

# Righting Refunds

Investigation into the appropriateness of the Department of Home Affairs' policies and procedures for Visa Application Charge refunds for parent visas

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# Overview

Australia is fortunate to have a rich diversity of people who come from across the world to make this country their home and contribute to its development. Almost half of all Australians have a parent born overseas, and in cases where the parent still lives overseas, they may wish to reunite with their adult children in Australia.<sup>1</sup>

The application process for an overseas parent visa is significant, involving Visa Application Charge(s) (VAC) and lengthy processing timeframes.

Depending on the type of parent visa applied for, the total VAC payable can be as high as more than \$40,000 and the wait time for processing up to almost 30 years.

It is not surprising that some parent visa applicants, due to a change in circumstances or simply feeling that the wait is too long, wish to discontinue their application and request a refund of the VAC they have paid to date. Refunds of the first VAC instalment in discretionary circumstances, such as where the applicant has made a mistake, are rarely granted by the Department of Home Affairs (Home Affairs). Where a refund is provided, the amount refunded is the amount that was originally paid. Home Affairs has advised that it does not make adjustments to account for a decrease in the 'real' value of money at the time of a VAC refund, despite the money having been paid up to 29 years ago.

In this investigation we wanted to examine whether Home Affairs has appropriate policies and procedures for consistent and fair decision-making in assessing VAC refund requests for parent visas (noting particularly the high costs and long processing times). Fairness and consistency are not mutually exclusive. To achieve fairness, there should be appropriate policies and procedures to facilitate both consistency (where decision-makers have similar views on what constitutes fairness in a specific situation so that there are not fundamentally different outcomes on the same facts) and consideration of individual circumstances.

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<sup>1</sup> According to the Australian Bureau of Statistics (ABS), the 2021 Census found that almost half of Australians have a parent born overseas (48.2 per cent) and the population continues to be drawn from around the globe, with 27.6 per cent reporting a birthplace overseas. See [ABS Media Release 28 June 2022](#).



Our investigation found that some aspects of Home Affairs' existing policies and procedures for VAC refunds need to be improved to ensure consistent and fair decision-making. We found that Home Affairs' policies and procedures on VAC refunds, in some respects, risk unfair outcomes either by:

- guiding decision-makers to exercise their discretion narrowly, without duly considering the specific circumstances of each case and whether a refund would be the fair outcome in the circumstances
- strictly applying key terms, or
- a lack of quality assurance processes to mitigate risk of inconsistent decision-making.

We also found that Home Affairs can do more to improve its communication with applicants and offers no effective avenue for internal review if their refund application is denied.

Following the law is essential. However, policy surrounding the administration of the law should not be unduly limited or technical, especially where people are impacted. Agencies should keep this in mind when developing and reviewing policies that affect people.

With this in mind, and as a result of our investigation, we made 6 recommendations and one suggestion to Home Affairs to improve. Home Affairs accepted our 6 recommendations and advised it will consult the Department of Finance and the Treasury on our suggestion. Home Affairs advised it expects to have implemented all recommendations and completed its consultation on the suggestion within the next 12 months. We will follow up with Home Affairs to assess the action taken, including whether it will implement our suggestion.



## Recommendation 1

We recommend the Department of Home Affairs revise its Procedural Instruction to better guide delegates exercising the discretion in regulation 2.12F(3) of the *Migration Regulations 1994*, which provides that a refund of the first instalment of the Visa Application Charge may be granted where the application was made because of a mistake by the applicant.

This should include providing:

- a non-exhaustive list of common scenarios where a mistake may have been made, and
- clear guidance about relevant considerations that may be taken into account by the delegate on a case by case basis when exercising their discretion.





## Recommendation 2

We recommend the Department of Home Affairs (Home Affairs) update relevant policies and procedures to state that a mistake by Home Affairs for the purposes of regulation 2.12F(2)(b) of the *Migration Regulations 1994* includes where information given by Home Affairs and relied upon by an applicant in making a visa application is found to have been unclear and/or open to reasonable misinterpretation.



## Recommendation 3

We recommend the Department of Home Affairs improve the information on its website and provided to applicants as part of the visa application and visa application charge (VAC) refund request processes to ensure that all applicants are aware of:

- the difference between the circumstances when the VAC *must* be refunded and those where the VAC *may* be refunded
- the small number of refunds of the first instalment of the VAC that are usually granted where the applicant has made a mistake, and
- the current estimated time taken to process parent visa applications.



## Recommendation 4

We recommend the Department of Home Affairs implement quality assurance processes to review visa application charge refund decisions for quality and consistency, and proactively identify and analyse trends in decision-making.





### Recommendation 5

We recommend the Department of Home Affairs (Home Affairs) implement a formal internal review mechanism for visa application charge refund decisions and advise applicants of this option in refund decision letters, along with avenues to make a complaint to Home Affairs and to make a complaint to the Commonwealth Ombudsman if they are not satisfied with how Home Affairs handled their complaint.



### Recommendation 6

We recommend the Department of Home Affairs amend its visa application charge refund decision letter templates to ensure every decision letter includes a clear explanation why the specific decision was made in that case.



