VICTORIAN ombudsman

# Investigation into the Registry of Births, Deaths and Marriages' handling of a complaint

**January 2017**

**Ordered to be published**
**Victorian government printer**
**Session 2014-17**
**P.P. No. 214**

# Letter to the Legislative Council and the Legislative Assembly

To

**The Honourable the President of the Legislative Council**

and

**The Honourable the Speaker of the Legislative Assembly**

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report on an *Investigation into the Registry of Births, Deaths and Marriages' handling of a complaint.*

Deborah Glass OBE

**Ombudsman**

30 January 2017

# Contents

# Foreword

*"... due to the circumstances of my children's birth, that is that they were born 3.5 months premature and consequently spent 4.5 months in the Newborn Intensive Care Unit ... followed by the death of my son ... and the intense sadness and despair that followed, it is only now that I have begun to commence functioning in a 'normal manner' and feel capable of fulfilling my legal obligations ..."*

Letter from Ms X to the Registry of Births, Deaths and Marriages, 15 February 2016

The American statesman Benjamin Franklin famously noted that the only certainties in life are death and taxes. While Franklin's maxim holds as true in the early 21st century as the late 18th when he coined it, it can be expanded to include, for Victorians, contact with the Registry of Births, Deaths and Marriages.

The Registry does, as the colloquialism has it, what it says on the tin. It registers the births of new lives, records marriages in the eyes of the law, and makes official the passing of human life.

Given the sensitive nature of much of its caseload, we would expect the Registry to fulfil its statutory obligations with efficiency and accuracy. But as this investigation demonstrates, far too often, this did not happen.

At the centre of this investigation were twin baby boys, one of whom tragically died at just over four months. His mother, Ms X, complained that the Registry had been unreasonably tardy in providing birth certificates for Twin A and his brother Twin B, and had similarly delayed providing the family with a death certificate for Twin A after he passed away. Ms X was also unhappy with the Registry for failing to provide her with adequate reasons for its decision to refuse to remove the wording 'deceased' from a copy of Twin A's birth certificate, when it had previously done so.

And as if this were not enough – a grieving parent, having lost an infant twin child seeking basic documentation about his very existence – Ms X found herself immersed in a bureaucratic netherworld. Over 20 contacts with the Registry, with concerns still not resolved over 12 months, unanswered and unreturned phone calls, discovering the Registry had lost certified identity documents and dealing with an organisation that seemed to show no understanding that having premature twins, one of whom subsequently died, could possibly constitute an extenuating circumstance when certain boxes were not ticked in time.

Sadly, Ms X's experience with the Registry was not unique. My office has received an increasing number of complaints about the Registry and its delays in issuing certificates or responding to complaints. Long waits on the telephone that failed to resolve issues, poor or non-existent record keeping practices, all service failures experienced by Ms X and many others.

The Department has acknowledged that the Registry has been experiencing serious service delivery problems and happily, matters are improving with more staff engaged, improved technology and the adoption of complaint handling procedures. The further recommendations contained in this report will help the Registry do what all Victorians should reasonably expect from this key public service.

Deborah Glass

**Ombudsman**

# Introduction

1. Ms X's twin sons (Twin A and Twin B) were born three and a half months premature in March 2015. In July 2015, Twin A died aged four and a half months. Ms X first applied for their birth certificates and Twin A's death certificate from the Victorian Registry of Births, Deaths and Marriages (the Registry)[1] in July and August 2015. She had ongoing contact with the Registry over more than 12 months as she tried to resolve her applications.
2. On 18 May 2016, Ms X contacted this office about the Registry's alleged:
    - unreasonable delay in providing birth certificates for Twin A and Twin B, and a death certificate for Twin A
    - failure to adequately communicate with her during the application process
    - failure to provide her with adequate reasons for its decision to refuse to remove the wording 'deceased' from Twin A's birth certificate.
3. Ms X provided details to this office of about 20 contacts she had with the Registry, showing that she had not been able to resolve her concerns.[2] She advised that the Registry appeared to have lost her certified identity documents, and also that it had made errors on the birth certificates and death certificate.
4. In the 12 months prior to Ms X's approach, this office had been receiving an increasing number of complaints about the Registry. The majority of the complaints related to delays in issuing certificates or responding to complaints; long telephone wait times; record keeping practices; failure by the Registry to meet timeframes advertised on its website; and poor communication.
5. This office endeavoured to informally resolve these complaints by making enquiries with the Registry under section 13A of the *Ombudsman Act 1973*. This included facilitating contact between the Registry and complainants, or seeking updates from the Registry about complainants' applications.
6. Ms X raised issues representative of these broader complaints. As a result, on 8 August 2016, we decided to formally investigate her complaint under section 15B of the Ombudsman Act. The Attorney-General, Hon Martin Pakula MP, the Secretary of the Department of Justice (the Department), Mr Greg Wilson, the then Acting Director and Registrar, Ms Vicki Bahen and Ms X were notified of this decision.

1 The administrative actions of the Registry are within jurisdiction; the Registry is an 'authority' within the meaning of the *Ombudsman Act 1973*.

2 See attached chronology at Appendix A.

## The Registry of Births, Deaths and Marriages

7. The Registry is governed by the *Births, Deaths and Marriages Registration Act 1996* (the Act) and t*he Births, Deaths and Marriages Registration Regulations 2008* (the Regulations). The Act provides for, among other things:
    - the registration of births, deaths, marriages and changes of name in Victoria
    - the keeping of registers for recording and preserving information about births, deaths, marriages and changes of name
    - the issue of certified and uncertified information from the registers.
8. Under section 41 of the Act, the Registrar is required to 'maintain a register or registers of registrable events'. These include events such as birth, change of name, death, marriage, adoption or surrogacy arrangement. These registers 'must contain the particulars of each registrable event'[3]. Under the Act, the Register 'may contain further information if its inclusion is considered appropriate by the Registrar'[4].
9. Section 46(1)(a) of the Act states:

> On completing a search of the Register and on payment by the applicant of the prescribed fee, the Registrar may issue a certificate –
>
> (a) certifying particulars contained in an entry;
>
> or
>
> (b) certifying that no entry was located in the Register about the relevant registrable event.

## Previous complaints about the Registry

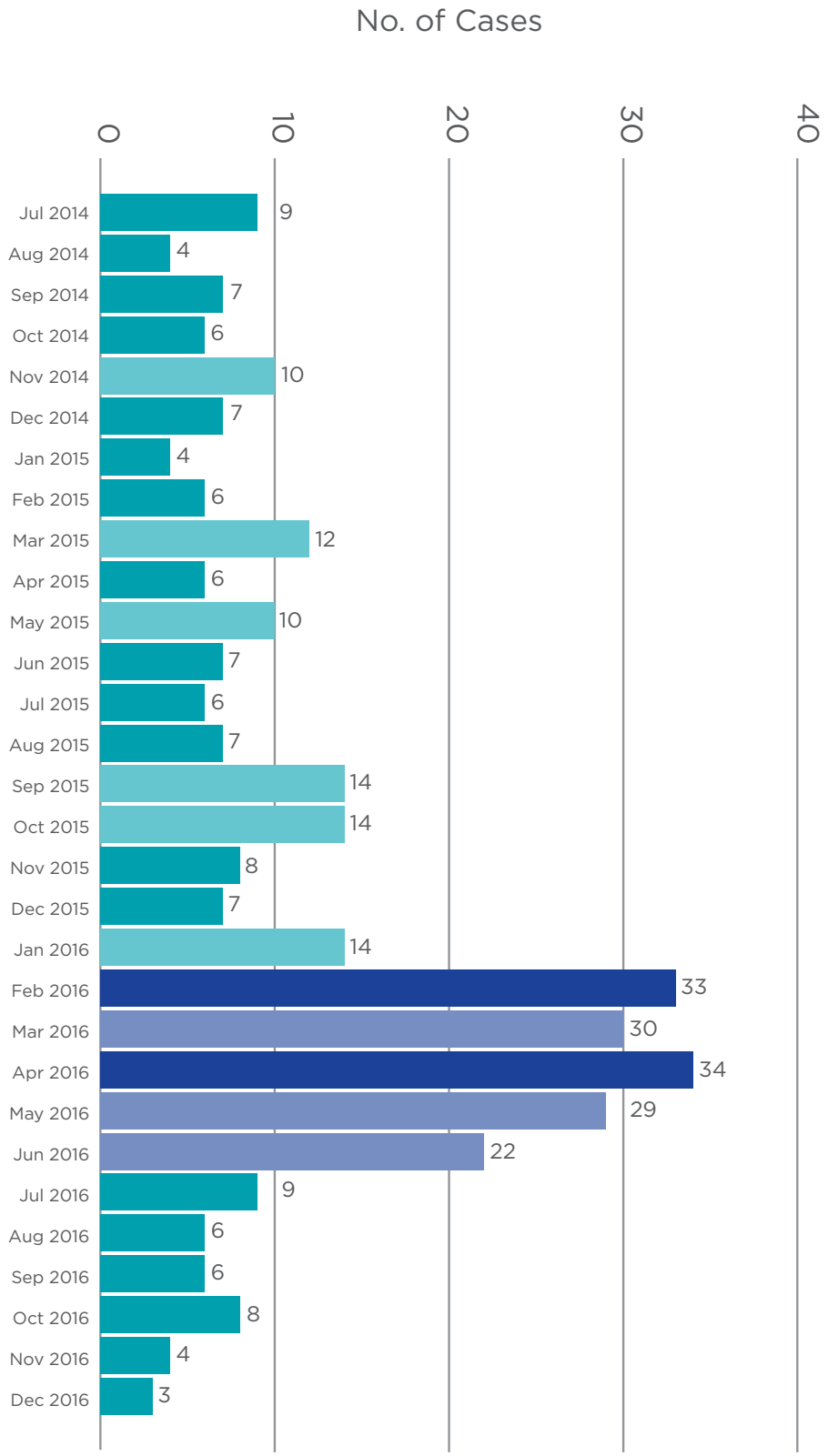
10. In June 2015, Ombudsman officers met with the Registry to discuss an increase in complaints to this office, about delays and general customer service issues[5]. The Registry indicated that it was taking a number of steps to address these issues. This is outlined in further detail below.

