

# Report on the action of a public officer at Murdoch University in respect to maintenance contracts

23 January 2024



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# CHAPTER ONE

## Introduction

- [1] Murdoch University's teaching, research and commercial activities are supported by its internal Property, Development and Commercial Services Office.
- [2] Within that office, the Manager Facilities and Maintenance is responsible for the delivery of facilities and maintenance services across Murdoch University's campuses.
- [3] In March 2021, Mr Dario Pacifici was appointed as Manager Facilities and Maintenance.
- [4] Mr Pacifici was in charge of the management of external contractors, budgeted and actual costs, and relevant governance and compliance requirements.
- [5] In October 2021, Facilities and Maintenance engaged a new contractor by the name of BM OnDemand Pty Ltd<sup>1</sup> (BM OnDemand) to carry out ad hoc maintenance works for Murdoch University.
- [6] BM OnDemand went on to become the preferred contractor for general maintenance at Murdoch University.
- [7] The Commission commenced an investigation, Operation Barrenjoey, after receiving a notification from Murdoch University concerning Mr Pacifici's undeclared conflicts of interest in relation to contractors. Murdoch University terminated Mr Pacifici's employment in September 2022.
- [8] The Commission's investigation revealed that Mr Pacifici had been involved in the setup and ongoing management of BM OnDemand with the two listed directors: his wife, Joshna Shrestha; and friend, Nathan Hodder.
- [9] Mr Pacifici introduced BM OnDemand to Murdoch University and ensured that the company would have an ongoing supply of work.
- [10] BM OnDemand earned \$1,067,199.80 in contracted work as a result of its engagement with Murdoch University.<sup>2</sup>
- [11] During the time Mr Pacifici was employed at Murdoch University, numerous transfers were made from BM OnDemand's bank account to his wife's account and to an account used by the couple for joint purposes.

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<sup>1</sup> BM ONDEMAND PTY LTD, ACN 653 907 638, Registered 22 September 2021.

<sup>2</sup> Exhibit 02308-2022-0529.

- [12] Mr Pacifici took active steps to hide his involvement with BM OnDemand from Murdoch University.
- [13] This enabled him to continue to use his position as Manager Facilities and Maintenance to direct work to the company and procure a financial benefit for himself, his wife and his friend.
- [14] Serious misconduct occurs when a public officer corruptly takes advantage of their employment to obtain a benefit for themselves or another person.
- [15] The Commission has formed an opinion of serious misconduct by Mr Pacifici.<sup>3</sup>

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<sup>3</sup> *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 217A(3).

## CHAPTER TWO

### **Murdoch University - Facilities and Maintenance**

- [16] The Property, Development and Commercial Services Office (PDCSO) at Murdoch University is responsible for delivering services including planning, building, maintenance and security at Murdoch's campuses.
- [17] Within PDCSO, the Manager Facilities and Maintenance is responsible for proactive and reactive maintenance work, managing external contractors, budgeted and actual costs, and governance and compliance requirements. The role is also responsible for leading and managing a team of support and technical staff.
- [18] Mr Pacifici was a public officer<sup>4</sup> at Murdoch University, commencing in the role of Manager Facilities and Maintenance on 8 March 2021. His position reported to the Director, Property and Commercial Services.
- [19] One function of the Facilities and Maintenance Team is receiving and allocating requests to complete work on Murdoch University's campuses. This includes repairs, painting, plumbing, cleaning and general maintenance.
- [20] All requests for maintenance or repair work at Murdoch University campuses are logged with the Facilities Management Helpdesk (FM Helpdesk).
- [21] The FM Helpdesk was responsible for receiving each job request, determining what type of contractor would be required and, in accordance with the pre-approved contractor schedule, or as instructed by technical staff or management, assigning the job to a specific contractor by raising a work request.
- [22] The Maintenance Support Officer is responsible for tasks including engaging contractors, raising purchase orders as directed by technical staff or management, and organising the approval of invoices.
- [23] Technical staff in the PDCSO include qualified engineers, plumbers and electricians who were responsible for supervising contractors, contributing to projects and advising on work that may be required.
- [24] Mr Pacifici gave evidence on oath to the Commission at a private examination. He acknowledged that part of his role was bringing on new vendors or contractors to the university:

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<sup>4</sup> The Commission has jurisdiction in respect of public officers. Mr Pacifici was a public officer at the relevant time because he fell within the definition of 'public officer' under CCM Act s 3.

*...there wasn't any when I arrived, and the first thing I needed to do was to increase the contractor base to allow better procurement activities and better services.<sup>5</sup>*

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<sup>5</sup> D Pacifici, transcript, private examination, 3 August 2023, p 6.