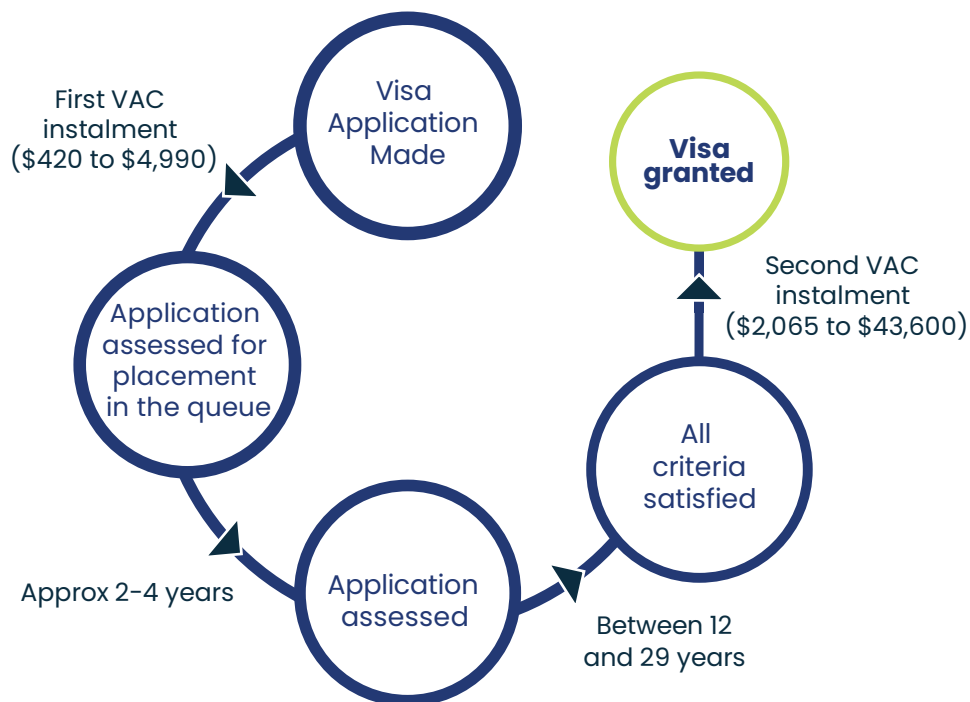
### Suggestion 1

We suggest the Department of Home Affairs (Home Affairs) adjust the amount payable when refunding a visa application charge (VAC) to take into account changes to the real value of the money during the period of time Home Affairs held the original VAC payment.



# Parent visa application and VAC refunds

A range of temporary and permanent parent visa options are available for parents of settled Australian citizens, permanent Australian residents and certain New Zealand citizens. Visa applicants must pay VACs in two instalments. The first instalment is paid when applying for a visa. It is required to be paid before the visa application will be considered valid and prior to an application being placed in a queue for processing. The second VAC instalment is paid just before the visa is granted after the application has been assessed and it has been determined that all visa criteria are satisfied. The visa will not be granted unless the second VAC instalment is paid.<sup>2</sup> Home Affairs has stated that VACs are classified as general taxation set by government in accordance with policy objectives, and that the VAC offsets the cost of family migrants to the federal budget and the draw migrants place on government services.<sup>3</sup> We note that Home Affairs advises applicants on its website that the VAC is paid so that Home Affairs can assess the application.<sup>4</sup>



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<sup>2</sup> Appendix A of this report details the VACs for the various parent visas available.

<sup>3</sup> [The efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions](#) at paragraphs 2.41-2.42, (The Senate, Legal and Constitutional Affairs References Committee, March 2022). See also [Migrant Intake into Australia Productivity Commission Inquiry Report](#) (No 77 13 April 2016, p.27).

<sup>4</sup> See [Getting a refund](#).

<sup>5</sup> Timeframes above are extracted from [Parent visas queue release dates](#) as at 21 May 2024. For full details of Home Affairs' visa fees and charges see: [Visa fees and charges](#).



Under s 85 of the *Migration Act 1958* (the Migration Act), the Minister may determine the maximum number of visas of a specified class (including parent visas) that may be granted in a financial year. This is known as 'capping'. Once the maximum number of visas of the class have been granted in the financial year, the 'cap' is reached and no more visas of that class may be granted in that year. Parent visa applications that have not been granted will then be queued. These applications will not be processed further and finalised until a place becomes available in later years. All parent visa applications are 'capped' and 'queued'. This, coupled with high demand for parent visas means a very long and drawn-out process for applicants.

Visa applicants can apply to Home Affairs for a refund of the first or second VAC instalment at any stage before a decision on whether to grant the visa has been made, provided they have first withdrawn their visa application. The *Migration Regulations 1994* (Cth) (Migration Regulations) provide the legislative framework for considering a VAC refund request. Regulation 2.12F of the Migration Regulations sets out the mandatory and discretionary circumstances in which the first instalment of the VAC can be refunded. Regulation 2.12H sets out the mandatory circumstances in which the second instalment of the VAC must be refunded. Home Affairs have developed internal procedures, *Div 2.2A of the Migration Regulations 1994 – Visa Application Charge Procedural Instruction* (Procedural Instruction), that set out how its decision-makers should interpret and apply the Migration Regulations.





# Why did we investigate?

Our investigation was prompted by complaints to our Office regarding Home Affairs' refusal to refund VACs. We also observed media attention and public criticism of Home Affairs' approach, particularly in relation to parent visas and the lengthy processing times and high costs. Many poignant stories and reports have been published of people engaged in the parent visa application process.<sup>6</sup> Having inflexible policies and procedures dealing with VAC refund requests only compounds the distress and exacerbates what can be a difficult personal situation for parent visa applicants (and their families) who have decided to withdraw or discontinue their application.

Our investigation focused on the guidance available to decision-makers to assess parent visa VAC refund requests and how Home Affairs is interpreting and applying the refund provisions under the Migration Regulations. Not everyone will be eligible for or entitled to a refund, but we wanted to make sure the process of assessing this leads to fair and consistent outcomes.

