off with the same legislation but each State Government amended it to meet the needs of their own community. When the Australian Constitution was introduced in 1901, the States decided which powers they wished to devolve to the Federal Government.

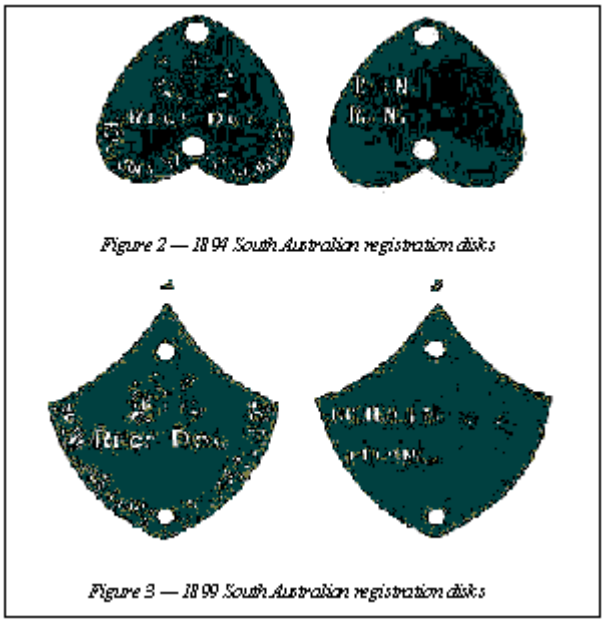


Figure 2 — 1894 South Australian registration disks

Figure 3 — 1899 South Australian registration disks

By this time, the country was a bit more unified and the States realised that certain functions could be performed better as a unified group than individually. Any powers that were not specifically transferred to the Federal Government automatically remained within the authority of the States. Those functions that were transferred were issues such as defence, trade and importation restrictions. State pride had developed well before this time and each State would defend its right to govern its own people in a manner consistent with local needs.

THE SITUATION TODAY

Basically, the primary consideration of each State Government remains the need to serve the electorate, that is their own State. Those needs still vary around the country as does the perception and priorities of issues. Exactly the same reasons for legislation exist as they did 150 years ago, namely:

- protection of stock;
- public nuisance;
- human health and safety;
- identification and registration;
- property rights - the right to dog ownership;
- environmental impact; and
- animal welfare.

Today, fortunately, environmental impact and animal welfare are considered to be important and to justify legislative intervention but overall, the drivers for urban animal management have not changed. Examining the old statutes, it is amazing how little has really changed. There was an Act in South Australia attempting to resolve the issue of the location of telegraph poles.

Swap the words 'telegraph poles' for 'mobile phone towers' and the similarities are obvious. The Vagrant and Gamblers Act was passed in the mid 1880s. We are still grappling with these issues and probably are not much closer to their resolution. (As an aside, under this legislation, any property held by a vagrant was, by law, not owned by that person and could be confiscated by the State!)

OBJECTS OF AUSTRALIAN LEGISLATION

Every Act of Parliament has a 'Short Title' which is the name of the Act, and a 'Long Title' or 'Objects' which briefly describe what the Act is designed to achieve. A comparison of the objects of urban animal legislation around the country highlights the similarities of intent behind the legislation. Such words as:

- keeping and control;
- identification and regulation;
- duties and responsibilities of owners;
- management of feral and nuisance domestic animals; and
- obligations and rights of persons in relation thereto (keeping of dogs).

All demonstrate a similar thrust. The property rights of a person to keep a pet tend to be addressed in other Acts dealing with the possession of property. It is interesting that only Western Australia specifically mentions 'rights' in the objects of the Dog Act. The other jurisdictions only discuss responsibilities and powers.

SO WHAT HAS CHANGED?

Probably the most significant change is that today, animals and their owners do move between the 'colonies' far more often and far more quickly than they have in the past. Improved communication allows the States to keep in touch and to know what each other are doing. The tyranny of distance is no longer a tyranny.

