COMMONWEALTH OMBUDSMAN

Why agencies need to be willing to check automated decisions

# What if the computer is wrong?

A short report under section 15 of the *Ombudsman Act 1976*

September 2025

# Overview

Section 15 of the *Ombudsman Act 1976* empowers me, among other things, to make recommendations to an agency when an investigation is concluded and I feel that the agency's actions have been unlawful, unreasonable or unjust. I can also request that the agency respond, within a specified timeframe, about how it intends to act on these recommendations.

This was the case in an investigation on a complaint made by an individual (known as 'Mr D' for the purpose of this report) about his experience with the Department of Home Affairs with respect to protection visas for himself and his family and with his associated Bridging Visa.

There are wider lessons for the Australian Public Service that can be drawn from this report. My recommendation to review processes to determine whether there are sufficient safeguards covering the use of automated decision-making is relevant across the APS. Agencies need to be willing to consider that an automated output could be wrong, and to be prepared to check that output if there is a serious question about it. I encourage agencies to read this report, reflect and consider the potential application to their day-to-day activities.

Iain Anderson
Commonwealth Ombudsman

# Background

We received a complaint from Mr D regarding the actions of the Department of Home Affairs (the department) relating to his Bridging Visa A.

Mr D is a foreign citizen living in Australia with his wife and two children. He applied for a protection visa. When the application was refused by the department, Mr D applied to the Administrative Appeals Tribunal (AAT) for review of the department's decision.

Mr D's application included additional applicants for the protection visa, namely his wife and his oldest child. The application was made to the AAT's Migration and Refugee Division.

The AAT realised that Mr D's application needed to be assessed by the General Division of the AAT and so assigned the application to that division. The AAT assigned Mr D's applications for his wife and children to the Migration and Refugee Division. Mr D applied to the AAT for the two matters to be heard together, by a member assigned to both the General Division and the Migration and Refugee Division, but the AAT declined this application.

After hearing Mr D's case, the AAT's General Division set aside the department's decision about Mr D and remitted his application back to the department for re-consideration.

Three months after that, the Migration and Refugee Division of the AAT remitted the application of Mr D's wife back to the department for reconsideration. It also stated that it did not have jurisdiction to consider the applications of Mr D or of either of his children.

The AAT's decision that it did not have jurisdiction with respect to Mr D's first child was because they had been granted Australian citizenship in the period since the application was made.

The AAT's decision that it did not have jurisdiction with respect to the second child was because they were only born after the original application for the protection visa and was therefore not part of the application before the AAT. Following their birth, a

protection visa application had been lodged on their behalf, but it was being processed by the department as a separate application.

The AAT's decision that it did not have jurisdiction with respect to Mr D was specified in the AAT decision as being because the department's protection visa decision on Mr D had already been decided by the AAT's General Division, with the matter having been remitted back to the department for reconsideration.

# Investigation outcomes

Home Affairs advised us that both AAT decisions were entered into departmental records.

**However, what was entered in the records about the second decision was just that the Migration and Refugee Division had found it had no jurisdiction to review the protection visa application – not that it had no jurisdiction to do so because the protection visa application had already been remitted back to the department** for reconsideration.

The department advised that, once the Migration and Refugee Division decision was entered into departmental records, **this then caused the automatic cancellation of Mr D's Bridging Visa A**, in October 2023. This was through the application of Schedule 2, subclause 010.511(b)(iii)(A)(II) of the Migration Regulations, which provides for cancellation if an 'application for merits review was not made in accordance with the law governing the making of applications to that review authority'.

**This was an unlawful decision, made automatically by an automated process**: Mr D had not failed to make an application for merits review in accordance with the law governing the making of applications. He had made a lawful application and it had been successful.

# Multiple visa applications

When advised by the department in that Mr D's Bridging Visa had been cancelled, Mr D's lawyer provided the department with the AAT's decision and asked that he be issued a fresh Bridging Visa. The department declined to do so, stating that instead Mr D should lodge a fresh application for a Bridging Visa.

Mr D did so, and his application was refused – on the grounds that the application was invalid as he had not made a valid application for a substantive visa that had not been finally determined. This decision was factually and legally incorrect: Mr D had made a valid application for a substantive visa and his application had not been finally determined – it had been remitted back to the department to reconsider.

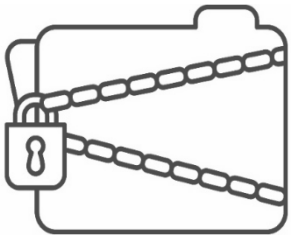
Mr D applied again for a Bridging Visa, and the department refused his application – on the grounds that the application was invalid as the decision to cancel his visa had not been revoked or set aside. This was factually correct but unreasonable, given that the visa cancellation itself had been unlawful, the department had (but did not check) all of the information it needed to determine that, and the department should have checked the information and revoked the unlawful cancellation decision.