Our investigation considered the appropriateness of Home Affairs' policies and procedures for administering refund requests for the first instalment of the VAC under regulation 2.12F of the Migration Regulations, which sets out conditions for a mandatory or discretionary refund. While the second VAC instalment is usually substantially more expensive, we generally focused on some of the circumstances where the first VAC instalment must or may be refunded. This is because the grounds for refund of the second instalment of the VAC seem clear cut and extensive. Notably, Home Affairs must refund the second VAC instalment if the applicant withdraws the application in writing before it is decided.<sup>7</sup> There are no apparent discretionary or potential interpretation issues of concern that arise under the provisions dealing with the refund of the second instalment of the VAC. Further the second instalment of the VAC is not payable until right before the visa is granted and the various visa criteria are satisfied, whereas the first instalment (though not as expensive) is payable upon visa application prior to any visa processing and in circumstances where the applicant may then be waiting up to 30 years for their visa to be granted. Likewise, we did not focus on circumstances where the first VAC instalment must be refunded in circumstances that are quite clear and did not present any discretionary or interpretation issues such as where the applicant dies before a decision is made on the application.<sup>8</sup>

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<sup>6</sup> See for example: [Waiting decades for a visa decision for their parents, migrants say immigration backlogs make life planning impossible - ABC News](#) (6 October 2023).

<sup>7</sup> See regulation 2.12H of the Migration Regulations.

<sup>8</sup> See regulation 2.12F(2)(c) of the Migration Regulations.



# What did we find?

## 1. Home Affairs' policy regarding exercise of discretion where a VAC refund application has been made because of a mistake by the applicant may lead to unfair outcomes

The first instalment of a VAC may be refunded if the application was made because of a mistake by the applicant.<sup>9</sup>

**Home Affairs told us that during 2022-2023 it received 174 requests for a refund based on a mistake by the applicant. Only 7 requests were approved.**

We found that Home Affairs' Procedural Instruction does not appropriately guide a decision-maker to consider an applicant's individual circumstances when considering whether to exercise their discretion to refund a VAC due to the applicant's mistake. Unfair outcomes may result.

**In the 'Purpose' section of the Procedural Instruction, Home Affairs acknowledges more generally when exercising powers in the Migration Act that "in order to make a fair, reasonable and lawful decision, it may be appropriate to depart from the approved policy and procedures, depending on the facts of the particular case." This principle is not properly reflected in the guidance on assessing discretionary refunds.**

Instead, we found Home Affairs' Procedural Instruction guides decision-makers to exercise their discretion narrowly. While the Procedural Instruction notes that the delegate has absolute discretion in whether to make a refund (within the bounds of the legislation), it also provides a set list of circumstances where Home Affairs considers refunds of a first VAC instalment will and will not meet the discretionary refund provisions under regulation 2.12F(3) of the Migration Regulations. In our opinion, there is a risk that this list could be applied by delegates as an exhaustive list. The Procedural Instruction states, for example, under a heading 'Cases not covered by this provision' that regulation 2.12F(3) "is not intended to cover situations where an applicant (or a decision-maker)

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<sup>9</sup> Regulation 2.12F(3) of the Migration Regulations. Note other legislative requirements which must be satisfied including that the application must be withdrawn in writing and a written refund request made.



*subsequently decides that the application was a 'mistake' because, for example the applicant:"* and then proceeds to list a broad range of circumstances.<sup>10</sup>

Agencies must give clear practical guidance to decision-makers on what to consider when making a discretionary decision, especially considering the impact of the decision on people. Guidance material must also be relevant and updated, where appropriate, to ensure it is current. However, it is important that such guidance is not overly prescriptive so as to effectively curtail real exercise of discretion.

For this discretionary power, we consider that Home Affairs should provide some common examples (presented clearly as a non-exhaustive list) of scenarios where a mistake may have been made accompanied with clear guidance about the relevant considerations when exercising the discretion. Such considerations should be taken into account where appropriate on a case-by-case basis. Common examples and relevant considerations should be reviewed and updated regularly to reflect where new meritorious scenarios are identified.

Relevant considerations for delegates when exercising their discretion may include considering the point at which the request for refund is made in the visa processing and whether it is fair and reasonable to refuse a refund, especially where visa processing is minimal or has not advanced. During our investigation, Home Affairs told us that some manual processing of the visa application will occur before it is placed in the queue. Our understanding is that this is then followed by lengthy periods where the application waits in the queue and then is processed. Noting the very lengthy processing times for parent visas, we consider that if little, if any, processing of the visa application has actually occurred, this should be a factor weighing in favour of granting a refund where a mistake has been made by the applicant. The VAC has been described as a tax that seeks to offset in part the visa applicant's 'draw' on Government services.<sup>11</sup> Home Affairs advises visa applicants that it is paid to allow Home Affairs to assess a visa application.<sup>12</sup> If no or minimal government services have been drawn upon to progress the visa application, we struggle to see how it is fair or reasonable to keep the money the applicant has paid. Alternatively, if the processing is substantially progressed, this may weigh in favour of not granting a refund. Ultimately, it is important that the delegate is given scope to consider such individual circumstances when exercising their discretion.

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<sup>10</sup> Including change of mind, change of circumstances etc.

<sup>11</sup> [The efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions](#) at paragraphs 2.41-2.42, (The Senate, Legal and Constitutional Affairs References Committee, March 2022).

<sup>12</sup> See [Getting a refund](#).





## Recommendation 1

We recommend the Department of Home Affairs revise its Procedural Instruction to better guide delegates exercising the discretion in regulation 2.12F(3) of the *Migration Regulations 1994*, which provides that a refund of the first instalment of the Visa Application Charge may be granted where the application was made because of a mistake by the applicant. This should include providing:

- a non-exhaustive list of common scenarios where a mistake may have been made, and
- clear guidance about relevant considerations that may be taken into account by the delegate on a case-by-case basis when exercising their discretion.

## 2. Home Affairs' policy on when it would be considered to have made a 'mistake' may lead to unfair outcomes

Where the visa application is found to have been made because of a mistake by Home Affairs, it is mandatory for the first instalment of the VAC to be refunded.<sup>13</sup> Home Affairs' Procedural Instruction states a mistake by Home Affairs will not be considered to have been made in circumstances where the applicant misinterpreted information provided by Home Affairs.