3 *Births, Deaths and Marriages Registration Act 1996* section 41(2)(a).

4 *Births, Deaths and Marriages Registration Act 1996* section 41(2)(b).

5 Minutes of meeting between the Registry's Business Networks Catalyst, Team Leader, Citizen Experience Lead and Victorian Ombudsman Investigation Officers, 24 June 2015.

**Table 1: Complaints received by the Victorian Ombudsman between July 2014 and December 2016 about the Registry**



11. However, the increase continued from July 2015 to March 2016, relating to:
    - service delivery concerns – including application processing delays; excessive call wait times; poor communication from staff; a lack of access to the Registry's office; and payment options
    - record keeping – including misleading and excessive processing timeframes and a lack of recording of communication received by or from the Registry
    - money being debited from an applicant's account for incomplete applications.
12. Of particular concern was that a number of complaints suggested that call wait times had extended to more than two hours and complainants had had their call cut off before speaking to Registry staff.
13. In April 2016, the Ombudsman wrote to the Registrar highlighting her concerns. In response, the Secretary of the Department advised:
    - the Department had recently approved additional funding for the Registry
    - additional resources had been sought to assist in the Registry's call centre, processing unit, change of name unit, birth registration unit and records/ administration unit
    - the Department had engaged an independent review of the Registry's performance to recommend areas for improvement[6].
14. The Secretary stated that between 2012 and 2015, the Registry underwent a significant restructure. This restructure was in response to the government's Sustainable Government Initiative that sought to 'reduce the number of public servants in non-service delivery and back-office roles ...'[7] As a result, the Registry's employee numbers decreased from 111 FTE staff to 85 FTE and role responsibilities substantially changed[8].
15. He later advised that on average, the Registry receives up to 7,500 emails[9] and 3,000 calls per week[10]. In the last financial year, the Registry issued 381,845 certificates[11].
16. Between April and August 2016, we noted a reduction in complaints to this office. We also noted that the details about the Ombudsman's role as an independent complaints oversight body no longer appeared on the Registry's website. Investigation Officers approached the Registry about this matter; and on 9 September 2016, the Registry advised that it had rectified the issue by referring to the Ombudsman in its online feedback and complaints information page.

6 Letter from Mr Greg Wilson, Secretary Department of Justice and Regulation, 27 May 2016.

7 *ibid*.

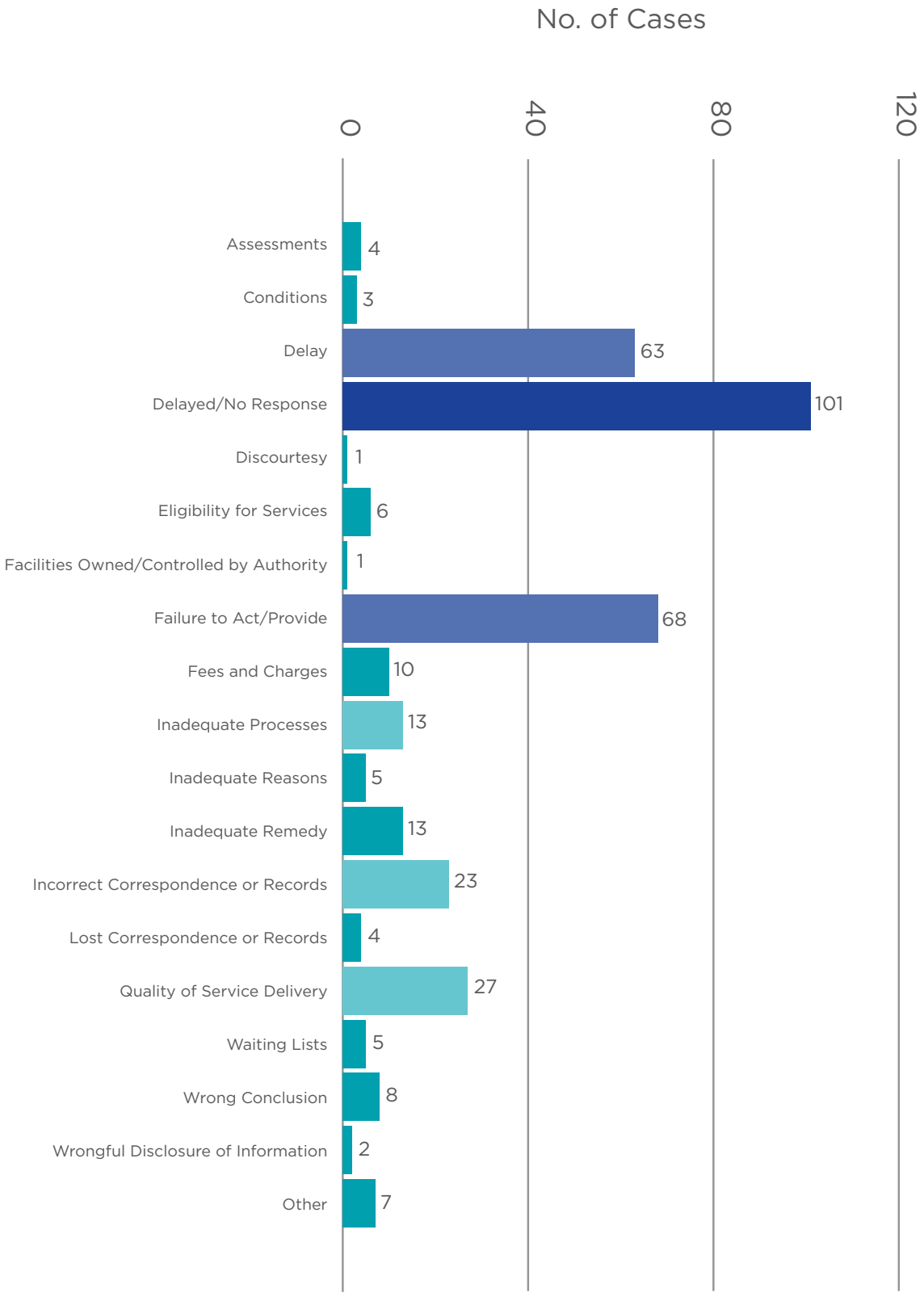
8 *ibid*.

9 *ibid*.

10 Letter from Mr Greg Wilson, Secretary Department of Justice and Regulation, 20 September 2016..

11 Registry of Births, Deaths and Marriages <http://www.bdm.vic.gov.au/utility/about+bdm/about+us/data/> Reviewed 21 October 2016.