## CHAPTER THREE

### Engagement of BM OnDemand at Murdoch

- [25] In August 2021, Mr Pacifici, acting in his capacity as Manager Facilities and Maintenance, proposed using a new general maintenance contractor.
- [26] He told members of the FM Helpdesk that the proposed contractor had done maintenance work on some of his rental properties, and he was impressed with their work.<sup>6</sup>
- [27] On 20 August 2021, Mr Pacifici emailed a PDCSO Maintenance Support Officer requesting she send new creditor forms to Mr Hodder.<sup>7</sup>
- [28] On 25 August 2021, Mr Pacifici emailed a PDCSO staff member asking him to escort 'general maintenance contractor' Nathan Hodder to the workshop 'to see what equipment is available for use and for general storage'.<sup>8</sup>
- [29] Once BM OnDemand had been engaged as a new contractor with Murdoch University, Mr Pacifici immediately began instructing FM Helpdesk staff to use BM OnDemand for all general maintenance work.
- [30] On 19 October 2021, the Maintenance Support Officer emailed the Facilities and Maintenance team:
- BM on Demand provides General Building Maintenances services, similar to that of A1 Property and Byte. Please use the contractor when required, they have been set up on F1 and I believe also on Archibus. They might be able to provide reduced pricing compared to our current contractors.*<sup>9</sup>
- [31] The Maintenance Support Officer gave evidence on oath that she sent this email based on information given to her by Mr Pacifici.<sup>10</sup>
- [32] BM OnDemand received its first work request on 15 October 2021, with the first invoice received by Murdoch University dated 24 October 2021.
- [33] The Murdoch University financial delegation and approval system at the time of BM OnDemand's engagement enabled Mr Pacifici to independently instruct the creation of work requests, draw down purchase orders, direct the allocation of works to contractors and approve incoming invoices for payment. Many of the

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<sup>6</sup> Witness B transcript, private examination, 13 September 2023 p. 10; Witness C transcript, private examination, 14 September 2023 p. 11; Witness D transcript, private examination, 14 September 2023 p. 8.

<sup>7</sup> Exhibit 02308-2022-0465.

<sup>8</sup> Exhibit 02308-2022-0524.

<sup>9</sup> Exhibit 02308-2022-0428.

<sup>10</sup> Witness B transcript, private examination, 13 September 2023 p. 12.

initial work requests allocated to BM OnDemand were raised and approved directly by Mr Pacifici.

[34] Although Mr Pacifici did appear to delegate responsibility for allocating work requests and approval of invoices to other members of the Facilities and Maintenance team, he nonetheless made it clear to staff who should be getting the work.

[35] According to one Facilities and Maintenance employee who gave evidence, Mr Pacifici:

*...just kept insisting that BM On Demand should get the work and ...made it very clear where he wanted the work to go.<sup>11</sup>*

[36] From October 2021, BM OnDemand began receiving a steady stream of work from Murdoch University. This work included general repairs and reactive maintenance work, as well as large ongoing projects such as gutter cleaning and timber varnishing.

[37] By March 2022, BM OnDemand had signed a licencing agreement with Murdoch University, enabling them to operate from a workshop on the Murdoch campus.

[38] This ensured that BM OnDemand were always on-site and available should any new work requests be raised.

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<sup>11</sup> Witness C transcript, private examination, 14 September 2023 p. 11-12.

## CHAPTER FOUR

### BM OnDemand

- [39] On 22 September 2021, BM OnDemand Pty Ltd was registered as a company with the Australian Securities and Investments Commission (ASIC).
- [40] BM OnDemand's website advises the company was established to provide property and maintenance services in and around the Perth area.
- [41] The Directors and 50% shareholders of BM OnDemand are listed as Ms Joshna Shrestha and Mr Nathan Hodder.

#### **Joshna Shrestha**

- [42] Ms Shrestha and Mr Pacifici have been in a relationship since approximately 2016 and were married in September 2022.
- [43] Ms Shrestha is a registered nurse with qualifications in acute care and cosmetic nursing. She has no experience or qualifications relevant to general maintenance or finance.<sup>12</sup>
- [44] Ms Shrestha invested \$28,000 to assist in funding the setup of BM OnDemand. This initial 'seed money' was eventually repaid to her.
- [45] Since its registration, Ms Shrestha has engaged in periodic casual work for BM OnDemand, mainly assisting with the issuing of invoices, and managing timesheets.<sup>13</sup>
- [46] When he engaged BM OnDemand as a contractor at Murdoch University, Mr Pacifici did not declare that he had a personal relationship with Ms Shrestha.