This could lead to unfair results where information Home Affairs provided was unclear and/or could reasonably be misinterpreted. We consider that Home Affairs should amend its interpretation of when a mistake has been made by Home Affairs to include every situation in which Home Affairs has made a mistake. This includes where the mistake made by Home Affairs was to provide advice or information relied upon by the applicant in making the application which is found to be unclear and/or reasonably open to misinterpretation. This would be a fairer approach, recognising that Home Affairs, as with any agency, may at times use communication which could be clearer and simpler, noting that it is communicating with people who may have a wide range of vulnerabilities due to language, advancing age, financial situation, and more.

**We also found that the language used in Home Affairs' Procedural Instruction is not clear in some parts, which may lead to inconsistent decision-making.**

For example, when describing mandatory refund provisions, the Procedural Instruction uses 'can' which implies a level of discretion, as opposed to making clear these provisions require a mandatory refund if satisfied.<sup>14</sup> Home Affairs should review its Procedural Instruction for consistency with legislation.

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<sup>13</sup> Regulation 2.12F(1) and (2)(b) of the Migration Regulations.

<sup>14</sup> In section 3.6.2.3 of the Procedural Instruction (see page 47) it states that "*Regulation 2.12F(2) provides each of the following circumstances in which the first instalment of the VAC can be refunded.*" Noting regulation 2.12F(2) is a mandatory provision, 'can' should be replaced with 'must'.





## Recommendation 2

We recommend the Department of Home Affairs (Home Affairs) update relevant policies and procedures to state that a mistake by Home Affairs for the purposes of regulation 2.12F(2)(b) of the *Migration Regulations 1994* includes where information given by Home Affairs and relied upon by an applicant in making a visa application is found to have been unclear and/or open to reasonable misinterpretation.

### 3. Home Affairs does not provide visa applicants with sufficient information when a VAC must or may be refunded, and can improve communication about visa processing times

It is reasonable for people to expect government agencies to give them information that is clear, unambiguous and sufficient to allow them to engage with government programs and services effectively.

#### a) Lack of information about when a VAC must or may be refunded

We found that Home Affairs publishes limited information about VAC refunds (see [Parent visa processing centre form](#), [Refunds](#) and [Getting a refund](#)). The level of detail is scant and the information written in a way some readers may find difficult to understand, particularly visa applicants who do not have English as their main language.

The information on these pages provides almost no information on the circumstances in which refunds may be granted. Home Affairs notes that refunds are only issued in limited circumstances and are not usually granted. Its website simply lists the legislative circumstances where a VAC refund will be provided but without explaining its interpretation of key criteria (in particular, when an application is considered *unnecessary* and when a *mistake* will be considered to have been made).

**Because the VAC refund provisions are complex, practical examples should be provided, especially to distinguish between situations where a VAC refund must or may be given.**

The [refund request form](#) likewise does not provide clear information on circumstances where the VAC will or may be refunded, listing only high level 'categories' which the applicant must select from. This form states that the applicant must provide a clear and well-supported reason for requesting a refund without any further detail. We expect it is difficult for applicants to do so with such limited information available about how Home Affairs applies the legislation on when a VAC refund may or must be granted. We also found the initial [parent visa application form](#) has minimal information about refunds. The only reference to VAC refunds in the main parent visa application form, 'Application for a parent to migrate to Australia', is that "*charges are generally not refundable, even if the application is withdrawn or refused.*"



## Case Study

Ms W applied for a parent visa on behalf of her parent who lived overseas and paid the first VAC instalment. Over a year after the application was lodged, Ms W contacted Home Affairs seeking to withdraw the application due to a change of circumstances and receive a refund of the first VAC instalment.

A Home Affairs officer advised Ms W that she would be able to receive a refund but would first have to withdraw the application and then submit a refund request in writing. The refund request was ultimately denied by Home Affairs on the basis that the reasons provided did not satisfy the criteria under regulation 2.12F of the Migration Regulations. Ms W raised multiple complaints with Home Affairs' Global Feedback Unit (GFU), citing the information given by Home Affairs which implied they would receive a refund.

Home Affairs acknowledged its officer may have incorrectly implied Ms W would receive a refund but ultimately referred Ms W to the request for refund form which Home Affairs stated explained that refunds can only be paid in limited circumstances. Home Affairs informed Ms W she could make a claim for compensation from Home Affairs, but that it was not a guarantee of payment.

We consider Home Affairs does not provide visa applicants with sufficient information about when a VAC must or may (or may not) be refunded at key stages of the visa process including at the time of visa application lodgement and the time of requesting a VAC refund.

### *b) Room for improvement in communicating lengthy processing times*

We also looked at what information is publicly available about parent visa processing times. We acknowledge that Home Affairs does publish information about visa





processing times on its webpage.<sup>15</sup> However, complaints made to our Office indicate that visa applicants may still not be aware of the extremely lengthy processing times at the point of making their application or misunderstand advice about processing times.

### Case Study

Ms X applied for a parent visa to have her parent move to Australia and live with her. Shortly after applying Ms X received an acknowledgement of the application which directed her to the information available on Home Affairs' website.

Ms X decided to withdraw the visa because of the lengthy processing time and requested a refund of the first instalment of the VAC. This refund request was denied by Home Affairs on the basis that the request did not meet the mandatory or discretionary refund provisions under the Migration Regulations.

Ms X claims that the acknowledgement she received was the first time she was made aware of the processing time for the visa application.

We consider that Home Affairs can do more to make visa applicants aware of the lengthy processing times for parent visas. This includes displaying more prominently clear information about processing timeframes (including wait times for queue release dates) on its website (this information appears towards the bottom of the [Visa processing times](#) page) and in its [parent visa application form](#) (a link to the previously mentioned page is included on page 4 of 6 pages of detailed and dense instructions under the heading 'parent visa options').

Home Affairs' [visa processing time guide tool](#) does not include the majority of parent visas because Home Affairs advises it cannot provide exact processing timeframes for these visas. We note however that the overview webpages for parent visas direct users to use this tool initially before directing users to the [Visa processing times](#) webpage.<sup>16</sup>

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<sup>15</sup> See: [Visa processing times](#).