**Table 2: Types of complaints received by the Victorian Ombudsman between July 2014 and December 2016 about the Registry**



# The investigation

17. In the context of the broader concerns outlined above, the investigation considered the following administrative actions relating to Ms X's complaint:
    - the Registry's communication with Ms X
    - record keeping practices
    - delays in processing Ms X's applications
    - advice to this office and Ms X about the status of her applications
    - the issuing and amendment of Twin A's birth certificate to include 'deceased'.
18. The investigation involved:
    - a site and file inspection at the Registry
    - interviewing five witnesses[12]
    - reviewing materials received from Ms X and the Registry, including the applications submitted by Ms X; the Registry's database and online records; and email communication between the Registry and Ms X
    - researching the legislative and policy basis for the Registry issuing a birth certificate referencing deceased status
    - researching interstate practice
    - releasing a draft report to the Registrar, the Secretary, a witness in the investigation (Officer One) and Ms X
    - considering the responses of the Registrar, Secretary, Officer One and Ms X to the draft report and incorporating the responses in this final report where relevant.
19. The standard of proof applied in this investigation was the balance of probabilities.
20. In accordance with section 25A(3) of the Ombudsman Act, anyone who is or may be identifiable from the information in this report are not the subject of any adverse comment or opinion, and:
    - this office is satisfied it is necessary or desirable to do so in the public interest; and
    - this office is satisfied that this will not cause unreasonable damage to those persons' reputation, safety or wellbeing.

12 All interviews were conducted on a 'voluntary' basis; section 2 of the *Ombudsman Act 1973*. All witnesses were offered the opportunity to bring a support person or legal representation. Four of the five witnesses elected not to do so; one witness elected to bring a support person.

## Ms X's applications to the Registry

21. The following facts are not in dispute.
22. In late July 2015, Ms X applied to register Twin A's and Twin B's births[13]. In a letter to the Registry, Ms X acknowledged the births should have been registered by the end of May[14]; however, she stated that while dealing with the distress of her sons' health because of their premature birth, she did not manage to complete the applications in time[15].
23. In August 2015, one month after Twin A's death, Ms X submitted Twin A's 'death registration statement' and applied for his death certificate[16]. The Births, Deaths and Marriages Act states 'If a person dies in the State, the death must be registered under this Act'[17].
24. To notify the Registry of a death, the Act states:

    > A funeral director or other person who arranges for the disposal of human remains must within 7 days after disposal of the remains give the Registrar a notice in the form and manner required by the Registrar specifying any prescribed particulars and including any supporting documentation required by the Registrar[18].

25. Ms X filled out the funeral director section with her details, as she had arranged Twin A's service and cremation without a funeral director and there was no other provision on the form to insert this detail.

13 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

14 Section 18(1) of the *Births, Deaths and Marriages Act 1996* requires that 'a person responsible for having the birth of a child registered must ensure that a birth registration statement is lodged with the Registrar within 60 days after the date of the birth'. Section 18(2) of the Act states 'However, the Registrar must accept a birth registration statement even though it is lodged after the end of the 60 day period'.

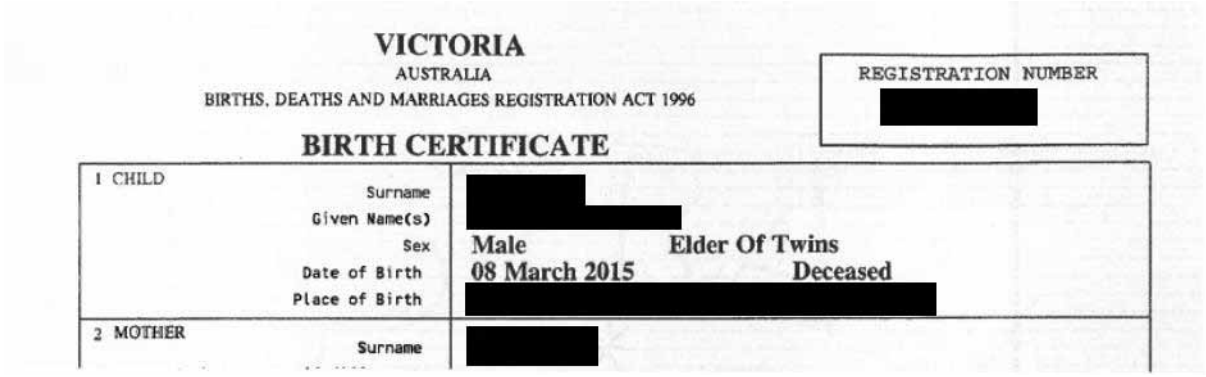
15 Letter from Ms X to the Registry, 15 February 2016.

16 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

17 *Births, Deaths and Marriages Registration Act 1996*, section 34(1).

18 *Births, Deaths and Marriages Registration Act 1996*, section 39.

**Image 1: Twin A's birth certificate with reference to 'Deceased', issued 4 September 2015**



VICTORIA
AUSTRALIA
BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT 1996

REGISTRATION NUMBER [redacted]

BIRTH CERTIFICATE

1 CHILD
Surname [redacted]
Given Name(s)
Sex Male Elder Of Twins
Date of Birth 08 March 2015 Deceased
Place of Birth [redacted]

2 MOTHER
Surname [redacted]

26. Registry staff assessed Twin A's death registration statement on 28 August 2015, and noted that Ms X had put her details in the funeral director section, which in their opinion, 'prevent[ed] issuance of [Twin A's death] certificate'[19].

27. The Registry did not contact Ms X to advise her of the reasons why the certificate could not be issued.

28. The birth certificates for Twin A and Twin B were completed and sent to Ms X on 4 September 2015[20]. As Twin A had died in July 2015, the Registry issued his birth certificate with the notation 'deceased' on it.

29. On 10 November 2015, Ms X telephoned the Registry to request:

    - a correction to the spelling of her surname on Twin A's birth certificate[21]
    - the word 'deceased' be removed from Twin A's birth certificate
    - an update in relation to Twin A's death certificate which had not yet been issued, despite her registering his death in August 2015[22].

30. Registry staff informed Ms X during this call that Twin A's death certificate had not been processed because they were awaiting additional information from funeral directors[23]. Ms X states she explained to staff that she did not engage funeral directors and therefore completed the death registration statement herself.

31. According to Ms X, Registry staff said that if she wished to progress Twin A's death registration and receive the death certificate, she would need to send an email to the Registry explaining her decision not to engage funeral directors and provide information about Twin A's service and cremation[24].

32. That same day, the Registry express posted to her a birth certificate for Twin A, without reference to 'deceased', and with her surname spelt correctly[25].

33. On 30 November 2015, Ms X emailed the Registry information confirming Twin A's date and place of birth, and date and place of cremation.

19 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

20 *ibid*.

21 Ms X's name was only misspelt on Twin A's birth certificate, and not on twin B's certificate, despite Ms X submitting both applications together at the same time. In response to this office's draft report, the Department advised, 'this was a BDM service provider error (DataTime keys in handwritten Birth Registration Statements). The error was unfortunate, and should have been picked up through quality assurance checks, but was not a direct result of failing of BDM (although BDM takes responsibility for the actions of its contractors)'.

22 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016; Interview with Ms X, 23 August 2016.

23 *ibid*.

24 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016; Email from Ms X to Victorian Ombudsman, 14 July 2016; Interview with Ms X, 23 August 2016.

25 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016; Interview with Ms X, 23 August 2016.

34. At interview on 23 August 2016, Ms X expressed frustration over the Registry's request for this information again, almost three months after she submitted Twin A's death registration statement:

> It's a little upsetting that then I had to give them the information again when they already had it… if you read this [the death registration statement] I actually put on there, 'I am the informant'… I explained … This form was sent on 17 August 2015[26].

35. The Registry printed and posted Twin A's death certificate to Ms X on 2 December 2015[27]. However, Ms X was of the view the Registry had made a number of errors on the death certificate; and on 9 December 2015, Ms X telephoned the Registry to request that these be corrected[28]. Specifically, Ms X requested that her husband's surname be included (in addition to his first name); that the place of death be 'The Royal Women's Hospital' and not 'Royal Womens Hospital'; and for Twin A's place of birth to include the hospital in which he was born. At interview, she stated the Registry acknowledged the errors in the naming and inclusion of the hospital details and advised her that the certificate could be corrected. She was advised that for the Registry to make the amendments, she would need to return the death certificate and send her request for amendments in writing[29].

36. In response to this office's draft report, the Department stated:

> The place of death is always taken from the Medical Certificate of Cause of Death (MCCD) as this is deemed to be the authoritative source for this information. [Twin A's] MCCD indicated the place of death as "Royal Women's Hospital", which is what was then recorded on the death certificate. The place of birth on the death certificate lists suburb and state only… This information was taken from the Death Registration Statement (DRS), completed by [Ms X] … BDM made both of these amendments in consideration of her circumstances; however these changes were not undertaken as a result of an error[30].

37. Ms X next contacted the Registry by telephone on 10 February 2016, following up on the advice she received in December about amending Twin A's death certificate[31]. She spoke with a Citizen Service Ambassador (Officer One) at the Registry.

