

Summary of the Exotic Birdkeepers Advisory Group (EBAG) fifth meeting on 3 & 4 December 2006

EBAG met on Sunday 3 December 2006 and Monday 4 December 2006 in Canberra. Kerry Smith, Assistant Secretary Wildlife Branch, chaired the meeting. All members were present.

Introductory comments:

The chairperson confirmed that in addition to the summary, a full record of the EBAG meeting will be published on the Department's website.

Business from the previous meeting

Managing record returns

The Department reported that it had engaged a consultant to report on use of technology to support record keeping, including options for online transactions, databases for storing records, and whether scanning of handwritten records would be useful and cost effective. The report included revised MTRs and Activity Records in a form that could allow scanning and electronic capture of the recorded information if this was useful. A significant investment would be required by the Department in electronic systems to support the record keeping proposal, and cost efficiencies would only be possible if a very high number of transactions occurred.

EBAG discussed that the birdkeeping community would also need paper based distribution and submission of record forms because of low level of internet use and familiarity amongst many birdkeepers.

EBAG agreed that the forms should be published for comment and should be presented as simply as possible. The Department will investigate this further.

Links to the Department's website

The Department will investigate the best approach to provide a link to the Department's website from the range of websites that are used by birdkeepers.

Issues since the September 2006 meeting

The Department had received requests for additional members and observers at meetings based on the view held by some that EBAG's transparency needed improvement. The Department reported on what it had done prior to the meeting to address these issues.

The Department considered that current EBAG membership is appropriate based on EBAG's progress and that there was now involvement of all major stakeholders. To address the concerns expressed about transparency the Department arranged and supported a stakeholder information meeting immediately following the EBAG meeting. Club and association representatives in all states and territories and some other key stakeholders had been invited to the stakeholder information meeting.

Discussion of public comments and submissions

Fifty submissions were received by the 15 November 2006 in response to EBAG's invitation to comment. Nine late submissions were also received. All comments and submissions were provided to members and were considered.

Many comments and submissions reflected a range of differing views. However, there were similar views in many submissions and these were presented in a summary document as common issues. The summary was provided to EBAG members to assist in their consideration of the comments. EBAG agreed that the summary of common issues should be published to provide feedback to people who had made submissions.

EBAG confirmed that:

- A common response supported some level of record keeping for high interest species.
- Many submissions were concerned that there were too many classes.
- A majority of comments and submissions indicated the need for very simple, or no records, for low interest species.
- A major issue is the draft classification, which many have said should be subject to rigorous review, with relevant expertise taking into account issues raised through submissions.
- A clear message through many comments and submissions is that options to deal with the lack of records since 2002 should be addressed urgently, and there should be an opportunity to comment on these options and the record keeping proposal together.

Feedback on public presentations and consultation since September 2006

EBAG noted feedback from members about the public and club level presentations that had occurred during October and November 2006 in the eastern states. EBAG considered that the public presentations had been a worthwhile exercise.

EBAG noted that despite some of the difficulties experienced at meetings there was now a much broader involvement of birdkeepers and other interests within the sector. EBAG also noted that the range of questions and issues raised at public meetings were reflected in the summary of public comments to be published on the website.

Reaction at presentations to the EBAG proposals and EBAG was mixed and included criticisms over transparency and confidence of some birdkeepers in the consultation process. EBAG noted this feedback and discussed how this could be addressed in future.

A common objection at meetings was to keeping records for species previously exempt from registration under NEBRS and many birdkeepers objected to any mandatory keeping of records for low interest birds.

Members noted that the Department's presence and willingness to listen to issues of concern was well received at most meetings even though many participants held strong views and presented them passionately.

EBAG members noted from the presentations that the reverse-onus-of-proof existed in state and other Australian Government legislation covering other matters and commented that this point was not widely known or accepted.

One member reported that public presentations were well received in NSW and that in Cairns the meeting acknowledged the value of record keeping/proof of purchase for people in possession of birds.

One member noted that initial resistance and anger from south east Queensland birdkeepers to the issues being raised in the information sessions now seemed to be shifting to wanting to move forward on the issue of record keeping.

EBAG noted that recent compliance activity involving the Department was topical and this has influenced some attitudes and behaviour within the birdkeeping sector.

The Department advised that states and territories would not support any additions to the 2003 Inventory listing and some states were concerned about pest risk and that some exotic bird species (e.g. Indian Ringneck Parakeet) were establishing wild populations that have not been formally documented. States supported classifying at species level, not mutations, hybrid, or sub species level.