<sup>16</sup> See for example [Subclass 804 Aged Parent visa](#). More detailed information on subsequent tabs in this webpage do state that "processing times for these applications can be lengthy."



Applicants, especially those in the parent visa stream who pay very high fees and are subject to very long processing timeframes, need clear information about VAC refunds and processing timeframes up front to help them make an informed decision whether to apply. This will help applicants make the best decision for their circumstances and, as a result, make the process fairer for them.



### Recommendation 3

We recommend the Department of Home Affairs improve the information on its website and provided to applicants as part of the visa application and visa application charge (VAC) refund request processes to ensure that all applicants are aware of:

- the difference between the circumstances when the VAC *must* be refunded and those where the VAC *may* be refunded,
- the small number of refunds of the first instalment of the VAC that are usually granted where the applicant has made a mistake, and
- the current estimated time taken to process parent visa applications.

#### **4. Home Affairs does not make adjustments when refunding the VAC to account for changes to the real value of the money originally paid**

At the time of processing a VAC refund, the money originally paid by the applicant may have been held by Home Affairs for a very long time –up to 29 years for the first instalment for parent visa applications. As time passes, factors like inflation mean that the real value of the VAC amount paid has decreased by the time a refund is processed. If a refund is processed years after the VAC was paid, inflation would mean that the amount refunded is significantly less in real terms than the amount originally paid. Given that the VAC is a tax, it is noteworthy that as a general rule refunds of taxes by the ATO do carry interest, to reflect changes in the real value of money over time.

Home Affairs advised that the Migration Regulations are silent on whether variables such as inflation or currency fluctuations could or should be considered in determining the amount refundable as part of a VAC refund. Home Affairs currently does not adjust VAC refund amounts to reflect the effects of inflation or any other devaluing on the original amount paid, but the refund will include any credit card surcharges paid by the individual.<sup>17</sup>

We are concerned that the potential devaluation of the original amount of the VAC paid by the applicant is not being considered when processing a VAC refund. We are particularly concerned about circumstances where the applicant's money has been held by Home Affairs for many years, in some cases with minimal processing. This may mean that the real value of the amount refunded to an applicant is considerably less than the value of the original amount paid. This does not seem fair, especially where a refund is being granted on the grounds of a mistake by Home Affairs.

While we are not suggesting an applicant has any entitlement to compensation or that a payment in addition to the original amount paid equates to compensation, Home Affairs should consider whether it is possible and fair to adjust a VAC refund amount to account for factors like inflation so that the real value of the amount refunded to an applicant more closely approximates the real value of the amount paid at the time of payment.<sup>18</sup>

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<sup>17</sup> *Home Affairs Legislation Amendment (Credit Card and PayPal Surcharge) Regulations 2020 (Cth)*.

<sup>18</sup> See for example – under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* the Australian Taxation Office will pay interest in certain circumstances, including for example where a past tax assessment is amended and as a result the taxpayer's liability is reduced. See: [Interest on overpayments | Australian Taxation Office \(ato.gov.au\)](https://www.ato.gov.au/Interest-on-overpayments/).



For example, simple indexation could be applied to the amount paid using changes in the Consumer Price Index for amounts held by Home Affairs for over 12 months.

We note also that the Migration Regulations allow for VAC refunds to be paid in either Australian currency or the foreign currency the money was originally paid in. It is not clear to us from Home Affairs' Procedural Instruction which option is being selected when processing VAC refunds. If VAC refunds are being paid in Australian currency where the original money was paid in a foreign currency, Home Affairs should also consider the effects of any significant currency fluctuation when determining the amount refundable.



### Suggestion 1

We suggest the Department of Home Affairs (Home Affairs) adjust the amount payable when refunding a visa application charge (VAC) to take into account changes to the real value of the money during the period of time Home Affairs held the original VAC payment.

## 5. There is a lack of quality assurance processes to review decisions made

Regardless of how robust policies and procedures are, there will always be scope for human error. To mitigate this risk, agencies should have appropriate quality control and quality assurance processes to check decisions before and after they are made to ensure consistency in decision-making.

Home Affairs advised us that its *Immigration and Settlement Services Group: Line 1 Assurance Activities Procedural Instruction* sets out the framework and requirements for assurance activities. Home Affairs also advised that it is the responsibility of individual program areas to develop and implement such processes. The Parent Visa Processing Section has several quality controls in place (processes that operate before a decision is made), but no specific quality assurance measures (processes after a decision has been made) regarding decisions whether to refund a VAC for parent visas.

**The absence of quality assurance processes, particularly in discretionary decision-making, risks inconsistent application of policies and procedures and incorrect or unfair decisions not being identified and fixed.**

During our investigation, we asked Home Affairs to provide reasons why requests for refunds were not approved. We were advised that Home Affairs' systems can extract data on which provision of the Migration Regulations the refund request was claimed and either refused or approved against, but data on more detailed reasons for decision-making is not collected or analysed. We consider it a matter of good administrative practice to record reasons for decisions in an extractable format, including in a manner that can be used for quality assurance purposes. We note that Home Affairs' 'SAP' system appears to contain fields to both select a reject reason and add a comment to support the reason. The comments field may be able to be used to capture data on reasons for decision-making for quality assurance purposes.

The lack of quality assurance also means that opportunities to provide additional training, guidance or reminders to staff to improve the quality of decision-making may be missed. Further, it is a missed opportunity to use data obtained through quality assurance processes to identify and analyse trends in decision-making.



For example, data on refund applications processed in previous financial years shows a 13% increase in the number of refund refusals of the first VAC instalment in one year,<sup>19</sup> which we consider not insignificant.