38. Ms X was seeking an additional birth certificate for Twin A and Twin B and an additional death certificate for Twin A to submit to the Italian consulate. Ms X requested once again to have 'deceased' removed from Twin A's birth certificate. Ms X told this office that Officer One stated this was 'probably not' something that could be done, but to send in the request as there was 'no harm in asking'[32].

26 Interview with Ms X, 23 August 2016.

27 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

28 Call log of phone call from Ms X to Registry, 9 December 2015.

29 Interview with Ms X, 23 August 2016.

30 Letter from Mr Greg Wilson, Secretary Department of Justice, 9 January 2017.

31 Call log of phone call from Ms X to Registry, 10 February 2016.

32 Interview with Officer One, 15 September 2016.

39. At interview, Officer One confirmed his advice to Ms X:

> I said [to Ms X] as far as I'm aware our policy is when people are deceased … we mark the birth certificate as 'deceased', because then the birth certificate can't be used for fraudulent purposes … But I said, when it gets down to it, the Registrar can make any decision, so I'm sure it'll get … to her eventually and she'll make a decision …[33]

40. Ms X states that Officer One confirmed the advice he provided in December 2015, in that she would need to send in Twin A's death certificate and a request in writing that the Registry make amendments to the certificate, as well as provide Proof of Identity documents to apply for any other certificates she wished to obtain[34].

41. On 12 February 2016, Ms X applied online for an additional birth certificate for Twin A and Twin B. She also requested Twin A's death certificate with the correct spelling of the hospital and his correct place of birth[35]. Ms X then sent by registered post her certified Proof of Identity documents, Twin A's original death certificate, and her written request to have 'deceased' removed from Twin A's birth certificate (see Appendix B)[36].

42. In her letter to the Registry, Ms X advised that the purpose of her request for further certificates, and amendment to Twin A's birth certificate, was to register her sons' birth with the Italian consulate:

> As a duel [*sic*] Australian and Italian citizen I am legally obligated to register my children's birth and my son, [Twin A]'s death with the Italian Republic …
>
> I would like my son, [Twin A] to be granted the same dignity and respect he was given by the State of Victoria and thus the Commonwealth of Australia; that is, acknowledgment of being born followed by acknowledgment of passing away at 4.5 months. By having the word deceased on [Twin A]'s Birth Certificate, [Twin A]'s birth cannot be respected and acknowledged for what it was – the live birth of a child who lived for 4.5 months before passing away. I say this in light of the fact that I should have registered my son [Twin A]'s birth with the Italian Republic as soon as he was born. Had I done so the Birth Certificate I would have given to the Italian Republic would not have contained the word deceased, his birth would have [been] acknowledged for what it was, and I would not be making this request now. However, due to the circumstances of my children's birth, that is that they were born 3.5 months premature and consequently spent 4.5 months in the Newborn Intensive Care Unit of The Royal Women's Hospital; followed by the death of my son, [Twin A]; and the intense sadness and despair that followed, it is only now that I have begun to commence functioning in a 'normal manner' and feel capable of fulfilling my legal obligations …[37]

33 *ibid*.

34 Email from Ms X to Victorian Ombudsman, 18 May 2016; Interview with Ms X, 23 August 2016.

35 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

36 Email from Ms X to Victorian Ombudsman, 18 May 2016.

37 Letter from Ms X to the Registry, 15 February 2016.

43. The Registry received Ms X's letter on 22 February 2016[38]. Between 9 March and 29 April, Ms X states she attempted to contact Officer One as well as other staff at the Registry on 14 occasions about her applications. She states she contacted the Registry's mainline but faced call wait times of 40 minutes; and on three separate occasions, the Registry's mainline was engaged[39]. The investigation was not able to confirm independent evidence to substantiate this; however the Registry confirmed that during this time it was experiencing significant call wait times and a number of service delivery issues.

44. In response to the draft report, the Department advised:

> The Ombudsman was advised in each of the three performance reports submitted to OV for the months of June – August 2016 inclusive, in response to OV's concerns regarding administration at BDM, that BDM experienced difficulties with the IVR (Interactive voice response unit) stating inaccurate call wait times of 40 minutes when the actual wait was significantly shorter. This IVR error was attended to as the reports progressed. This may have been response for the issue that [Ms X] experienced[40].

45. The Department further stated:

> An engaged tone is highly unusual and has not been reported through any other complaint (BDM has capacity to cover multiple callers at any one time); however, as stated, BDM was experiencing difficulties and therefore cannot confidently confirm or refute [Ms X's] statement that the line was engaged[41].

46. On 11 April 2016, Ms X copied one of her emails to the Registry's complaints email address about her difficulty in obtaining the certificates[42]. Ms X states she received three voicemail messages from staff in response to her contact, but each time she attempted to call back, phone lines were either engaged, went to voicemail, or went through to an unidentified number[43]. Again, the investigation could not establish independent evidence to verify this.

47. Excerpts from her emails with Officer One between 8 and 11 April 2016 show the following exchange:

> *Ms X:* I have tried to contact you several times but I have not received an answer nor a reply to my voicemail message. As yet, I have not received the certificates I ordered in mid February. Can you please advise me as to when I will be receiving the certificates. (8 April 2016)
>
> *Registry:* Have you sent your certified proof of identity documents in yet, if so when did you send them in? Untill [*sic*] we get those, we cannot process your application. (8 April 2016)
>
> *Ms X:* I sent the certified documents on 19 February 2016 via registered post … I received a call from you a little while ago which I returned and left a voicemail message but I did not hear back from you. Given I sent the document seven weeks ago, can you please tell me when the certificates will be sent? (10 April 2016)
>
> *Registry:* Firstly i [*sic*] don't have voicemail, so i [*sic*] was unaware that you had called. Your application has still not been processed, which tells me given that you sent them 7 weeks ago, that we probably have not received them. Do you have the registered post number, so that I can see if we have, because we have a spreadsheet with all the registered post mail that we receive? (11 April 2016)

38 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

39 Email from Ms X to Victorian Ombudsman, 18 May 2016.

40 Letter from Mr Greg Wilson, Secretary Department of Justice, 9 January 2017.

41 Letter from Mr Greg Wilson, Secretary Department of Justice, 9 January 2017.

42 Email from Ms X carbon copied to Registry's complaints inbox, 11 April 2016.

43 Email from Ms X to Victorian Ombudsman, 18 May 2016; Interview with Ms X, 23 August 2016.

> *Ms X:* … Regardless of whether you have voicemail on your usual extension, the number you asked me to call you back on… had an option to leave a voicemail message. Furthermore, it has been nearly five weeks since you left me a voicemail message to call you back … and nearly five weeks since I returned your call on the number you specified and left you a voicemail … It is extremely poor that firstly no one has passed my voicemail message on to you, and secondly that, as you say, not knowing I called and therefore not having heard from me, you did not concern yourself with calling me again … I would appreciate if this matter could be dealt with promptly. I have now been waiting substantially longer than the turn around time indicated at the time I made the request and sent the appropriate proof of identity documents … (11 April 2016)

48. Ms X approached this office in May 2016, as the two birth certificates and correct death certificate had not been issued by that time. She stated that she was unable to obtain a satisfactory explanation as to why the three certificates could not be issued as she had requested[44]. Ms X was also awaiting the return of Twin A's original death certificate.

49. Following the commencement of the investigation, the Registry offered to provide Ms X with a commemorative birth certificate (the commemorative birth certificate does not contain a deceased notation) and provide a letter to the Italian authorities to explain the import of the word 'deceased'.

50. At interview, Ms X stated that she had already purchased commemorative certificates for the twins when she registered their births in July 2015.

51. The Registry sent Ms X the outstanding certificates on 23 August 2016[45] and 5 September 2016[46] following the commencement of this office's investigation.

## The Registry's record keeping and complaint handling

52. The Registry's central system for storing data, specifically its registers, is called 'Lifedata'; and was built in 1988 and upgraded in 2000. Lifedata is designed to capture relevant information pertaining to an individual's life events, each of which has its own database that effectively sits within Lifedata. The system does not include a case management module: it is built on events and not individuals, and email interactions cannot be saved into Lifedata[47].

53. The Registry told the investigation that this system is 'at the end of its life and no longer meets the needs of BDM and its users'[48]. At interview, the Registry's Senior Policy Advisor, said:

> [I]t is not a tool that is focused on the individual. The way that you interrogate the tool is very much event based, which is, in this day and age, problematic…

54. As a result, there was no systematic recording of Ms X's exchanges with the Registry[49].

55. On 12 and 13 July 2016, investigators made enquiries with the Registry about the status of Ms X's applications. In response, the Registry stated on two occasions that there were no outstanding applications and all certificates requested by Ms X had been issued[50]. This office made further enquiries, as Ms X continued to advise that she had not received any of the requested certificates.