Today, it is necessary to start to think of the whole nation as a single 'colony' divided into States. We still do not need identical laws but it is important to consider the requirements of all States when considering legislation for one. Administrative practices can be as important as legislative provisions in ensuring that we work together to achieve the best results possible. An obvious example is the training of animal management officers. Although the legislation that authorises their actions differs around the country, the actual day to day tasks performed are fundamentally similar. Training which ensures that these functions can be performed in a safe and professional manner is a priority to all jurisdictions and it always has been a priority of the community. Now, with the ability to move around the country, it is important that the skills learned and the qualifications achieved are transferable. A transferable curriculum requires that the States agree on a set of core competencies comprising about 80% of formal training. The remaining 20% should reflect local conditions and issues. This will necessitate cooperation between all levels of Government and the officers themselves to define what the common factors are, yet allow the States to deliver courses with the individuality to ensure they are relevant to the officers and the community they serve.

Identification and mutual recognition of registration also need to be considered. Families are transferred interstate on a regular basis and they take their pets. The identification and registration methods used must at least be readable in their new State. Perhaps even more important is the cross-border identification of dangerous dogs. If any jurisdiction contemplates or implements a system of life-long registration, the ramifications of people moving interstate must be considered. Would a refund be provided? Would the new home State recognise the registration device? Would the owner be disadvantaged or conversely would the new council be able to locate the owners if the dog were lost or at large. It is important that these issues be considered and resolved before any such system is implemented. This becomes even more crucial if the dog has been declared dangerous. The new council must have access to information relating to the background of the animal.

There are financial benefits in cooperation as well. Each jurisdiction has spent significant, though probably inadequate, amounts of money on community education programs relating to domestic animals. Though the details of the programs differ, the underlying principles are identical - think, consider your neighbours, understand the behaviour and needs of companion animal and be nice - would cover the majority of what we are all trying to get across.

Yet we independently develop different programs to achieve this end. If we could all plagiarise the best in the nation, improve it and then make it available to everybody else at no charge we would all be better off. The effectiveness of the programs would increase and the cost would decrease correspondingly. Each jurisdiction could make minor changes to such a package according to give it a flavour and to ensure it meets community needs.

THE NEED FOR INCONSISTENCY

Just as 150 years ago, the colonies did not have identical priorities and legislative provisions, the States today vary in the directions they wish to take. Legislation that is appropriate and acceptable in one State may be either unreasonable or unenforceable in other jurisdiction. Absolute legislative consistency tends to result in law that is not really suitable for any of the States and amendments become extremely difficult and cumbersome when every State has to agree on what those changes will be. There are exceptions. The Road Traffic Acts around the country are rapidly becoming absolutely consistent. Given the number of interstate road trains and passenger vehicles, this is in the public safety interests of all jurisdictions. Similarly, the Biological Control Act must be consistent in all States. This legislation prevents the introduction of exotic micro-organisms into Australia without the consent of all jurisdictions. At Federation, the States did not contemplate the deliberate importation of microbes yet today, this is an issue in which we all take a vital interest. Clearly, if a microbe is introduced into one State, it has the potential to impact on the whole country.

This could be positive (eg Calici virus in rabbits) or negative so all Governments must collectively weigh up the risks and potential gains and make a decision. The security of the nation is dependent on this level of cooperation and often the decisions are not easy.

By far the majority of legislation does not have to be identical to be functional. The law merely has to suit the needs of the 'colony' for which it is designed. The differences between State laws should be identified and justifiable in terms of the community interest. A limitation on the number of dogs held may be quite appropriate in some locations but totally unjustifiable in others. Similarly, a requirement to impound stray cats may be reasonable in some urban situations but it would be ridiculous in rural Australia. The law must be relevant to the community to which it applies and enhance the quality of life of people and animals who make up that community.

Just as it did 150 years ago, State pride still matters today. The States chose to devolve some responsibility to the Commonwealth in the Constitution but they chose to retain their independence and sovereignty at the same time. Consistency and compatibility are fundamental to a national approach to issues but, in very few instances, is mirror image legislation necessary or desirable. Most of the time better results can be achieved through mutual respect, consensus and by all Governments and their employees genuinely trying to achieve the best they can for their communities.

Post Script

This paper tends to concentrate on the South Australian perspective simply because it is far easier to obtain information on the history of one's own state and the original documentation than it is to find the same resources for other jurisdictions. The history of urban animal management in Australia, in particular dog control, would make a fascinating Honours law thesis.

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Deb Kelly is an Executive Officer 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 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.

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