	2021-22 Financial Year	2022-23 Financial Year
<b>First VAC instalment refund requests under reg 2.12F</b>		
<b>Total requests refused</b>	99 (28%)	206 (41%)
<b>Total requests approved</b>	251 (72%)	302 (59%)
<b>Second VAC instalment refund requests under reg 2.12H</b>		
<b>Total requests refused</b>	2 (15%)	1 (6%)
<b>Total requests approved</b>	11 (85%)	16 (94%)

There may be valid reasons for this increase, for example more refund requests in this batch of applications did not meet legislative requirements. Alternatively, it may represent a shift in how delegates are applying the Migration Regulations and Home Affairs' policies and procedures. There is no information that indicates Home Affairs uses such data to identify trends, so that it can ensure decision-making is consistent and achieving fair outcomes for applicants.

We note as well that there is significant variance in the approval rates for mandatory refund criteria such as reg 2.12F(2)(c), where the applicant dies before a decision is made on the application (98% approved in 2021-22 and 90% approved in 2022-23) and discretionary refund criteria such as reg 2.12F(3)(a), where the applicant has made a mistake (5% approved in 2021-22 and 4% in 2022-23).



## Recommendation 4

We recommend the Department of Home Affairs implement quality assurance processes to review visa application charge refund decisions for quality and consistency, and proactively identify and analyse trends in decision-making.

<sup>19</sup> For parent visa subclasses 103, 143, 173, 804, 864 and 884.



## **6. Home Affairs do not have a formal internal review process for VAC refund refusal decisions.**

Another effective measure to address the risk of inconsistent decision-making and human error is providing an internal review process, regardless of whether there is a legislated obligation to have one. The applicant can then challenge a decision they think is wrong.

Home Affairs advised us that it is under no obligation to internally review VAC refund decisions but on receiving a request, may choose to do so. Such requests may be received after an applicant requests internal review on the basis that they are unsatisfied with how the GFU responded to their complaint. We acknowledge that Home Affairs' template for communicating a VAC refund refusal decision states that a new refund request can be lodged if the applicant believes they can provide new evidence to support their claim, however we do not consider this equivalent to an internal review process and further note that an example decision letter we were provided did not include this advice.

There is no reference to any internal review processes in Home Affairs' Procedural Instruction. Further, VAC refund applicants are not informed of any review processes available, only that there is no right to merits review, and are not informed of their right to make a complaint to the GFU in the decision outcome letter.

**This leads an applicant to believe the process is final and absolute, effectively denying them the opportunity to respond to or appeal the decision if they think it is wrong.**

In the absence of clearly informing applicants that they can seek internal review of a decision to refuse to refund a VAC, we do not consider that Home Affairs has a formal and effective internal review process in place in respect of VAC refund decisions. While we acknowledge there is no legislative requirement for Home Affairs to offer an internal review process, we maintain that it is best practice to do so.

As an example, our Office offers complainants the ability to request internal review of a decision we have made about a complaint despite not being legislatively required to do so. If a complainant disagrees with a decision, they can request an internal review, describing the reasons why they believe our decision was wrong and providing supporting information. While we will not accept every review request, we look at all requests and, if we do not accept it, we tell the complainant and explain why. Where we



accept a review request, the review is conducted by an officer with no prior involvement. The officer will consider whether:

- the original officer properly considered the issues raised
- the original decision was the right one, and
- the original officer explained their reasons clearly and considered the complainant's response.

We note that Home Affairs advised us that if an internal review is conducted, the review *"may or may not be the same delegate"* who made the original decision, unless it is considered *"contentious"*. Regardless of whether a request is contentious, it undermines public perceptions and confidence in the impartiality and fairness when a delegate reviews their own decision. Internal reviews should always be conducted by an officer with no prior involvement.

Having an internal review process also benefits the agency, allowing it to reflect on decisions upheld versus overturned and identify potential underlying issues driving people to request refunds or issues in the consistency of decision-making.



## Recommendation 5

We recommend the Department of Home Affairs (Home Affairs) implement a formal internal review mechanism for visa application charge refund decisions and advise applicants of this option in refund decision letters, along with avenues to make a complaint to Home Affairs and to make a complaint to the Commonwealth Ombudsman if they are not satisfied with how Home Affairs handled their complaint.



## 7. Home Affairs may not always provide clear reasons for rejecting a refund request

Agencies need to communicate clear reasons for their decisions and ideally explain the process by which the delegate arrived at the decision. Home Affairs provided us with example decision letters and templates for advising applicants of the outcome of their refund request.

Home Affairs' template titled 'Refund Rejection' does not prompt the decision-maker to include specific reasons for the decision and instead includes text to refer the applicant back to the situations where a refund can be paid as per the Refund Request form.<sup>20</sup> One of the example letters provided of Home Affairs communicating a VAC refund request outcome to an applicant did contain some explanation for the decision but this was detracted from by large amounts of irrelevant legislation also being included. We do not think it is fair or appropriate to assume that applicants receiving these letters will be able to understand Home Affairs' reasoning for the decision made exclusively from the relevant section of legislation provided, particularly given that applicants may not speak English as their first language.

**People have a right to clear explanations that enable them to understand specifically why the decision was made.**

Home Affairs should ensure its decision letters to VAC refund applicants set out the reasons for the decision in clear and simple terms (with translations to languages other than English where appropriate). In doing so, Home Affairs should consider how it can enhance the language and layout of these letters for better readability and understanding.

Improved messaging will help applicants understand why a decision was made and provide them with information needed to consider whether they wish to seek review of a decision. It will mitigate risk of misinterpretation by applicants, as well as possible frustrations around not feeling heard.

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<sup>20</sup> As discussed above we have concerns regarding the limited information provided on this form.





## Recommendation 6

We recommend the Department of Home Affairs amend its visa application charge refund decision letter templates to ensure every decision letter includes a clear explanation why the specific decision was made in that case.