EBAG was informed that there is a process involving state and territories to address anomalies in the 2003 Inventory (mainly spelling and taxonomic issues) and a working group is likely to resolve these before the next Vertebrate Pest Committee meeting in March 2007. Any changes arising from this will be included in the proposed classification for record keeping.

Development of the proposed criteria

EBAG agreed that the criteria reflect the obligations of the Australian Government.

EBAG agreed that pest and disease risk were important but that disease, in particular, could be affected by levels of illegal trade activity.

EBAG considered that the issues raised in public comments were mainly interpretation and could be addressed by amending some of the considerations under the criteria. EBAG agreed that application of the criteria could be improved by ensuring the considerations under the criteria take into account:

- abundance of species
- length of time species have been in Australia
- species not requiring registration under NEBRS
- disease risk being linked to levels of illegal trade for different species.

EBAG agreed that the system must be flexible enough to reflect changes in biodiversity risk. It is anticipated any changes in classification are likely to be downward and are likely to be minimal. Any changes should only be done on an 'as needs' basis, not made without proper assessment against the criteria, and changes should involve consultation with the birdkeeping sector.

Simplifying classes and record keeping

EBAG considered the comments received through submissions and public meetings. EBAG agreed that the vast majority of comments sought simplification of the proposal in terms of the number of classes for record keeping purposes. EBAG noted the following key comments:

- The proposed system is too complex, it needs to be simple and contain fewer classes.
- For simplicity there should be only two classes: 'exempt' and 'non-exempt'.
- There should be three classes: high - requiring MTRs, and specimen identification; low – MTRs but identification optional; and exempt – no records.
- The need for Activity Record (AR) returns.

EBAG members stressed that if the Department could not process and analyse the information contained in ARs for compliance purposes their return would serve no purpose and should not be undertaken. EBAG agreed that it is important to have annual returns to the Department for Class 1 species and analysis of those returns.

Through discussion EBAG simplified its proposal to the following three classes with the following record keeping approach for each proposed class:

Class 1 - High interest species

- Activity Records would need to be maintained and kept for each species, and returns provided annually to the Department.
- Movement Transactions Records (MTRs) would be required for all transactions with the buyer and seller retaining copies and each submitting a copy to the Department.
- Individual marking and identification of specimens would be required.
- The Class 1 requirements could be implemented either as a policy or through Regulations under the EPBC Act.
- EBAG's preference is to implement this initially as a Departmental policy, strongly recommended by the Department for a 12 month period initially, and followed by the introduction of Regulations under the EPBC Act which would require records for species in Class 1.

Class 2 - Low interest species

- MTRs would be strongly recommended by the Department to assist birdkeepers in verifying where they had obtained specimens (i.e. strongly advised as a Departmental policy but not put into Regulations under the EPBC Act)
- No Activity Records would be required.
- No individual identification would be required (birdkeepers could choose to mark and individually identify specimens).
- No records returned to the Department. However, birdkeepers would need to be aware that the Department may request documentation held by birdkeepers that help them verify where they obtained their specimens.

Class 3 – No records required

- Import/export would still be regulated by relevant agencies.

EBAG confirmed that the species on the 2003 Inventory would be classified into one of the three proposed classes.

There was general discussion about distribution of record forms and how information provided by birdkeepers would be recorded. The use of technology to record details on MTRs and ARs was discussed. Many birdkeepers have made comments that they do not use computers. Internet based records may not cater for everyone's needs. EBAG agreed that a range of distribution and record management approaches would need to be put into place.

Some EBAG members sought clarification about the legal status of MTRs and the specimens they cover if record keeping was introduced. It was clarified that MTRs would not legitimise any specimen –they would simply support a paper trail.

EBAG proposed publishing the draft movement transaction record form on the Department's website so that birdkeepers could start using this to help them record their transactions.

EBAG noted that in presenting the proposed classes for record keeping it will be important to highlight that requirements of states and territories and other agencies may also need to be met by birdkeepers. The proposed classes would only relate to the Department's policies and legislation it administers in relation to exotic birds.

EBAG agreed to publish the revised classes with the revised classification and criteria in one document so that comments could be invited and provided before the next EBAG meeting in late February 2007.

Review of the draft classification based on comments received

EBAG considered the comments received through submissions and public meetings, noting that many comments sought re-consideration of species that could be kept under NEBRS without the person being registered. EBAG noted and discussed other key comments which included:

- Extending the 'exempt' list [from record keeping] would reduce DEH's work load. DEH had problems keeping up with this task when only 2,000 people registered.
- With this proposal, EBAG may be creating another 'black hole'. If the classification system changes in the future and exempt birds become non-exempt; how are birdkeepers expected to have the necessary paperwork.
- All finch species should be removed from class three and made exempt.
- The list also needs to be checked for inaccuracies and anomalies (some specific examples have been highlighted for checking).
- There is inconsistency in how the criteria have been applied to develop the working draft and this needs to be reviewed with relevant expertise before the option is considered further.
- State requirements and assessments (e.g. Qld assessment of exotic bird species) should be taken into account when a review is undertaken.