Mr D made a number of complaints to the department, pointing out that his protection visa application had been remitted back to the department for reconsideration. **Both Mr D and his wife also advised the department that he had been suspended from his employment because of the cancellation of his visa and that his family now had no income, which was causing them financial hardship**.

The department's responses included that 'once a decision had been made on an application it cannot be reviewed' and that Mr D should not keep making fresh complaints about this matter.

Mr D lodged a third Bridging Visa application. The department assessed this as valid and granted a fresh Bridging Visa A.

# Lack of transparency



**The department did not provide Mr D with any explanation of the various decisions beyond what he had been provided with at the time of each decision**. The Global Feedback Unit did advise Mr D after a fresh Bridging Visa was finally issued that 'your Bridging Visa status has been corrected. We trust that this resolves the matter.'

When we asked the department whether it had considered the application of the Compensation for Detriment due to Defective Administration (CDDA) Scheme (the Scheme) to compensate Mr D and his family for having been deprived of their sole source of income for over two months due entirely to a departmental error, the department advised that it had not received a CDDA application from Mr D. The department noted that there is information about the Scheme on its website.

My Office has published Best Practice guidance about the CDDA Scheme. The Best Practice principles include that members of the public need to be made aware of the options available to them if they consider they have suffered detriment.

**In a situation such as this one, where an agency has been made aware that an individual has suffered financial hardship and the agency knows it is solely due to an error by the department, in my view the appropriate action by the agency is to explicitly draw the CDDA Scheme to the attention of the individual** - not to passively wait to see if the individual happens to find out about the Scheme. In my view, explicitly drawing the CDDA Scheme to the attention of the individual affected would be a demonstration of accountability by the agency.

Ultimately it would then be a matter for the individual whether they wish to make an application under the Scheme, once it is drawn to their attention. It would then be a matter for the department to fairly consider the quantum of compensation that might be paid.

In my view it would also be appropriate in a situation such as this one for the department to apologise to the individual at the time that it discovers and corrects its initial error. This did not happen here.

Under s15(1)(a) of the Ombudsman Act I am of the opinion, for the reasons set out above, that the department acted unlawfully and unreasonably, causing financial hardship to Mr D and his family.

# Recommendations

Under s 15(2) of the Ombudsman Act I am of the opinion that the department should take the following actions to mitigate the effects of its actions, and I recommend accordingly:

## Recommendation 1

Home Affairs should apologise to Mr D for the unlawful cancellation of his Bridging Visa A.

**Department response:**
The Department agrees to recommendation 1, that it should apologise to Mr D for the administrative error that led to his BVA ceasing. The Department acknowledges the error that resulted in the BVA ceasing and regrets the adverse impact that it had on Mr D's family. The Department will write to Mr D to apologise for the error and adverse impacts. Additionally, in line with Recommendation 3, the letter will also advise Mr D of the procedure for making an application under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme.

## Recommendation 2

Home Affairs should apologise to Mr D for twice rejecting his applications for a fresh Bridging Visa A – once unlawfully, once unreasonably.

**Department response:**
The Department agrees to Recommendation 2 and will write to Mr D to acknowledge the errors made and apologise for the adverse impact this had on him and his family. The Department acknowledges the error in determining two BVA applications to be invalid.

## Recommendation 3

Home Affairs should advise Mr D of the procedure for making an application under the CDDA Scheme for compensation for the period of over 2 months that Mr D and his family were deprived of income due to the unlawful decision to cancel his Bridging Visa A.

**Department response:**

The Department agrees to Recommendation 3 and will provide Mr D with information on how claims can be made through the CDDA Scheme.

Once a claim for compensation is received by the Department, it is investigated and assessed, having regard to the Department of Finance Resource Management Guide – *RMG 409 Scheme for Compensation for Detriment caused by Defective Administration.*

## Recommendation 4

If Mr D does make an application under the CDDA Scheme, Home Affairs should consider the application expeditiously.

**Department response:**

The Department agrees to Recommendation 4.

## Recommendation 5

Home Affairs should review its procedures for recording the outcomes of Tribunal (and court) decisions into departmental systems, to seek to avoid such errors in future.

**Department response:**

The Department agrees to Recommendation 5.

## Recommendation 6

Home Affairs should review why it took over 2 months to correct the unlawful decision, and whether there are sufficient safeguards covering the use of automated decision-making as occurred in this case.