#### **Nathan Hodder**

- [47] Prior to the creation of BM OnDemand, Mr Hodder was a sole trader doing landscaping and general maintenance work.
- [48] Mr Hodder invested \$15,500 in funding the setup of BM OnDemand which was eventually repaid to him.
- [49] Since the creation of BM OnDemand in September 2021, Mr Hodder has been the company's Operations Director. He is responsible for labour, managing work projects, organising tradespeople and contractors, and completing the practical aspects of the work of the company.

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<sup>12</sup> J Shrestha transcript, private examination, 1 August 2023 p. 4.

<sup>13</sup> J Shrestha transcript, private examination, 1 August 2023 p. 3.

- [50] Mr Pacifici and Mr Hodder have known each other since high school where they were in the same friendship group and have remained friendly since. Mr Pacifici did not declare his personal relationship with Mr Hodder at the time he engaged BM OnDemand.

**Nira Karmacharya**

- [51] BM OnDemand also employed a Finance Manager, Nira Karmacharya. Ms Karmacharya is a qualified accountant and a cousin of Ms Shrestha.

**Mr Pacifici's involvement with BM OnDemand**

- [52] At the beginning of his examination by the Commission, Mr Pacifici was asked about his current employment. He gave evidence that he was currently working for BM OnDemand and had been since about November 2022 after he left his role with Murdoch University.<sup>14</sup>

- [53] However, Mr Pacifici had been involved with BM OnDemand from its very inception.

- [54] In mid-2021, Mr Pacifici and Mr Hodder began discussing the idea of setting up a general maintenance company. Mr Hodder wanted to expand his sole trader business and turned to his friend for advice.<sup>15</sup>

- [55] BM OnDemand was the result of those discussions.

- [56] Having Murdoch University engage BM OnDemand to undertake general maintenance work was always part of the plan.

- [57] In September 2021, Mr Pacifici and Mr Hodder had the following text message exchange:<sup>16</sup>

*Hodder: See if you can find out when I come on board will I get a share of the building maintenance because to make it work I thi [sic] know we need that.*

*Pacifici: Hi mate from the day you start you will receive works. I'm thinking the varnishing to start on an adhoc basis.*

*Hodder: How am I charging/quoting that*

- [58] Mr Pacifici saw an opportunity to both help his friend and gain a financial benefit for himself and his wife. As he put it:

*I spoke to Nathan in regards to an opportunity at Murdoch as a handyman and also an opportunity to set up a business with Joshna to look at the wider range of the market.<sup>17</sup>*

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<sup>14</sup> D Pacifici transcript, private examination, 3 August 2023 p. 4.

<sup>15</sup> N Hodder transcript, private examination, 2 August 2023 p. 9.

<sup>16</sup> Exhibit 02308-2022-0593.

<sup>17</sup> D Pacifici transcript, private examination, 3 August 2023 p. 28.

- [59] During his examination, Mr Pacifici insisted on multiple occasions that he was only involved in the early stages of the business as an advisor and did not have any ongoing role with BM OnDemand while he was still employed at Murdoch University.<sup>18</sup>
- [60] However, the Commission has evidence which shows that Mr Pacifici was not only heavily involved in the setup of BM OnDemand but also maintained an active role in the ongoing management of the company.
- [61] Some examples of the initial and ongoing work Mr Pacifici did for BM OnDemand between approximately September 2021 and, at least, March 2022, included:
- Providing instructions to a consultant accountant to have BM OnDemand registered with ASIC;<sup>19</sup>
  - Liaising with ANZ Bank for the opening of BM OnDemand's business bank accounts;<sup>20</sup>
  - Arranging for the purchase of accounting software and the setup of BM OnDemand's email accounts;<sup>21</sup>
  - Sending regular emails to Mr Hodder, Ms Shrestha and Ms Karmacharya detailing action items and arranging directors' meetings; and
  - Reviewing and approving the issuing of invoices from BM OnDemand to Murdoch University.

#### **Use of the BD@bmondemand.net email address**

- [62] During examination, Mr Pacifici was asked about his use of various email addresses, including bd@bmondemand.net. He said:

*And you said you had an email address for BM On Demand, which was dario.pacifici@bmondemand? --- Yep.*

*Was there another email address that you used with the company? --- There was - there was other email addresses, I may have used - I think there was an email address bd@bmondemand.net. I may have used that once or twice, yes.*

*And what does the BD stand for? --- Business development.<sup>22</sup>*

- [63] Despite Mr Pacifici's assertion that he may have used this address 'once or twice', the Commission's investigation revealed that this was in fact the email

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<sup>18</sup> D Pacifici transcript, private examination, 3 August 2023 p. 15, 16, 20, 23, 25, 26.