44 Email from Ms X to Victorian Ombudsman, 18 May 2016.

45 Letter from Deputy Secretary DOJR to the Victorian Ombudsman, 29 August 2016.

46 Email from the Registry to the Victorian Ombudsman, 5 September 2016.

47 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

48 Letter from Mr Greg Wilson, Secretary Department of Justice and Regulation, 27 May 2016, page 3.

49 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

50 Telephone calls between the Registry and Victorian Ombudsman, 13 July 2016.

56. In response to the draft report, the Department stated 'BDM does not believe that it advised that there were no outstanding applications'[51].

57. Contemporaneous file notes made by a Senior Investigation Officer at this office indicate that in two separate telephone conversations with this office, a Registry staff at the time stated 'there were no outstanding applications on the system for [the complainant] and that all certificates requested previously had been provided'. Investigation Officers confirmed this conversation with the particular Senior Investigation Officer. On balance, this office is persuaded by the Senior Investigation Officer's version of events and is satisfied the Registry provided this advice.

58. On 3 August 2016, investigators spoke with the Acting Registrar and Senior Policy Advisor. They advised that Ms X's applications, which had been submitted in February 2016, had not in fact been processed because the Registry was awaiting Ms X's Proof of Identity documents[52]. The Registry reaffirmed this in an email to this office on 4 August 2016[53].

59. In response to notification of this investigation on 8 August 2016, the Registry conducted another search of its email files and archived documentation, and confirmed it had received Ms X's Proof of Identity documents in late February[54]. The Deputy Secretary has since advised that when Ms X submitted correspondence in February 2016, the Registry processed her application to correct Twin A's death certificate but overlooked the attached Proof of Identity documents and request to amend Twin A's birth certificate. The Registry then filed and archived the documents[55].

60. At interview, Officer One said that when the Registry receives an application, it enters the application into the Registry's system and assesses it as either compliant or non-compliant. He stated that when the Registry considers an application is non-compliant, a letter may be sent to the applicant requesting further evidence (for example, Proof of Identity documents)[56]. The Registry then files the application into a box and after one to two months, sends the box to storage for archiving. Officer One stated that:

> … if they ever call and query… [and] we've asked for this particular ID, and they say 'oh no we've sent that in', we can always go and check it if it's still there … but if they wait three or four months, then obviously it gets sent away and we have to recall the box and then check it …[57]

51 Letter from Mr Greg Wilson, Secretary Department of Justice, 9 January 2017.

52 Teleconference with Acting Registrar, Senior Policy Advisor and Victorian Ombudsman Investigation Officer, 3 August 2016.

53 Email from the Registry to the Victorian Ombudsman, 4 August 2016.

54 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

55 *ibid*.

56 Interview with Officer One, 15 September 2016.

57 *ibid*.

61. Officer One stated that it would 'probably [be] easier for them just to send in new ID required … and quicker to do that'[58].

62. When asked how the Registry generally communicates with people who have submitted incomplete or non-compliant applications, Officer One stated:

> … we contact them … like I said, a phone call, then obviously you know you've spoken to them … but if you send out a letter, they might not get the letter … but if they've sent in a query and they haven't heard about it for, I don't know, 3 or 4 months … I've got applications there that go back to February last year, probably … you would've thought, 'why wouldn't they contact us again?'. It's really not up to us, I don't think. We've done what we have to do. Like I said, we don't know if they're going to get the letter or not … but if they … don't get any correspondence from us at all … surely they would actually call back, or email or something in that regard … like I said, in a lot of instances … they obviously haven't so I just consider that it obviously wasn't that important to them …[59]

63. The Registry charges a fee for processing certificates and Ms X had paid the sum of $99.65 to the Registry. The Registry did not contact Ms X to tell her that it was awaiting further information from her to complete her application or refund the application fee during this time.

64. Evidence indicates that this situation may not be isolated. At interview, Officer One stated there were a number of non-compliant applications awaiting further information, which date back to February 2015[60].

65. The investigation was not provided with any information to indicate the Registry has a policy or procedure setting out what contact should be made with an applicant when an application is incomplete or is considered non-compliant.

66. In response to the draft report, the Department stated:

> Different areas of the business do perform follow up in differing ways, which BDM acknowledges should be standardised. Some areas will only provide one follow up whereas other areas (such as births) will attempt to make contact three times by varying methodologies. BDM's current practice is not documented and improvements need to be made. A written procedure will be developed to better articulate good practice[61].

67. At interview, Ms X expressed her frustration about her documents being misplaced, stating:

> The fact that I sent them through registered post, a letter by registered post and then they weren't certain whether I had or hadn't is just appalling … and then they don't even look in my file properly to know what I wrote in there. They clearly didn't read the letter that I wrote to them … or maybe they did and they just ignored it … and then they didn't even know that I had sent through a certified copy of my Medicare card and a certified copy of my driver's licence … where are those? Have they just disappeared into the ether somewhere? They should have these on file …[62]

58 *ibid*.

59 *ibid*.

60 *ibid*.

61 Letter from Mr Greg Wilson, Secretary Department of Justice and Regulation, 9 January 2017.

62 Interview with Ms X, 23 August 2016.

68. The *Public Records Act 1973* requires the 'preservation and security of public records'[63] and the 'logical and orderly classification'[64] of such records. Responsibility for record keeping is generally assigned to the 'officer in charge of government agencies' but is also the responsibility of all individuals in agencies[65]. The Public Records Act defines a public record as 'any record made or received by a public officer in the course of his duties'[66]. Destruction of any public record must be conducted in accordance with the Public Record Office Victoria's guidelines and the relevant Retention and Disposal Authority. The Retention and Disposal Authority for Records of the Registry of Births, Deaths and Marriages[67] places an obligation on the Registry to retain registrable information and applications for 75 years upon registration[68].

69. With respect to Ms X's contact with the Registry about her applications, Officer One did not record any of his contact with Ms X in the Registry's database[69]. This meant the Registry was not aware of the full extent of Ms X's communications and concerns until it conducted a full search of the Registry's email inboxes, in response to this investigation.

70. At interview, Officer One advised that he regularly deletes emails he receives from members of the public, once he considers the matter or enquiry has been finalised[70].

71. During a site inspection, investigators observed that the Registry does not have a case management database; and it was unable to identify a policy or procedure for case workers detailing where to save emails they receive direct from the public.

72. The Department has advised that it is currently redesigning the Registry's IT system and intends for the replacement system to 'go live' by November 2017[71]. The Department has also advised this system will link communications and events to the individual citizen[72].

## Complaint handling

73. As outlined in this office's *Good Practice Guide for Public Sector Agencies* (September 2016), sound complaint handling is part of core business and good service delivery in the public sector. Well-handled complaints can:

- restore trust with members of the public when things have gone wrong
- lead to better services and outcomes for individuals
- identify ways to improve services for the public[73].

63 *Public Records Act 1973*, section 7(a).

64 *Public Records Act 1973*, section 7(b).

65 Victorian Auditor General, 'Records Management in the Public Sector', March 2008, page 11.

66 *Public Records Act 1973*, section 2.

67 Public Record Office Standard, 'Retention and Disposal Authority for Records of the Registry of Births, Deaths and Marriages', version 2009.

68 *ibid*.

69 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

70 Interview with Officer One, 15 September 2016.

71 Letter from Mr Greg Wilson, Secretary Department of Justice and Regulation, 9 January 2017.

72 Letter from Mr Greg Wilson, Secretary Department of Justice and Regulation, 27 May 2016.

73 Victorian Ombudsman, Complaints: Good Practice Guide for Public Sector Agencies, September 2016, page 4.

74. Prior to this investigation, Ombudsman officers met with the Registry in December 2014 to discuss the Registry's general complaint handling practices[74]. Investigators met again with the Department and Registry in June 2015, to outline specific concerns about the number of complaints received about the Registry. In response, the Registry advised that it would be:

    - introducing a complaints register
    - developing a complaints handling process
    - prioritising responses to people who have made a complaint to the Ombudsman
    - conducting staff training to multi-skill staff across different business areas, and to ensure that relevant staff respond to emails within 24 hours[75].

75. Despite implementation of these actions, complaints about the Registry to this office continued to increase. Complaints were similar to those of Ms X.

76. When Ms X approached this office on 18 May 2016, the Registry had not responded to her complaint to the Registry dated 11 April 2016 and had delayed issuing the requested certificates. The Deputy Secretary advised the investigation that at the time, staff understood Officer One was handling Ms X's matter. As such, her complaint was filed in a 'completed complaints email folder'[76].