**Department response:**

The Department agrees to Recommendation 6 and will undertake a review into action taken in response to the error that occurred.

**The full response from the Department can be found at page 11 of this report.**

Australian Government

Department of Home Affairs

SECRETARY

**OFFICIAL: Sensitive**

Thanks for working so constructively with us on this issue.

EC25-003234

Mr Iain Anderson
Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

Iain

Dear Mr Anderson,

I refer to my previous letter to you dated 22 May 2025 in relation to your proposed report under section 15 of the *Ombudsman Act 1976,* in response to a complaint from [redacted] regarding the actions of the Department of Home Affairs (the Department) with respect to his Bridging A visa (BVA). I also refer to our meeting on 4 June 2025 where we further discussed the application of the *Migration Act 1958* (the Migration Act) and *Migration Regulations 1994* (the Regulations) in this case.

Subsequent to our meeting, the Department has further considered the legal position. The Department agrees with your assessment that [redacted] BVA did not cease on [redacted] that the system incorrectly reflected that [redacted] BVA had ceased, and the subsequent actions taken by departmental officers as a result, were unlawful.

Where the Tribunal decides that it has 'no jurisdiction' to review an application, it is generally because the application for merits review was not made in accordance with the law governing the making of applications to the Tribunal. In such cases, a BVA granted to a person in association with their substantive visa application will cease 35 days after the Tribunal's decision in accordance with subsection 82(7A) of the Migration Act, with reference to paragraph 010.511(1)(b)(iia) of Schedule 2 to the Regulations.

At the time [redacted] was granted his BVA in association with his Protection visa application on [redacted] the equivalent provision was in paragraph 010.511(b)(iii)(A)(II) of Schedule 2 to the Regulations. This provided that the BVA permitted the holder to remain in Australia until:

> *(iii) if the substantive visa application is refused and the holder applies, or purports to apply, for merits review of that refusal:*
>
> > *(A) 28 days after notification by the review authority:*
> > *[…]*
> > *(II) that the application for merits review was not made in accordance with the law governing the making of applications by that review authority;*

[redacted] BVA did not, as a matter of law, cease on [redacted] with reference to paragraph 010.511(b)(iii)(A)(II) of Schedule 2 to the Regulations (as in effect on 21 January 2015). This is because, at the time the 'no jurisdiction' decision was made by the then AAT's Migration and Refugee Division on [redacted] [redacted] Protection visa application had already been remitted to the Department for reconsideration by the then AAT's General Division ([redacted] As such, paragraph 010.511(b)(iii)(A)(II) was simply not applicable.

However, due to system limitations, when the 'no jurisdiction' decision was recorded in the departmental system, the system was unable to identify that this was not the operative Tribunal outcome given [redacted] Protection visa application had already been remitted to the Department for reconsideration by the then AAT's General Division. In other words, the system was unable to reconcile the two different Tribunal outcomes in relation to the review of [redacted] Protection visa application. As a result, when the 'no jurisdiction' event was recorded in the system, it (albeit incorrectly) triggered the system to automatically regard [redacted] BVA as having ceased on [redacted] when, as a matter of law, this was not the case. This course of action was unlawful.

The Department has apologised to [redacted] for the errors made by the Department which led to it incorrectly recording that his BVA had ceased and for the errors that occurred during the processing of his subsequent BVA applications. The Department is deeply sorry for the impact these errors had on [redacted] and his family and regrets any inconvenience or distress this may have caused.

Should your staff wish to discuss any aspect of the response, please contact [redacted]
Alternatively, you are welcome to contact me directly if that is helpful.

Yours sincerely,

[redacted]

**Stephanie Foster PSM**

23 June 2025

Australian Government
Department of Home Affairs

SECRETARY

**OFFICIAL: Sensitive**

Iain, it would be great if we could resolve the difference of view around lawfulness before you publish. We stand ready to help in any way.

EC25-002327

Mr Iain Anderson
Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2301

Dear Mr Iain Anderson,

I refer to your letter of 28 April 2025, providing your proposed report under section 15 of the *Ombudsman Act 1976*, in response to a complaint from [redacted] regarding the actions of the Department of Home Affairs (the Department) with respect to his Bridging Visa A (BVA).

The Department agrees to implement all of the recommendations. There are various references in your report, including four of the six recommendations, alleging that the Department acted unlawfully. Whilst the Department acknowledges that errors occurred which unfortunately led to a negative outcome for [redacted] the Department does not agree that those actions were unlawful.