<sup>19</sup> Exhibit 02308-2022-0507.

<sup>20</sup> Exhibit 02308-2022-0210.

<sup>21</sup> Exhibits 02308-2022-0191 and 02308-2022-0197.

<sup>22</sup> D Pacifici transcript, private examination, 3 August 2023 p. 15.

address Mr Pacifici regularly used to communicate with Mr Hodder, Ms Shrestha and Ms Karmacharya regarding internal BM OnDemand business.

### **The Memorandum of Understanding**

[64] Mr Pacifici's intention to have a significant and ongoing role with BM OnDemand is further evidenced by a 'Binding Memorandum of Understanding' (MOU) signed by Mr Pacifici, Mr Hodder and Ms Shrestha on 28 September 2021, shortly after the company was registered with ASIC.

[65] The MOU sets out the role Mr Pacifici was to have in BM OnDemand:<sup>23</sup>

*With the goal of setting up a leading building maintenance and services company in Perth. Dario Pacifici will act as an agent on behalf of Joshna Shrestha of BM On Demand Pty Ltd, and shall carry out leadership activities required to achieve the strategic goals and financial objectives of BM On Demand Pty Ltd. Business development, contract development, business sustainability and company resilience will fall under the responsibilities of the agent.*

[66] Mr Pacifici was asked to explain his role in the company as outlined in the MOU and what was meant by the wording 'as an agent':<sup>24</sup>

*To provide advice at times. Of course I wanted Nathan and my wife's business to succeed, to be engaged to provide advice. That is what I mean by agent. The husband giving advice to a wife to make sure that things were done safely. The handyman doesn't necessarily understand the requirements and the laws that change in regards to safety operations, and I didn't want exposure to Nathan or my wife in areas that could leave them open, if something were to go wrong on a job. Risk mitigation was the most paramount thing.*

[67] Ms Shrestha's limited role in BM OnDemand was also made clear in the MOU:<sup>25</sup>

*Joshna Shrestha will have no operational commitment or scope apart from initial seed investment.*

[68] The MOU further states:<sup>26</sup>

*Joshna Shrestha...will not be required to carry out any leadership activities in [sic] within the business.*

*Dario Pacifici will be responsible for the following tasks and functions.*

*Not least the following items:*

- *Participate in director financial reviews and payments to PAYG, BAS obligations.*
- *Support legal and Financial requirements of a director's role*

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<sup>23</sup> Exhibit 02308-2022-0453 p. 2

<sup>24</sup> D Pacifici transcript, private examination, 3 August 2023 p. 26.

<sup>25</sup> Exhibit 02308-2022-0453 p. 1

<sup>26</sup> Exhibit 02308-2022-0453 p. 3

- *Responsible for having an oversight of the affairs of the company and ensure you must comply with your legal obligations as a director under the Corporations Act 2001.*
- *To ensure you are fully up-to-date on what BM On Demand Pty Ltd is doing, including its financial position, question managers and staff about how the business is going and take an active part in directors' meetings.*

[69] Mr Pacifici was asked why, given the apparently significant role he was to have with the company, he was not made one of the directors:<sup>27</sup>

*It wasn't the right time, I was still employed, and I was actively seeking to leave ... Murdoch University....*

*So you said it wasn't the right time, why wasn't it the right time for you to be a director?-- Because I - I don't know, I don't know how to answer that, I just wasn't wanting to be a part of it. I did, and I also needed to have a job that I had an income. He was setting up a company with all that transparency to make it a legitimate entity, not just to do Perth, to grow maybe nationally.*

[70] The Commission considers that it is more likely that Ms Shrestha was listed as a Director of BM OnDemand instead of Mr Pacifici so that his involvement with the company would be harder to detect.

[71] Considering all the evidence put to Mr Pacifici during his examination, his attempts to downplay his role and ongoing involvement with BM OnDemand while he was employed by Murdoch University are simply not credible.

#### **Mr Pacifici conceals his connection to BM OnDemand from Murdoch University**

[72] Under the Murdoch University Staff Code of Conduct, Murdoch staff are required to adhere to the Murdoch Conflict of Interest Policy.

[73] The Murdoch Conflict of Interest Policy requires employees to disclose any conflict of interest they have in relation to an entity which has a business relationship with the University.

[74] Mr Pacifici was asked about his understanding of conflicts of interest:<sup>28</sup>

*A conflict of interest is where you have, in layman's terms, a relationship with, in this instance, a contractor that needs to be disclosed if they are to perform any works at the university.*

[75] Mr Pacifici also understood that as the Maintenance and Facilities Manager, he was required to make annual declarations to Murdoch University with respect to any conflicts of interest.<sup>29</sup>

<sup>27</sup> D Pacifici transcript, private examination, 3 August 2023 p. 25.