EBAG discussed the need to consider all species on the 2003 Inventory against the proposed criteria and to classify each species. EBAG noted that this proposal is

different to NEBRIS and that current information should be considered when applying the criteria.

EBAG confirmed that hybrids should be classified at the species level in the highest class of either of the parents.

EBAG highlighted the importance of adequate paperwork being maintained for rare colour mutations of certain species to assist birdkeepers verify the source of such specimens and to minimise scrutiny of birdkeepers under the EPBC Act 1999. EBAG anticipated that certain colour mutations of some species pose a significantly higher risk of illegal trade. EBAG noted such specimens may be of interest to regulatory agencies in compliance and enforcement actions.

EBAG agreed that the revised record keeping proposal should be available for comment with the other revised aspects of the record keeping proposal so that comments could be invited and considered before the next EBAG meeting in late February 2007.

EBAG agreed that any comments received on particular species being inappropriately classified for record keeping may need to be referred by the Department to an independent consultant for advice in order to finalise the classification.

EBAG considered that changes would be infrequent and would only be made if substantial new information was available to justify a change. In the event that a species was placed in a higher class requiring records it would not act retrospectively and would only apply from the date of the change.

EBAG considered the options available to assess species against the criteria for classification including the value of establishing a panel. Options of representation from a scientific authority, state/territory and birdkeeping community (independent of EBAG) were discussed.

EBAG discussed the issue of finch classification and whether some species should be in Class 1 or Class 2 category based on rarity in aviculture and past and current illegal trade risk.

EBAG worked through the draft classification, revising the classifications to take account of the key public comments where this was possible.

Options to address lack of records and *black hole birds*

EBAG noted that public comments and submission and feedback from public presentations had highlighted that this issue needed to be progressed urgently.

EBAG discussed the following options that could be applied to address concerns about lack of record keeping and *black hole birds*:

- Continuation of the current approach by the Department.
- The proposed approach to deal with *Black Hole Birds* as outlined in the discussion paper tabled at the fourth meeting.
- An approach to deal with 'contentious birds' based on possible changes to the *Black Hole Birds* discussion paper that could be developed further.

- A compliance policy approach presented at the meeting by the Department.
- Amnesty options previously identified by EBAG.

EBAG noted that papers presented had been prepared for discussion and development by EBAG and were not for wider distribution at this stage.

The Department presented the compliance policy approach paper and explained the principles of the proposed compliance framework. It aims to provide improved understanding of the Department's compliance approach and thereby provide comfort to the majority of companion bird owners and hobbyist birdkeepers. It presented priorities focussed on illegal activities that pose a high risk in terms of illegal trade, and activities that may adversely impact on Australian biodiversity.

EBAG members highlighted the potential scale of the lack of record keeping, the number of birds involved. Some members estimated that the majority of birdkeepers could not establish proof of legal ownership under the current possession offence which requires the person to be able to verify the source of the specimen, or have a reasonable excuse for holding the specimen.

During the discussion the suggestion was made that the Department make a policy statement declaring that all birds not required to be registered under NEBRS be declared legal. The Department said it could not declare birds as legal or illegal.

The *Black Hole Birds* discussion paper was discussed and this led to suggestions of some changes. Some members felt that this could be developed as a workable option. Further revision of the document was deferred to the next meeting because of time constraints.

EBAG discussed defining and applying the 'acquired in good faith' concept. EBAG agreed that this needed clarification if it was to provide a basis for deciding what would be done with contentious birds. The Department advised that it could be very difficult to define, and there are likely to be different perceptions about whether 'acquired in good faith' could be applied consistently.

EBAG discussed the distinctions between birds that were never registered under NEBRS but should have been, and birds that may not have complete or adequate documentation to support their origin.

EBAG members suggested the lack of communication following NEBRS has contributed to the problems faced in the current situation. EBAG also noted that ignorance of the law is not considered by Courts as an excuse for a breach of the law.

Some EBAG members thought that the *Black Hole Birds* discussion paper ultimately presents as an amnesty. This view was not supported by members putting forward the suggested approach. The suggestion was also made that the proposal as presented in the discussion paper may be considered as laundering of birds. The Department highlighted that it cannot be involved in laundering of birds or activities that may be seen to promote illegal trade.

Some EBAG members raised the concern that the possession offence provision (303GN) to regulate exotic birds has not been tested in Court.