# APPENDIX A

## Visa Application Charges and Associated Costs for Parent Visas<sup>21</sup>

The table summarises the visa application charges (VACs) for each subclass of parent visa. The VAC is payable in two instalments: the first at the time the visa application is made, and the second before the visa is granted.

Visa Subclass	VAC First Instalment			VAC Second Instalment		
	Base*	AA 18+°	AA 18-^	Base	AA 18+	AA 18-
Parent visa (subclass 103)	\$4,990	\$2,495	\$1,250	\$2,065	\$2,065	\$2,065
Contributory Parent visa (subclass 143)	\$420-\$4,765	\$215-\$1,605	\$105-\$805	\$19,420 - \$43,600	\$19,420 - \$43,600	\$2,095
Contributory Parent (Temporary) visa (subclass 173)	\$3,210	\$1,605	\$805	\$29,130	\$29,130	\$1,825
Aged Parent visa (subclass 804)	\$4,990	\$2,495	\$1,250	\$2,065	\$2,065	\$2,065
Contributory Aged Parent visa (subclass 864)	\$420-\$4,765	\$215-\$2,380	\$105-\$1,195	\$16,545 - \$43,600	\$16,545 - \$43,600	\$2,095
Sponsored Parent (Temporary) visa (subclass 870)	\$1,145	N/A	N/A	\$4,590 - \$10,325	N/A	N/A
Contributory Aged Parent (Temporary) visa (subclass 884)	\$4,765	\$2,380	\$1,195	\$2,095 - \$29,130	\$2,095 - \$29,130	\$2,095

**\*Base application charge:** Minimum amount that must be paid for a visa application. This amount will be payable by the main applicant in a combined application.

**°AA 18+:** Additional applicant charge payable for each visa applicant over the age of 18 included in a combined application.

**^AA 18-:** Additional applicant charge payable for each visa applicant under the age of 18 included in a combined application.

<sup>21</sup> Figures extracted from [Visa fees and charges](#) as at 23 May 2024.





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EC24-003772

Mr Iain Anderson  
Commonwealth Ombudsman  
Office of the Commonwealth Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Iain  
Dear Mr Anderson

Thank you for providing the Department of Home Affairs (the Department) with your draft own motion investigation report *Righting Refunds – Investigation into the appropriateness of the Department of Home Affairs' policies and procedures for Visa Application Charge refunds for parent visas*.

I appreciate your insights and the identified opportunities for improvement. The Department's response to your recommendations is enclosed.

Should your staff wish to discuss any aspects of the response, they can contact Alison Sommerville, Assistant Secretary, Audit and Assurance [REDACTED]. Alternatively, you are welcome to contact me directly if that would be helpful.

Yours sincerely

Stephanie Foster

**Stephanie Foster PSM**

2 August 2024

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**Attachment B**

**Department of Home Affairs - Recommendation and suggestion response template**

**DRAFT REPORT: Righting Refunds – Investigation into the appropriateness of the Department of Home Affairs’ policies and procedures for Visa Application Charge refunds for parent visas**

Recommendation	Entity response to recommendations/suggestions	Action entity proposes to take and expected timeframes for implementation of recommendations/suggestions
	<p>Please indicate your response to each recommendation/suggestion. If you do not accept a recommendation/suggestion, please provide reasons.</p>	<p>Please provide particulars of any action you propose to take to implement the recommendation/suggestion and expected timeframes for implementation, including justification for the timeframes.</p>
<p><b>Recommendation 1:</b> We recommend the Department of Home Affairs revise its Procedural Instruction to better guide delegates exercising the discretion in regulation 2.12F(3) of the <i>Migration Regulations 1994</i>, which provides that a refund of the first instalment of the Visa Application Charge may be granted where the application was made because of a mistake by the applicant. This should include providing:</p> <ul style="list-style-type: none"> <li>• a non-exhaustive list of common scenarios where a mistake may have been made, and</li> <li>• clear guidance about relevant considerations that may be taken into account by the delegate on a case-by-case basis when exercising their discretion.</li> </ul>	<p><input checked="" type="checkbox"/> <b>Accepted</b>  <input type="checkbox"/> <b>Not accepted</b>                      If not accepted, please provide reasons:</p>	<p><b>Proposed action:</b>                      The Department is in the process of centralising refunds across visa programs. Through this process, the team is building a knowledge base of common scenarios. This will eliminate instances of inconsistencies in decision making from other visa program areas in processing refunds.</p> <p>The Procedural Instruction (PI) is currently under review including a review of the guidance listed for discretionary refunds. The revised PI will contain both the list of common scenarios and clear guidance about relevant considerations that may be taken into account by the delegate on a case-by-case basis when exercising their discretion.</p> <p><b>Expected timeframes:</b>                      Twelve months.</p> <p><b>Justification for timeframes:</b>                      This timeframe will allow for the phased implementation of all refunds to be centralised into the one team and for staff to be trained.</p>
<p><b>Recommendation 2:</b> We recommend the Department of Home Affairs (Home Affairs) update relevant policies and procedures to state that a mistake by Home Affairs for the purposes of regulation 2.12F(2)(b) of the <i>Migration Regulations 1994</i> includes where information given by Home Affairs and relied upon by an applicant in making a visa application is found to have been unclear and/or open to reasonable misinterpretation.</p>	<p><input checked="" type="checkbox"/> <b>Accepted</b>  <input type="checkbox"/> <b>Not accepted</b>                      If not accepted, please provide reasons:</p>	<p><b>Proposed action:</b>                      The Department will review current policies and procedures and make updates to implement this recommendation. Relevant staff will be provided training and clear guidance to ensure consistency and accuracy on how to process claims where a mistake has been made by the Department.</p> <p><b>Expected timeframes:</b>                      Nine – Twelve months.</p>