<sup>28</sup> D Pacifici transcript, private examination, 3 August 2023 p. 8.

<sup>29</sup> D Pacifici transcript, private examination, 3 August 2023 p. 8.

[76] During his employment with Murdoch University, Mr Pacifici never declared any conflicts of interest with respect to any contractors.

[77] Not only did Mr Pacifici fail to advise Murdoch University of his personal relationship with the Directors of BM OnDemand, he also appeared to take steps to hide his connection to the company.

[78] BM OnDemand's accountant, Ms Karmacharya, told the Commission:<sup>30</sup>

*So did you ever receive any instructions about communicating with Dario at his personal email address while he was working at Murdoch?---Yeah, for advices like this from BM On Demand, if I need any advice I was told not to send to his work email.*

[79] When put to him, Mr Pacifici denied instructing BM OnDemand staff to conceal his connection to the company from Murdoch University.

[80] On 1 December 2021, Mr Hodder, in his capacity as Operation Director of BM On Demand, emailed the Murdoch FM Helpdesk to follow up on the payment of some overdue invoices. He cc'd the email to bd@bmondemand.net.<sup>31</sup>

[81] Later that same day Mr Hodder receives the following reply from bd@bmondemand.net:

*Better just forward these to me as opposed to having me directly linked/copied into the email. As google may bring up my name against the email address.*

[82] Although unsigned, Mr Pacifici accepted that he sent the email.<sup>32</sup>

[83] When asked why he was concerned about Google linking his name to the email address, Mr Pacifici struggled to provide an explanation to the Commission:

*But he's not sending it to your Murdoch address asking you to be involved, he was sending it to bd@bmondemand email address? --- That's correct.*

*And you seem to have some concerns with that? --- Yeah, I do, because the appropriate process is to go through accounts payable and Pri. I didn't get involved in day to day runnings of invoices for all contractors, okay? For all contractors.<sup>33</sup>*

[84] When pressed for an explanation, Mr Pacifici said:<sup>34</sup>

*Well so, we're talking about it today because he has put me in this email, and as I've explained to yourself, the best process in mitigating invoice queries was not bringing it to me, but dealing with Murdoch directly. That is, I think, a fair answer. This is why I'm here today, because of these emails.*

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<sup>30</sup> N Karmacharya transcript, private examination, 1 August 2023 p. 29.

<sup>31</sup> Exhibit 02308-2022-0503.

<sup>32</sup> D Pacifici transcript, private examination, 3 August 2023 p. 45.

<sup>33</sup> D Pacifici transcript, private examination, 3 August 2023 p. 46.

<sup>34</sup> D Pacifici transcript, private examination, 3 August 2023 p.47-48.

*That's only one of many reasons? --- Yes, but it is a good reason, and it is the truthful reason that if he – I don't – there was a process at Murdoch, if you had a query, you go through the team, he knew that, and I didn't want to have emails like this because it suggests other things. So that's why I say not to use the Google account, because it's going to come up in a situation like we are today.*

- [85] In the Commission's view, the more plausible explanation for Mr Pacifici's concern is that he did not wish to alert staff at Murdoch University to his connection with BM OnDemand.

## CHAPTER FIVE

### Maintenance Services Agreement

- [86] Perhaps the most significant example of Mr Pacifici using his position as Manager Facilities and Maintenance to directly benefit BM OnDemand was in the development and award of a Maintenance Services Agreement (MSA) in early 2022.
- [87] In January 2022, Mr Pacifici commenced inquiries into awarding a MSA to BM OnDemand. The MSA would effectively make BM OnDemand the preferred provider of all general maintenance work at Murdoch University.
- [88] No official value of the contract was stipulated in the terms of the MSA however email correspondence from Mr Pacifici estimated the value of the procurement was approximately \$900,000 over 24 months.<sup>35</sup>
- [89] On 29 April 2022, Mr Pacifici was advised by a Murdoch Procurement Officer that a Competitive Process Waiver would be required to proceed with awarding the MSA to BM OnDemand without going to market, as was required by the Murdoch Procurement Procedure. The Procurement Officer advised Mr Pacifici:<sup>36</sup>

*We need to obtain approval before I can request execution of the agreement. Can you please raise a Competitive Process Waiver Request? You will need to provide a strong business justification, please insist on the financial aspect, competitiveness of BM on Demand, rented space in addition to the practical aspect. You need to justify why you are directly engaging BM on demand without going to market and demonstrate savings and risk mitigation.*

- [90] On 2 May 2022, Mr Pacifici replied outlining his justification for the Competitive Process Waiver:

*To whom it may concern, We are asking for a waiver to market based on the following key points .... The contractor has negotiated a schedule of rates which is market tested and proven to be competitive. Over a period of six months the contractor has demonstrated cost savings on numerous occasions, and an operational prowess in fostering strong relationships across the collegial body of leaders at Murdoch university.*

- [91] At no point during the development of the MSA or the application for the Waiver did Mr Pacifici declare any connection to the Directors of BM OnDemand. Nor did he inform Murdoch University that he was effectively working for BM OnDemand at this time.