Discussion also included the common issue in submissions that the *Black Hole Birds* should be addressed as quickly as possible. EBAG maintained the view that the proposed record keeping scheme needed to be introduced as soon as possible so the record keeping gap doesn't grow.

EBAG acknowledged that time spent reviewing and taking account of comments received and preparing for the stakeholder information meeting on Tuesday 5 December had meant that further work could not be done at this meeting.

EBAG agreed to progress this agenda item as the major issue at the next meeting and that it would review and develop the options outlined in the EBAG working drafts:

- *Proposed code for birdkeepers and compliance response to address lack of record keeping* and
- *Black Hole Birds* discussion paper tabled in September 2006.

Criticism of EBAG and further consultation

EBAG discussed criticism made of EBAG due to a perception that the group is making decisions on behalf of the birdkeeping community. The Department highlighted that the criticism is not appropriate given that EBAG is a consultative group established to advise the Department.

Feedback from public meetings had included useful information that could help improve communication and dissemination of information on proposals. Several clubs provided newsletter contact details so that EBAG updates could be provided for distribution through club newsletters. The Department will establish a list of known contacts in bird clubs, associations and societies and send them EBAG meeting updates.

Timing of magazines and club level publications did not often coincide with progress on EBAG proposals or invitations for public comment. There was little that could be done about this other than to disseminate information as widely as possible and promote people accessing current information.

EBAG members discussed distribution of working draft documents produced for consideration by EBAG. Members agreed that these working documents should not be distributed outside EBAG without agreement for their wider distribution, or for invitation for public comment. This would also help avoid miscommunication or confusion if proposals are developed further before their release.

EBAG noted again that full meeting records will be released with a summary via the Department's website and that updates will continue to be provided to aviculture media.

Observers at meetings

The Department advised that the issue had been raised by the Queensland Council of Bird Societies in correspondence and at the Brisbane meeting on 21 November 2006.

EBAG noted the Department's decision to decline the request for observers which was communicated in a letter to QCBS on 17 November 2006.

Approaches to future birdkeeper engagement (revision of membership)

The Department advised that the current composition was decided by the Department from 21 nominations received in February/March 2006 following an invitation for nominations at the December 2005 workshop. Nominations came from people other than those who attended the workshop. The Department considered that membership on EBAG continues to be appropriate because consideration of the issues was well advanced and consultation across the sector was ensuring that all major stakeholders in the exotic birdkeeping sector were now involved. The Chair advised that the Pet Industry Association of Australia and major finch associations could be more closely consulted on particular issues and that presentation of their views would be encouraged and supported.

Proposed communication strategy for EBAG

The Department advised that its Public Affairs area had been consulted on the most appropriate and effective methods of communicating with birdkeepers with the small budget available. The Public Affairs area had recommended that the Department produce a simple publication outlining:

- the background of establishing EBAG
- the issues EBAG is addressing
- how to access this information
- the key messages for birdkeepers on record keeping.

The Department will develop and publish a simple brochure and seek to distribute this widely through a range of outlets (including clubs and associations, pet shops and bird sales) directing birdkeepers on how to get more information on outcomes from EBAG.

The Department also outlined a proposed communication strategy for EBAG. The proposal identifies a range of audiences to be targeted, primary communication approaches and the use of other groups useful as secondary communication channels.

Given the Department currently requires that birdkeepers maintain adequate paperwork some members suggested that the draft MTR form could be posted on the Department's website with the recommendation from the Department that birdkeepers commence using the form in addition to existing record keeping methods.

The Department will review the draft MTR form and post a template on the Department's website with the recommendation that birdkeepers should consider using the form in addition to existing record keeping methods.

The need for further consultation

EBAG discussed the approach to consultation on EBAG's revised record keeping proposal. EBAG considered that the proposal could be presented in one document that would include the criteria, classes and classification of bird species.

EBAG anticipated that discussions on the lack of record keeping and *black hole birds* should be progressed sufficiently by the end of the February meeting to give an indication on how this issue could be addressed.

EBAG also considered that by the next meeting scheduled for late February 2007, a conclusion on the record keeping proposal and the Activity Record and MTR forms could be possible.

The Department acknowledged the possible timing and noted that consultation with other stakeholders such as the states and territories may occur in February/March 2007 and this would determine timing for any proposals being formally provided by the Department to the Minister for consideration.

Next EBAG meeting

Timing of the meeting was discussed in terms of inviting comment on the revised record keeping proposal and the need to progress the options to address lack of record keeping and issues relating to *Black Hole Birds*. EBAG agreed that it would need to meet in late February 2007.