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Recommendation	Entity response to recommendations/suggestions	Action entity proposes to take and expected timeframes for implementation of recommendations/suggestions
	Please indicate your response to each recommendation/suggestion. If you do not accept a recommendation/suggestion, please provide reasons.	Please provide particulars of any action you propose to take to implement the recommendation/suggestion and expected timeframes for implementation, including justification for the timeframes.
		<p><b>Justification for timeframes:</b></p> <p>This timeframe will allow for all staff consultation, governance clearance and training of staff within the refunds team.</p>
<p><b>Recommendation 3:</b> We recommend the Department of Home Affairs improve the information on its website and provided to applicants as part of the visa application and visa application charge (VAC) refund request processes to ensure that all applicants are aware of:</p> <ul style="list-style-type: none"> <li>• the difference between the circumstances when the VAC <i>must</i> be refunded and those where the VAC <i>may</i> be refunded</li> <li>• the small number of refunds of the first instalment of the VAC that are usually granted where the applicant has made a mistake, and</li> <li>• the current estimated time taken to process parent visa applications.</li> </ul>	<p><input checked="" type="checkbox"/> <b>Accepted</b>  <input type="checkbox"/> <b>Not accepted</b>                      If not accepted, please provide reasons:</p>	<p><b>Proposed action:</b>                      The Department will improve and enhance the website content, including making the current processing times for Parent visas more prominent. Work is underway to build an eligibility tool which will link from the refunds page. The tool is not expected to be overly complex however it will cover common scenarios and reduce confusion and ineligible refund applications.</p> <p><b>Expected timeframes:</b>                      Three – Six months.</p> <p><b>Justification for timeframes:</b>                      This will allow for consultation with internal business units and clearance times for content to be published.</p>
<p><b>Recommendation 4:</b> We recommend the Department of Home Affairs implement quality assurance processes to review visa application charge refund decisions for quality and consistency, and proactively identify and analyse trends in decision-making.</p>	<p><input checked="" type="checkbox"/> <b>Accepted</b>  <input type="checkbox"/> <b>Not accepted</b>                      If not accepted, please provide reasons:</p>	<p><b>Proposed action:</b>                      The Department will ensure its quality assurance process is fit for purpose. This will be reviewed regularly as refunds from other business units are phased in and the work is centralised.</p> <p><b>Expected timeframes:</b>                      Twelve months.</p> <p><b>Justification for timeframes:</b>                      This timeframe will allow for the phased implementation of all refunds to be centralised into the one team; staff to be trained and consistent quality assurance processes to be bedded down.</p>
<p><b>Recommendation 5:</b> We recommend the Department of Home Affairs (Home Affairs) implement a formal internal review mechanism for visa application charge</p>	<p><input checked="" type="checkbox"/> <b>Accepted</b>  <input type="checkbox"/> <b>Not accepted</b>                      If not accepted, please provide reasons:</p>	<p><b>Proposed action:</b>                      The Department will implement a formal internal review mechanism for visa application charge refund decisions. The</p>

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<b>Recommendation</b>	<b>Entity response to recommendations/suggestions</b>	<b>Action entity proposes to take and expected timeframes for implementation of recommendations/suggestions</b>
	<p>Please indicate your response to each recommendation/suggestion. If you do not accept a recommendation/suggestion, please provide reasons.</p>	<p>Please provide particulars of any action you propose to take to implement the recommendation/suggestion and expected timeframes for implementation, including justification for the timeframes.</p>
<p>refund decisions and advise applicants of this option in refund decision letters, along with avenues to make a complaint to Home Affairs and to make a complaint to the Commonwealth Ombudsman if they are not satisfied with how Home Affairs handled their complaint.</p>		<p>Department will also review the current decision letters to ensure they include information regarding requests for review of decisions and avenues to lodge a complaint regarding a decision.</p> <p>Upon implementation there will be regular reviews of the internal review mechanism to ensure that it remains fit for purpose.</p> <p><b>Expected timeframes:</b> Three months.</p> <p><b>Justification for timeframes:</b> Consultation and clearance of decision letters with internal stakeholders.</p>
<p><b>Recommendation 6:</b> We recommend the Department of Home Affairs amend its visa application charge refund decision letter templates to ensure every decision letter includes a clear explanation why the specific decision was made in that case.</p>	<p><input checked="" type="checkbox"/> <b>Accepted</b>  <input type="checkbox"/> <b>Not accepted</b>                      If not accepted, please provide reasons:</p>	<p><b>Proposed action:</b> The Department will amend the decision letter templates to ensure there is a clear explanation of the decision based on the claimant's request for refund and to ensure it is assessed in accordance with the relevant regulations.</p> <p><b>Expected timeframes:</b> Three months.</p> <p><b>Justification for timeframes:</b> Consultation and clearance of decision letters with internal stakeholders. Staff training and implementation.</p>

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Recommendation	Entity response to recommendations/suggestions	Action entity proposes to take and expected timeframes for implementation of recommendations/suggestions
	<p>Please indicate your response to each recommendation/suggestion. If you do not accept a recommendation/suggestion, please provide reasons.</p>	<p>Please provide particulars of any action you propose to take to implement the recommendation/suggestion and expected timeframes for implementation, including justification for the timeframes.</p>
<p><b>Suggestion 1:</b> We suggest the Department of Home Affairs (Home Affairs) adjust the amount payable when refunding a visa application charge (VAC) to take into account changes to the real value of the money during the period of time Home Affairs held the original VAC payment.</p>	<p><input checked="" type="checkbox"/> <b>Acknowledged</b></p> <p>The Department thanks the Ombudsman for this suggestion and acknowledges the intent of ensuring fairness when refunding a Visa Application Charge. The Department will consider this suggestion noting any provision to adjust the amount refunded would require specific legislative authority and potentially require insertion of a special appropriation provision into the Migration Act.</p>	<p><b>Proposed action:</b> Scoping work to be undertaken by the Department.</p> <p><b>Expected timeframes:</b> 31 October 2024</p> <p><b>Justification for timeframes:</b> Time required to consult with other agencies including the Department of Finance and the Treasury.</p>



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