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<sup>35</sup> Exhibit 02308-2022-0547.

<sup>36</sup> Exhibit 02308-2022-0544.

- [92] The Commission investigation identified that Mr Pacifici initiated a total of eight procurement processes to preferred providers during his tenure at Murdoch. BM OnDemand were the only suppliers who were awarded works through the tender waiver process, with the other seven being assessed through a competitive tender process.
- [93] The MSA was endorsed on 23 May 2022 and commenced on 1 June 2022 for a two-year term. Mr Hodder and Ms Shrestha both signed the agreement in their capacity as directors for BM OnDemand.
- [94] The MSA listed Mr Hodder as the representative for BM OnDemand, who was to liaise with and report to Mr Pacifici as the representative for Murdoch.
- [95] As a direct result of Mr Pacifici's involvement and pursuit of the Competitive Process Waiver, BM OnDemand were awarded a valuable contract that would lead to ongoing and lucrative work from Murdoch for at least the next two years.

## CHAPTER SIX

### Benefits to BM OnDemand flow to Mr Pacifici and others

#### Murdoch University was BM OnDemand's biggest client

- [96] The MSA solidified what was already a valuable business relationship for BM OnDemand.
- [97] By October 2022, just one year after BM OnDemand was engaged as a contractor, the company had issued 964 invoices to Murdoch University for works valued at \$1,067,199.80.
- [98] Works awarded by Murdoch University represented 93% of BM OnDemand's total income for the period October 2021 to December 2022.<sup>37</sup>
- [99] BM OnDemand's accountant acknowledged the company's reliance on Murdoch University:<sup>38</sup>

*I think 90 - more than 90 per cent of our income was from Murdoch University. I remember we had a bit of a discussion saying that it shouldn't be that way; if we don't receive anything Murdoch then it will all collapse.*

- [100] Mr Pacifici used his position at Murdoch University to ensure that BM OnDemand would be a financially viable company. It was in his own interests, and in the interests of his wife and friend to do so.

#### BM OnDemand Finances link to Mr Pacifici

- [101] Mr Pacifici, his wife Ms Shrestha and his friend Mr Hodder received financial benefits that he procured through engaging BM OnDemand at Murdoch University.
- [102] BM OnDemand did not transfer any money directly to Mr Pacifici until 20 September 2022, following his official termination from Murdoch University approximately a week earlier.
- [103] However, the Commission's investigation uncovered numerous bank transactions which indicated that Mr Pacifici was receiving benefits from BM OnDemand while he was employed as a public officer at Murdoch University and soon after that employment ended.

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<sup>37</sup> Exhibit 02308-2022-0529.

<sup>38</sup> N Karmacharya, transcript, private examination, 1 August 2023 p. 26.

## Dividends from BM OnDemand

- [104] By early 2022, after being in operation for less than four months, BM OnDemand was in a financial position to pay dividends to its Directors/shareholders.
- [105] On 9 January 2022, Ms Shrestha was paid a dividend of \$5,625 by BM OnDemand. Some months later, Ms Shrestha made the following payments from her account directly to an account in the name of Mr Pacifici:<sup>39</sup>
- a. 22 April 2022: \$3,000, Description: 'Dividend to Dario'.
  - b. 14 May 2022: \$2,150, Description: 'Dividend money'.
- [106] When asked whether Ms Shrestha was transferring Mr Pacifici his share of the dividends, Mr Pacifici told the Commission:<sup>40</sup>
- No, that was her dividend, that's why she's saying, 'Dividend to Dario,' it's her dividend to me. I can tell you that at that stage we were living with my mother in Mandurah, and we also were paying expenses there to fix the house, and we've just resold it. So that's her contribution from her dividend to me.*
- [107] When asked the same question Ms Shrestha also responded that the dividends were hers.<sup>41</sup> Regardless, Mr Pacifici received a total of \$5,150 in dividend money derived from BM OnDemand into his personal bank account, via his wife.
- [108] In early August 2022, Ms Shrestha and Mr Hodder each received a total of \$15,000 in dividends from BM OnDemand.
- [109] On 8 August 2022, two transfers, in the amounts of \$10,000 and \$5,000 were made from one of Ms Shrestha's bank accounts to a different account in Ms Shrestha's name, (the Future Contributions Account) each with the description 'Dividend'.
- [110] Mr Pacifici and Ms Shrestha each gave evidence that the Future Contributions Account was used by both of them for saving for the future, including buying a house and for their wedding which took place in September 2022.<sup>42</sup>
- [111] Both agreed that while the Future Contributions Account was only in Ms Shrestha's name, the funds within it were used for joint purposes.
- [112] On 29 December 2022, a further \$700 dividend was paid to each of Ms Shrestha and Mr Hodder. Again, the same day the \$700 was paid to the Future Contributions account with the description 'Dividend'.