77. The Deputy Secretary advised that the Registry is reviewing its complaints handling procedures and 'intends to establish a central complaints repository to help track all complaints made by citizens about [the Registry]'[77].

78. At interview, the Senior Policy Advisor at the Registry stated:

> Over a period of time, as I understand it, a range of email inboxes had developed to receive complaints; it had sort of evolved because there were different inboxes for different inquiries about births, deaths, marriages, changes of name, and then there was a complaints inbox as well … In addition to that, there was not a single person in the Registry who was responsible for handling complaints …[78]

79. The Registry has three staff dedicated to complaints handling – its Senior Policy Advisor, the Registry's Operations Manager and the Registrar's Executive Assistant[79]. In response to the draft report, the Department stated 'BDM also has a range of other staff accessing the complaints inbox'[80].

74 Minutes of meeting between Registry Business Networks Catalyst, Citizen Experience Lead and Victorian Ombudsman Investigation Officers, 4 December 2014.

75 Minutes of meeting between Victoria Ombudsman and Registry, 26 June 2015.

76 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

77 *ibid*.

78 Interview with Registry Senior Policy Advisor, 25 August 2016.

79 *ibid*.

80 Letter from Mr Greg Wilson, Secretary Department of Justice and Regulation, 9 January 2017.

80. The Registry published its complaints handling procedures on its website in September 2016[81] stating that:

- it will respond to a complaint (or compliment) about its services and communicate an outcome of the review to a complainant within a reasonable time
- where the subject matter of a complaint is urgent, it will respond with a telephone call within two working days
- all other complaints will be responded to in writing within five working days. In some circumstances the Registry may take longer than five working days to respond if further investigation into the complaint/matter is required.
- complainants are entitled to an internal review of the outcome of their complaint
- if a complainant is dissatisfied with the resolution of their complaint, they can escalate their matter to the Ombudsman.

81. The Department also engaged Ernst and Young to review the Registry's service delivery performance issues. Ernst and Young's June 2016 report to the Department indicated:

- the Registry's policies and processes do not align with the 'organisation's strategy and the standards expected by Victorian citizens'
- the structure of the Registry is not designed to practically service its customers
- the Registry's technology is not increasing efficiency in the agency[82].

82. Ernst and Young made a number of recommendations for improvement including an increase in staff, using overtime to complete a backlog of applications, technological changes and developing a long term strategy for its business operations[83].

## Decision to place 'deceased' on birth certificate

83. A key element of Ms X's matter related to the Registry's decision to include 'deceased' on Twin A's birth certificate.

84. Investigation Officers sought information about the reasons for this decision and whether it is supported by policy or legislation. On 13 July 2016, the Registry advised that it is legislatively required to include the word 'deceased' on the birth certificate[84]. The Registry did not provide specific legislative references, or indicate whether this requirement is reflected in an internal policy.

85. Ms X did not accept the Registry's explanation that it could not remove this reference, when it had previously removed 'deceased' from Twin A's birth certificate in November 2015.

86. The Births, Deaths and Marriages Registration Act indicates the Registrar has a discretion to add to the register 'further information if its inclusion is considered appropriate by the Registrar'[85]. There is no specific requirement that birth certificates include deceased indicators.

81 Registry website <http://www.bdm.vic.gov.au/utility/about+bdm/legislation+and+policies/bdm+feedback+and+complaints+practice> Reviewed 7 September 2016.

82 Ernst and Young, *Operations Review of the Registry of Births, Deaths and Marriages*, 15 June 2016, page 4.

83 *ibid*.

84 Telephone call between Victorian Ombudsman Senior Investigation Officer and a Registry staff member, 13 July 2016.

85 *Births, Deaths and Marriages Registration Act 1996* section 41(2)(b).

87. In a response to the investigation, the Deputy Secretary advised that:

> BDM's long-term policy and standard practice is to include the word 'deceased' on the birth certificate of a person who has died. This policy is based on BDM's obligation, as the issuing agency of citizen's core proof of identity documents, to maintain accurate records and high standards of identity protection and security[86].

88. The Deputy Secretary also commented that:

> It seems likely that a sense of compassion motivated a BDM team leader's decision to authorise not only the correction to [Ms X's] surname, but also a single issue of [Twin A's] birth certificate without the word 'deceased'... in removing the 'deceased' notation from [Twin A's] birth certificate, the staff member acted contrary to well established identity protection and fraud prevention policies[87].

89. At interview, when asked about the Registry's practice, the Senior Policy Advisor stated[88]:

- the Registry's practice of including deceased on a birth certificate is an automated process and one based on data linkage
- the automated data linkage process was established when Lifedata was first created, with the purpose of protecting citizen identity
- it is 'clearly advantageous from a prevention of fraud view point'.

90. The Senior Policy Advisor drew particular attention to a guideline developed by the Commonwealth Attorney-General in 2009[89], which encourages greater use of deceased status indicators in the data matching process. She also referred to the Victorian Births, Deaths and Marriages Act[90] and stated that sections within the Act allowed for the Registry's practice. In addition, she spoke of a 'fraud control plan' developed by the Registry in 2006, and that this plan outlines the risks associated with 'data linkage failure', including that between birth and death data.

91. According to the Senior Policy Advisor and the Secretary of the Department, all Australian States and Territories, save for Queensland, have adopted the practice of referencing deceased on birth certificates after a person's death; and the investigation verified this[91]. In response to the investigation's request for information, the Tasmanian Registry of Births, Deaths and Marriages confirmed the use of 'deceased' on birth certificates for deceased persons, but also noted that:

> The Registrar will exercise discretion and will remove the 'deceased' flag if requested. Each request would be assessed on a case by case basis. In practice there have only been 1 or 2 requests from parents whose children have died soon after birth ...[92]

86 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

87 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

88 Interview with Registry Senior Policy Advisor, 25 August 2016.

89 These Guidelines were developed in response to the National Identity Security Strategy as agreed upon by the Council of Australian Governments (COAG) in 2007.

90 Specifically, sections 41, 43 and 46.

91 Emails received from Registries of Queensland, South Australia, Western Australia, Northern Territory and Tasmania, 4 and October 2016.

92 Email from Manager, Births, Deaths and Marriages, Department of Justice, Tasmania, 5 October 2016.

92. At interview, officers asked the Senior Policy Advisor how staff are made aware of the Registry's 'long-term policy' and the broader policy context. She stated:

> It has been absolutely clarified with staff that we do not issue birth certificates without the word deceased on it where that birth certificate relates to a deceased person … once again, I would say that this occurred at a time … where there was a real lack of support to operational staff, they were overwhelmed with applications, there was very little guidance or shall we say, there was too much guidance from multiple sources and not all of it clear or consistent … I know [the Operations Manager at the Registry] has told them, I don't know how she's done it. If she's announced it in person or by email …[93]

93. On 26 August 2016, Investigation Officers interviewed the Team Leader from the Registry who dealt with Ms X's initial request to remove the deceased reference in November 2015. At interview, the Team Leader could not recall their specific dealings with Ms X. However, they surmised:

> [M]y evaluation would have been very much that I had to be quite … controlled in my thought process, in an environment that was a very out of control environment … [the request to remove the deceased reference] would have been one of in excess of 30 queries that I would have had in a morning shift down on the counter/call centre … and probably at a time where we were having over an hour-and-a-half wait on the phones, a two hour wait on the counter … I would have … assessed when the child was born, when the child passed. I would have been in that mode of excessive turn around times … process delays … and also I would have had history of the whole scenario of the lady having twins, that they were born premature … then the question mark on 'had that birth registration statement come in on a timely manner … that birth would have been registered, well before the death was completed' … … It's not [a decision] that, [I] would have (even with the pressure of… a queue of staff waiting to actually see me, returned phone calls that I had to make from complainants on the phones), that I would have actually made at a whim. It would have been something that I would have considered. But I had very little reference point in terms of escalating that to somebody in a lead position, in terms of accessibility …[94]

94. When asked about their understanding of the Registry's expected practice and whether this is reflected in policy or guidelines, the Team Leader stated 'In terms of a policy that's written, I know that's in the process of being put into play …[95]'

95. The Registry's database indicates that information related to deceased status is an automated link in a person's birth record database. Selective tabs are available including reference to whether the death is linked to the birth. Options in this database include, 'yes', 'no', 'not applicable' and 'override'. At interview, a Registry staff member confirmed that there was nothing in the system that prevented a staff member from changing these details.