As a matter of law, [redacted] BVA(1) was not cancelled.

The BVA(1) granted to [redacted] on [redacted] in association with his Subclass 866 visa (PV) application was not cancelled and as such, the question of whether the cancellation decision was unlawful does not arise. There was also no decision (automated or otherwise) to cease BVA(1). A BVA ceases to be in effect by operation of law in accordance with Section 82 of the *Migration Act 1958* (the Act), with reference to a specified event in Division 010.51 of Schedule 2 to the *Migration Regulations 1994* (the Regulations).

The decision made by the Administrative Appeals Tribunal's (AAT's) General Division on [redacted] to remit [redacted] PV application to the Department for reconsideration was recorded accurately on departmental systems, but the existing system was unable to reconcile two outcomes for a single review. As a result, when the AAT's Migration and Refugee Division made the subsequent 'no jurisdiction' finding on [redacted] and this outcome was entered into departmental systems, it incorrectly triggered the cessation of BVA(1) in departmental systems. However, as a matter of law, BVA(1) ceased to be in effect on [redacted] when [redacted] was granted BVA(2) (see subsection 82(7A) of the Act, with reference to paragraph 010.511(b)(iv) of Schedule 2 to the Regulations, as in effect at the time BVA(1) was granted on [redacted].

[redacted] made valid applications for a BVA on [redacted], [redacted] and [redacted] While the BVA application of [redacted] has been disposed of ([redacted] was granted a BVA on [redacted]), the applications of [redacted] and [redacted] remain to be decided. Given [redacted] the Department will provide him with an opportunity to withdraw this BVA application.

I note the matter is technical in nature and my officers would welcome the opportunity to further discuss the details with your staff.

**OFFICIAL: Sensitive**

Should your staff wish to discuss any aspect of the response, please contact [redacted] Alternatively, you are welcome to contact me directly if that is helpful.

Yours sincerely

[redacted]

**Stephanie Foster PSM**

22 May 2025

**Attachment A**

## Home Affairs response to proposed recommendations

**Recommendation 1:** *Home Affairs should apologise to* [redacted] *for the unlawful cancellation of his Bridging Visa A.*

The Department agrees to Recommendation 1, that it should apologise to [redacted] for the administrative error that led to his BVA ceasing. However, the Department does not agree the actions were unlawful.

The Department acknowledges the error that resulted in the BVA ceasing and regrets the adverse impact that it had on [redacted] and his family. The Department will write to [redacted] to apologise for the error and adverse impacts. Additionally, in line with Recommendation 3, the letter will also advise [redacted] of the procedure for making an application under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme.

**Recommendation 2:** *Home Affairs should apologise to* [redacted] *for twice rejecting his applications for a fresh Bridging Visa A - once unlawfully, once unreasonably.*

The Department agrees to Recommendation 2 and will write to [redacted] to acknowledge the errors made and apologise for the adverse impact this had on him and his family. The Department acknowledges the error in determining two BVA applications to be invalid on [redacted] and [redacted] However, the Department does not agree that it acted unlawfully.

**Recommendation 3:** *Home Affairs should advise* [redacted] *of the procedure for making an application under the CDDA Scheme for compensation for the period of over 2 months that* [redacted] *and his family were deprived of income due to the unlawful decision to cancel his Bridging Visa A.*

The Department agrees to Recommendation 3 and will provide [redacted] with information on how claims can be made through the CDDA Scheme.

Once a claim for compensation is received by the Department, it is investigated and assessed, having regard to the Department of Finance Resource Management Guide - *RMG 409 Scheme for Compensation for Detriment caused by Defective Administration.*

**Recommendation 4:** *If* [redacted] *does make an application under the CDDA Scheme, Home Affairs should consider the application expeditiously.*

The Department agrees to Recommendation 4.

**Recommendation 5:** *Home Affairs should review its procedures for recording the outcomes of Tribunal (and court) decisions into departmental systems, to seek to avoid such errors in future.*

The Department agrees to Recommendation 5.

**Recommendation 6:** *Home Affairs should review why it took over two months to correct the unlawful decision, and whether there are sufficient safeguards covering the use of automated decision-making as occurred in this case.*

The Department agrees to Recommendation 6 and will undertake a review into action taken in response to the errors that occurred. The Department does not agree that its actions were unlawful.

**Disclaimer**

This document is intended and suitable for public release and publication.



**Contact us**

Inquiries regarding the licence and any use of this report are welcome at:

Commonwealth Ombudsman

Level 5, 7 London Cct

Canberra ACT 2601

Tel: 1300 362 072

Email: ombudsman@ombudsman.gov.au