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<sup>39</sup> Exhibit 02308-2022-0526.

<sup>40</sup> D Pacifici, transcript, private examination, 3 August 2023, p. 76.

<sup>41</sup> J Shrestha, transcript, private examination, 2 August 2023, p. 21.

<sup>42</sup> J Shrestha, transcript, private examination, 2 August 2023, p 6; D Pacifici, transcript, private examination, 4 August 2023, p 5.

[113] Mr Pacifici and Ms Shrestha received the combined financial benefit of \$21,325 in 2022 in the form of dividends<sup>43</sup> as a result of BM OnDemand's engagement by Murdoch University.

[114] Mr Hodder also received \$21,325 in dividends from BM OnDemand in the same period.

**Wages paid to Mr Hodder**

[115] As a result of Mr Pacifici organising BM OnDemand's engagement with Murdoch University, BM OnDemand was able to pay Mr Hodder a regular wage for his position as Operations Director.

[116] From November 2021 to December 2022, BM On Demand paid Mr Hodder wages totalling \$122,703.78.

**Wages and 'Consulting Allowance' paid to Ms Shrestha**

[117] Ms Shrestha assisted BM OnDemand's accountant with invoicing from March to October 2022. During this time, BM OnDemand made fortnightly payments titled 'PAY' to Ms Shrestha's account totalling \$13,386.77.<sup>44</sup>

[118] In May 2022, in addition to the transfers titled 'PAY', Ms Shrestha also started regularly receiving a separate payment of \$1,000 from BM OnDemand, on the same day, titled 'Consulting allowance' or 'Allowance'.<sup>45</sup>

[119] When asked what the consulting allowance was for, Ms Karmacharya stated that it was for Ms Shrestha's financial consulting work.<sup>46</sup> She acknowledged that she did not think Ms Shrestha had a background in finance.<sup>47</sup>

[120] Ms Karmacharya, who was responsible for payroll, gave evidence that she was told to make these 'Pay' and 'Consulting allowance' payments separately, and that it was maybe Mr Pacifici who told her to do this.<sup>48</sup>

[121] Mr Pacifici explained that the purpose of these separate \$1,000 payments to Mr Shrestha was 'for Joshna being a part owner of a business that was making money'.<sup>49</sup>

[122] However, on each occasion that BM OnDemand made this \$1,000 'Consulting allowance' payment to Ms Shrestha, it was transferred to the Future

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<sup>43</sup> Exhibit 02308-2022-0526.

<sup>44</sup> Exhibit 02308-2022-0527.

<sup>45</sup> Exhibit 02308-2022-0527.

<sup>46</sup> N Karmacharya, transcript, private examination, 1 August 2023, p 30.

<sup>47</sup> N Karmacharya, transcript, private examination, 1 August 2023 p 30.

<sup>48</sup> N Karmacharya, transcript, private examination, 1 August 2023, p 31.

<sup>49</sup> D Pacifici, transcript, private examination, 3 August 2023, p 74.

Contributions account the same day, with descriptions such as 'Dario's pay', 'pay', 'From Dario', 'D-pay', 'Dario contribution'.

- [123] When Ms Shrestha was asked what the consultancy allowance was for, her explanation was:<sup>50</sup>

*That might probably be part of Dario's time that was given to us for advice, that allowance. ... It might be for Dario. Yeah, it was probably paid to him for his consulting fees.*

- [124] A total of \$10,000 was received into the Future Contributions account as a result of the 'consulting allowance'.

### **Contract Payments and Wages paid to Dario Pacifici**

- [125] After being terminated from his employment by Murdoch University, Mr Pacifici entered into a contractor agreement with BM OnDemand to provide services including marketing and business development.