96. In light of the Registry's lack of a written policy with respect to this practice, Investigation Officers proposed that it was open to a registry officer to make a decision to remove the wording of deceased on a birth certificate. The Registry's Senior Policy Advisor stated:

> I find it very difficult to imagine a circumstance in which there would be a reason for issuing a birth certificate … without the deceased indicator in it[96].

93 Interview with Registry Senior Policy Advisor, 25 August 2016.

94 Interview with Registry Team Leader, 25 August 2016.

95 *ibid*.

96 Interview with Registry Senior Policy Advisor, 25 August 2016.

97. The Registry has since advised this office that there is no option under the policy to remove the word deceased from a birth certificate issued for a person in the event of death.

98. This office received a similar complaint to Ms X's in July 2014. In response to enquiries for this particular complaint, the Registrar at the time stated:

> It is unknown whether the Registry developed a policy in 2001 regarding the marking of records in this way … there are no procedural documents because the practice of marking the birth record is automated - that is the computer system makes the link and the birth record is marked 'deceased'. The Registry can also manually remove the link from the record, which it did for a short time in 2011, but this practice has ceased because it created records that did not accurately reflect the status of the record at the time of issue and other data integrity issues.
>
> As this practice is one of the ways in which the Registry guards against fraud, publication of this fact needs careful consideration. However, [the complainant's] experience has drawn attention to the distress that this may cause. The Registry is conferring with other stakeholders (such as Australian Passport Office, Victoria Police and other Registries) to confirm what will be provided on its website by December 2014[97].

99. This office's search of the Registry's website did not locate any mention of the Registry's practice of referencing deceased on birth certificates.

97 Email from the Registrar to Victorian Ombudsman, 26 August 2014.

# Conclusions

100. In light of the above, the investigation found that the Registry delayed issuing Ms X the three certificates[98] she applied for in February 2016.

101. The evidence showed that, despite receiving all necessary information in support of Ms X's applications, the Registry failed to provide her with two birth certificates and one death certificate until after the investigation commenced in August 2016.

102. During this time, the Registry advised both Ms X and Investigation Officers that there were no outstanding applications when clearly Ms X had lodged and was waiting for the three certificates and Twin A's original death certificate. Ms X effectively waited four and six months for certificates, despite the Registry advertising a 10-20 business day turnaround time on its website.

103. It is understandable that a person would approach this office when they have been told by any agency that applications they have lodged are not outstanding; when they have a receipt that their application has been received; that an administration fee has been collected by the agency; and the person has had a subsequent conversation with a staff member about further information required to complete processing of the application, as happened in this instance.

104. Ms X also had trouble obtaining a clear explanation about why the Registry could not provide her a second birth certificate without the word deceased on it. While the Registry advised its decision is based on 'long-term policy', it has no written or internal document that evidences this policy. It also appears that Registry staff did not understand the basis of the policy as this office was incorrectly advised it was a legal requirement. The result is that Ms X was issued a certificate for Twin A's birth without the word deceased in November 2015, but then refused a similar request in February 2016. Understandably, this confused and further distressed Ms X when she tried to obtain a birth certificate for Twin A. In saying this, this office recognises that the commemorative birth certificate to Ms X by the Registry would not reference the deceased status.

105. In response to the investigation, the Registry advised that the staff member who responded to Ms X's initial request to amend Twin A's birth certificate, 'acted contrary to well established identity protection and fraud prevention policies'. The staff member's decision however, was not unreasonable, particularly in light of the circumstances of the Twins' birth and the untimely death of Twin A, and in the absence of any guidelines that stipulated the amendment could not be made.

98 Ms X was also awaiting the return of Twin A's original death certificate.

106. In response to the draft report, the Department stated:

> While it is understandable that the team leader made the decision she did, both for compassionate reasons and in the context of the then lack of managerial support, it was not correct for her to do so. That discretion should have been exercised, if at all, by the Registrar, as is stated in the BDMR Act. The automation of the data matching process and inclusion of a 'deceased' notation on a birth certificate for any person who has died represents the policy position of the Registry: this is what should occur as a default. The possibility of overriding that position provides for the Registrar to exercise discretion in exceptional circumstances[99].

107. Good administrative practice would see that the Registry possess a written policy regarding the Registrar's discretion to reference deceased on birth certificates for deceased persons. This policy should recognise the discretion provided in the Act, as well as articulate how any such request to alter a certificate could be made, any applicable circumstances that the Registrar (or their delegates) should consider in exercising discretion, and who holds the delegation to make the decision with respect to these matters. Adopting a 'blanket policy' to add a deceased notation on birth certificates effectively precludes the Registrar from taking into account instances where the consideration of exceptional circumstances may be warranted.

108. In response to the draft report, the Department advised:

> As a result of this matter BDM is also considering changes to the positioning on the deceased notation on the birth certificate. Currently the notation appears after the date of birth field (at the top of the certificate). This notation could appear solely in the endorsements field (at the bottom of the certificate). Such an approach might assist from a compassionate perspective, however BDM would need to ensure that other entities (such as the Passports Office) were aware of change and actively looked at the entire document.

109. The investigation also identified problems with the way the Registry maintains records. In particular, communications and documents it receives from the public. This applies not only to applications for certificates, but also to any complaint made to the Registry. One consequence of this is that the Registry advised this office that Ms X had not provided documents when she had in fact done so in February 2016. It took the escalation of this complaint by this office into an investigation for the Registry to locate Ms X's Proof of Identity documents (in archives) as well as identify the history of communication between Ms X and Registry staff.

110. Officer One's deletion of emails from members of the public is not good administrative practice, given that they had not been captured in any other format, such as in the Registry's database.

99 Letter from Mr Greg Wilson, Secretary Department of Justice and Regulation, 9 January 2017.

111. It appears that the Registry does not have a consistent approach to following up applications that may have errors or be incomplete. Officer One informed us they generally assume the applicant will contact the Registry again. A government agency ought to be proactive in contacting applicants if their application is considered 'non-compliant', particularly when a fee has been paid for service. It is important to acknowledge the Department's advice that it will be developing a written procedure to better articulate its practice around following up on these types of certificates.

112. Until recently, the Registry had no centralised system in place for responding to complaints; and as evidenced in this investigation, staff appeared unaware of how to respond appropriately and consistently to concerns raised by members of the public.

113. On the evidence obtained, in the Ombudsman's view the way in which the Registry handled Ms X's applications for certificates was wrong[100] including:

- delay in providing Ms X certificates
- poor communication in relation to her applications
- failure to accurately record communication with Ms X
- failure to accurately process Ms X's applications and supporting proof of identity documentation
- failure to provide Ms X consistent advice regarding the Registry's decision not to issue Ms X a birth certificate without referencing deceased when it had previously done so.

114. The Department and the Registry have been working to address service delivery issues and have sought to resolve matters with Ms X. The Department states[101]:

- it has issued Ms X a written apology for its mishandling of her matters and issued a refund for all three certificates she applied for
- it is replacing its core business system with the intention of having a case management function for all citizen and Registry interactions
- it is undergoing a comprehensive review of all Registry policies
- it is reviewing its complaints handling procedures and establishing a central complaints repository for all Registry complaints.

115. The Department has also provided this office with three audit reports, which indicate that since initially raising concerns with the Department, it has significantly reduced its wait times and has reduced its backlog. The Registry now reports that it is meeting its service delivery key performance indicators. Specifically, registrations are now meeting the 5, 10 and 20-day service level targets and call wait times have reduced; the longest call wait listed as 34 minutes. In addition, the Department reports that online enquiries have reduced by half and complaints to the Registry have reduced by more than 70 per cent[102].

100 *Ombudsman Act 1973*, section 23(1)(g).

101 Letter from Mr Donald Speagle, Deputy Secretary Department of Justice and Regulation, 29 August 2016.

102 Letter from Secretary, Mr Greg Wilson, Department of Justice and Regulation, 20 September 2016.

# Recommendations

In light of the Registry currently reviewing its business practices, I have made few recommendations. I recommend the Department/Registry:

## Recommendation 1

Review the Registry's business practices and performance through an external audit agency in 18 months' time.

## Recommendation 2

Develop a written policy regarding the Registrar's discretion to use a 'deceased' notation on birth certificates for deceased persons under the Births, Deaths and Marriages Act; giving consideration to the wording of the policy to allow the Registrar not to record a deceased status on birth certificates in exceptional circumstances.

## Recommendation 3

Ensure that applicants who have paid a fee, for which their application has been assessed as non-compliant, have been notified of this.