- [126] On 20 September 2022, approximately one week after Mr Pacifici was terminated, BM OnDemand transferred \$12,000 directly to Mr Pacifici's bank account with the description 'Contract Payment'.<sup>51</sup>

- [127] Mr Pacifici explained that this was an 'upfront' payment for his services to BM On Demand:<sup>52</sup>

*...my terms and conditions were that I needed that amount of money upfront to be drawn down on because I was getting married, and I didn't know my situation or – we got a framework agreement, we worked out the number of weeks, and my deposit – like sometimes you do in consultancy, you ask for an upstated [sic] amount to draw down on.*

- [128] On 10 October 2022, BM OnDemand transferred a further \$7,672 to Mr Pacifici's bank account pursuant to the contractor agreement.

- [129] From 30 November 2022, Mr Pacifici received regular wages from BM OnDemand to his bank account. Between 30 November 2022 to 28 December 2022, BM On Demand paid Mr Pacifici weekly payments of \$1,500, totalling \$7,500.<sup>53</sup>

- [130] Mr Pacifici received a total of \$27,172 from BM OnDemand directly into his bank account between September and December 2022, after he had left Murdoch University.

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<sup>50</sup> J Shrestha, transcript, private examination, 1 August 2023, p 23.

<sup>51</sup> Exhibit 02308-2022-0521.

<sup>52</sup> D Pacifici, transcript, private examination, 3 August 2023, p 77.

<sup>53</sup> Exhibit 02308-2022-0521.

- [131] It was due to Mr Pacifici's efforts in directing work to BM OnDemand while he was at Murdoch University and organising the MSA that the company was in a position to make these payments to him. Murdoch University was BM OnDemand's main client between 2021 and 2022.
- [132] As a result, the contract payments and wages paid to Mr Pacifici are financial benefits procured by Mr Pacifici by use of his position of trust and influence as Manager Facilities and Maintenance to engage the services of BM OnDemand.
- [133] In total, over the course of 2021 and 2022, Mr Pacifici used his position at Manager Facilities and Maintenance at Murdoch University to procure a total financial benefit of \$72,883.77 for himself and Ms Shrestha.

## CHAPTER SEVEN

### **Mr Pacifici's connection to BM OnDemand is uncovered**

- [134] In August 2022, Murdoch University received reports that Mr Pacifici had failed to declare conflicts of interest.
- [135] In response, Murdoch University:
- a. stood down Mr Pacifici;
  - b. notified the Commission of the allegations;<sup>54</sup> and
  - c. engaged Ernst & Young to investigate the allegations against Mr Pacifici.
- [136] Following Ernst & Young's investigation, Murdoch University officially terminated Mr Pacifici's employment by letter dated 12 September 2022.<sup>55</sup>
- [137] On 13 September 2022, Murdoch University wrote to Mr Hodder and terminated the Maintenance Services Agreement between Murdoch University and BM OnDemand.
- [138] Under the terms of the Maintenance Services Agreement, BM OnDemand was permitted to complete existing work for a period of 20 business days following termination.
- [139] BM OnDemand is no longer a contractor for Murdoch University.
- [140] Mr Pacifici commenced full time work with BM OnDemand in November 2022.

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<sup>54</sup> Murdoch University is a notifying authority within the meaning of *Corruption Crime and Misconduct Act 2003* s. 3.

<sup>55</sup> Exhibit 02308-2022-0500.

## CONCLUSION

- [141] A conflict of interest is not, of itself, serious misconduct. Conflicts often arise and must be managed appropriately.
- [142] Similarly, a failure to declare a conflict of interest is not, of itself, serious misconduct. It may, however, as in this case, be evidence of serious misconduct. Serious misconduct occurs when a public officer corruptly takes advantage of their office or employment to obtain a benefit for himself or herself or for another person.
- [143] While employed by Murdoch University, Mr Pacifici saw an opportunity to form a maintenance company from which he, his wife, and his friend could benefit.
- [144] Mr Pacifici's conduct went beyond a conflict of interest. He took advantage of the trust vested in him as a public officer.
- [145] Mr Pacifici went to significant effort to ensure that his involvement in BM OnDemand did not come to light.
- [146] He continued to use his position as Manager Facilities and Maintenance to direct Murdoch University's maintenance work to BM OnDemand, eventually securing an agreement that made BM OnDemand the preferred contractor.
- [147] Mr Pacifici was able to create such a reliable influx of work that BM OnDemand sustained its business almost solely on Murdoch University's engagement between 2021 and 2022.
- [148] The Commission has formed an opinion of serious misconduct by Mr Pacifici.
- [149] An opinion that serious misconduct has occurred is not, and is not to be taken as a finding or opinion that a particular person is guilty of or has committed a criminal offence or a disciplinary offence.<sup>56</sup>

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<sup>56</sup> CCM Act s 217A.