### *Department's response:*

*Recommendations accepted.*

*In relation to Recommendation 3 the Department notes:*

*'Different areas of the business do perform follow up in different ways, which BDM acknowledges should be standardised … A written procedure will be developed to better articulate good practice[103].'*

103 Letter from Mr Greg Wilson, Secretary Department of Justice and Regulation, 10 January 2017.

# Appendix A – Chronology

| Date | Action |
|---|---|
| **8 March 2015** | Ms X gave birth to twins, Twin A and Twin B |
| **22 July 2015** | Twin A died |
| **27 July 2015** | Registry received Birth Registration Statement for Twin B and Twin A (included was an application for one birth certificate and one commemorative birth certificate for each child) |
| **10 August 2015** | Registry uploaded information regarding Twin A's cause of death into database following receipt of medical practitioner's medical certificate |
| **24 August 2015** | Registry received Death Registration Statement for Twin A from Ms X |
| **28 August 2015** | Registry worked on Twin A's death registration. Internal Registry notes showed that '[Ms X] had filled out the funeral director section with her details, preventing issuance of certificate' |
| **3 September 2015** | Registry completed birth registration for Twin B and Twin A. Registry printed Twin B's birth certificate |
| **4 September 2015** | Registry printed Twin A's birth certificate (with deceased recorded). Registry posted both birth certificates to Ms X. Twin A's birth certificate misspelled Ms X's surname |
| **10 November 2015** | Ms X states she telephoned the Registry and spoke with a female staff member about errors on Twin A's birth certificate and requested the Registry remove the word 'deceased'. Ms X states she received advice from the Registry staff member (who spoke with their Manager) that this would be actioned and his birth certificate issued.<br>Ms X states she also requested reasons as to why she had not received Twin A's death certificate yet. She states she was advised that issue of Twin A's death certificate was delayed because the Registry was awaiting additional information from funeral directors. Ms X explained that she did not have funeral directors and she had completed the paperwork herself.<br>The Registry requested Ms X send an email detailing her son's date and place of birth, and son's date and place of cremation |
| **10 November 2015** | Registry printed and posted a birth certificate without reference to 'deceased', and with the correct spelling of Ms X's surname. Registry also printed and posted a commemorative birth certificate |
| **30 November 2015** | Ms X emailed the Registry detailing Twin A's date and place of birth, and date and place of cremation |
| **2 December 2015** | Registry advised Ms X by email that it had finalised Twin A's death registration and would post his death certificate shortly<br>Registry printed and posted Twin A's death certificate to Ms X |
| **7 December 2015** | Ms X emailed the Registry requesting amendments to Twin A's death certificate including age, father's name, place of birth and place of death |
| **9 December 2015** | Ms X telephoned the Registry requesting amendments to Twin A's death certificate |
| **10 February 2016** | Ms X states she telephoned Officer One in the Registry's Deaths team, explaining her situation and requesting changes to Twin A's death and birth certificate |
| **12 February 2016** | Ms X ordered and purchased an additional death certificate and two birth certificates online |
| **19 February 2016** | Ms X sent via registered post a letter (dated 15/02/16) with her requests, Twin A's death certificate, and certified copies of Proof of Identity documentation. Ms X addressed this letter to Officer One and stated 'as discussed can the following amendments be made to … certificates' |

| Date | Action |
|---|---|
| **22 February 2016** | Registry received by registered post Ms X's application to correct Twin A's death certificate and Proof of Identity documents |
| **7 March 2016** | Officer One keyed in Ms X's application for correction to Twin A's death certificate<br>Ms X's Proof of Identity documents provided in the same collection of paperwork were overlooked and filed/archived with the completed death certificate correction paperwork |
| **9 March 2016** | Registry Team Leader authorised fee waiver regarding corrected death certificate |
| **9 March 2016** | Ms X states Officer One contacted her by telephone; leaving a voicemail message requesting a return call |
| **10 March 2016** | Ms X states she returned Officer One's call; leaving a voicemail message requesting a call back |
| **23 March 2016** | Ms X states she telephoned Officer One with no answer |
| **24 March 2016** | Ms X states she telephoned Officer One with no answer |
| **6 April 2016** | Ms X states she telephoned Officer One with no answer |
| **8 April 2016** | Ms X emailed Officer One advising she had not received the certificates as applied for in February |
| **8 April 2016** | Officer One reply emailed Ms X asking whether she had sent in her Proof of Identity documents |
| **10 April 2016** | Ms X emailed Officer One advising she had sent the Proof of Identity documents seven weeks prior and asked how long it would take for the certificates to be issued |
| **11 April 2016** | Officer One emailed Ms X stating her applications had not been processed; that if she sent Proof of Identity documents seven weeks ago the Registry "probably have not received them" |
| **11 April 2016** | Ms X states she telephoned Officer One with no answer |
| **11 April 2016** | Ms X emailed Officer One expressing disappointment in his email and advice. Ms X carbon copy emailed the Registry's complaints email address |
| **12 April 2016** | Ms X states Officer One telephoned her requesting she return his call |
| **13 April 2016** | Ms X states she telephoned Officer One twice with no answer |
| **13 April 2016** | Ms X states she telephoned Officer One a third time and left a message with a different Registry staff member requesting that her call be returned by the person who had been dealing with her applications |
| **15 April 2016** | Ms X states she received a call from Officer Z |
| **15 April 2016** | Ms X states she returned Officer Z's call on the phone number provided; the call went to voicemail. Ms X states she left a voicemail message, leaving her name and telephone number |
| **20 April 2016** | Ms X states she contacted Officer Z on the number provided to her; but the call went to voicemail. Ms X states she left a similar message to that of 15 April 2016 |
| **26 April 2016** | Ms X states she contacted the general Registry telephone line but the wait time was over 40 minutes so she hung up |
| **29 April 2016** | Ms X states she contacted the general Registry phone line on three separate occasions; on each occasion, the Registry phone line was engaged |
| **18 May 2016** | Ms X sent a formal complaint to the Victorian Ombudsman |

# Appendix B – Letter from Ms X to the Registry, 15 February 2016

[redacted]

15 February 2016

Attention: [redacted]
Deaths Team
Births Deaths and Marriages
GPO Box 4332
Melbourne
Victoria 3001

Dear [redacted],

As discussed can the following amendments please be made to my son, [redacted], Death Certificate.

Place of Death:
[redacted]

Place of Birth:
[redacted]

As requested, please find enclosed my son's current un-amended Death Certificate.

As a duel Australian and Italian citizen I am legally obligated to register my children's birth and my son, [redacted] death with the Italian Republic. I have therefore ordered an additional copy of [redacted] Death Certificate as well as a copy of his Birth Certificate and a copy of my son, [redacted], Birth Certificate. The receipt number for these certificates is [redacted]. If these can please be processed and sent to me promptly, so I may fulfil my legal obligations, it would be greatly appreciated.

I understand that as my son, [redacted], passed away at 4.5 months his Birth Certificate will now contain the word deceased. Whilst I understand why this is inserted in the Birth Certificate after a person passes away, I would like to request that the word deceased be temporarily removed from [redacted] Birth Certificate so I may receive a certificate without the word deceased. I will be using this Birth Certificate to register [redacted] birth with the Italian Republic and [redacted] Death Certificate to register [redacted] death with the Italian Republic.

I would like my son, [redacted] to be granted the same dignity and respect he was given by the State of Victoria and thus the Commonwealth of Australia; that is, acknowledgement of being born followed by acknowledgement of passing away at 4.5 months. By having the word deceased on [redacted] Birth Certificate, [redacted] birth cannot be respected and acknowledged for what it was – the live birth of a child who lived for 4.5 months before passing away. I say this in light of the fact that I should have registered my son [redacted] birth with the Italian Republic as soon as he was born. Had I done so the Birth Certificate I would have given to the Italian Republic would not have contained the word deceased, his birth would have be acknowledged for what it was, and I would not be making this request now. However, due to the circumstances of my children's birth, that is that they were born 3.5 months premature and consequently spent 4.5 months in the Newborn Intensive Care Unit of The Royal Women's Hospital; followed by the death of my son, [redacted]; and the intense sadness and despair that followed, it is only now that I have begun to commence functioning in a 'normal manner' and feel capable of fulfilling my legal obligations. It is for this reason I will now be forwarding [redacted] Birth Certificate and Death Certificate to the Italian Republic.

If you would like to discuss any of the above I can be contacted via email, [redacted]; or telephone, [redacted].

Yours sincerely,

[redacted]

Victorian Ombudsman
Level 2, 570 Bourke Street
Melbourne VIC 3000

Phone 03 9613 6222
Fax 03 9602 4761
Email ombudvic@ombudsman.vic.gov.au
www.ombudsman.vic.gov.au