



Crime and Corruption Commission
QUEENSLAND

Investigation Keller

An investigation into allegations relating to the former Chief of Staff to The Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade

September 2020





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An investigation into allegations relating to the former Chief of Staff to The Honourable Anastacia Palaszczuk MP, Premier of Queensland and Minister for Trade

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September 2020

The Honourable Curtis Pitt MP
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Speaker

In accordance with Section 69(1)(b) of the *Crime and Corruption Act 2001*, the Crime and Corruption Commission hereby furnishes to you its report – *Investigation Keller: An investigation into allegations relating to the former Chief of Staff to The Honourable Anastacia Palaszczuk MP, Premier of Queensland and Minister for Trade.*

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. MacSporran', followed by a long horizontal line extending to the right.

A J MacSporran QC
Chairperson

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Chapter 1 – The investigation

The complaint

1. On 23 July 2019, the Economics and Governance Committee examined the proposed expenditure for the portfolio areas of the Premier and Minister for Trade. During this hearing, the Leader of the Opposition asked the Premier:

Is the Premier aware that Fortress Capstone, a company owned by the Premier's chief of staff, received a business development grant of \$267,000 from the Palaszczuk government?¹
2. And further:

Has your chief of staff declared his interest in Fortress Capstone, as he is required to do as per the ministerial handbook?²
3. Subsequently, in late July 2019 the CCC received a complaint from the Deputy Leader of the Opposition, alleging that David Barbagallo (Barbagallo), the then Chief of Staff to The Honourable Premier Anastacia Palaszczuk, MP:
 - Inappropriately obtained a payment of \$267,500 by the Queensland Investment Corporation (QIC), under the Advance Queensland Business Development Fund (AQBD Fund); and
 - Misused his position to obtain funding from the AQBD Fund through a company he was associated with, Fortress Capstone Pty Ltd (Fortress Capstone).

The CCC's jurisdiction

4. The CCC has the responsibility to investigate matters that may involve corrupt conduct by anyone who holds an appointment in a unit of public administration in Queensland. A person holds an appointment in a unit of public administration if they hold any office, place or position in that unit, whether the appointment is by way of election or selection.³
5. "Corrupt conduct" is defined in s.15 of the *Crime and Corruption Act 2001* (the CC Act). That effectively defines the CCC's corruption jurisdiction.⁴ In order to be corrupt conduct, it must be conduct which, if proved, would be a criminal offence, or a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.⁵

1 Transcript of the Economics and Governance Committee, Parliamentary Estimates hearing on 23 July 2019, page 12.

2 Transcript of the Economics and Governance Committee, Parliamentary Estimates hearing on 23 July 2019, page 12.

3 *Crime and Corruption Act 2001*, s.21.

4 Except for matters of police misconduct, which are included within the corruption jurisdiction, although police misconduct may not necessarily amount to corrupt conduct.

5 *Crime and Corruption Act 2001*, ss15(1)(c), 15(2)(c).



Corrupt Conduct under investigation

6. Barbagallo is alleged to have engaged in corrupt conduct by misusing his position as Chief of Staff to the Premier to obtain funding (\$267,500) from the AQBD Fund through Fortress Capstone, a company in which he was a shareholder, director, and Chairman of the Board of Directors.
7. The information available to the CCC raised a reasonable suspicion that in performing his duties as Chief of Staff, Barbagallo improperly influenced the decision of the QIC and/or the investment panel of the AQBD Fund to award co-investment funding to benefit Fortress Capstone and ultimately himself as a shareholder of the company.
8. The position of Chief of Staff to the Premier involves a high level of public trust and accountability. The Queensland public would expect Barbagallo to perform his role with integrity and impartiality, ensuring he observed all laws and directives relevant to the performance of his role, and ensuring his personal interests were not prioritised over the public interest.
9. The information gathered by the CCC indicated Barbagallo failed to fully declare his non-pecuniary interests, in particular his role in Fortress Capstone, in accordance with his obligations under:
 - the *Ministerial and Other Office Holder Staff Act 2010* (the Ministerial Act)
 - the Declaration of Interests Directive (2014/01)
 - the Code of Conduct – Ministerial Staff Members, and
 - the Queensland Ministerial Handbook.
10. The CCC considered that Barbagallo's failure to fully comply with his obligations, as stipulated in the above legislative and policy documents, would, if proved, breach the conditions of his employment contract. If this was the case, the Director-General of the Department of the Premier and Cabinet may consider terminating Barbagallo's employment. The CCC also considered that Barbagallo's involvement in the alleged corrupt conduct would, if proved, amount to misconduct in relation to public office, a criminal offence under s.92A(1)(c) of the Criminal Code 1899 (Qld).

The decision to investigate

11. The CCC does not investigate all complaints it receives. All action which the CCC takes must be in pursuit of its statutory functions and purposes. Primarily these are to combat and reduce the incidence of major crime, and to continuously improve the integrity of, and reduce the incidence of corruption in, the public sector.⁶ This is to be achieved by the CCC, amongst other things, investigating corrupt conduct, particularly more serious cases of corrupt conduct,⁷ and helping units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so.⁸
12. The CCC's Executive Leadership Team (ELT) awaited an audit report from Ernst & Young (EY) before completing the assessment of the matter. The ELT's assessment of the matter was also informed by discussions with an officer from the Queensland Audit Office (to which the CCC had disseminated the report), as well as a partner from EY.

6 *Crime and Corruption Act 2001*, s.4.

7 *Crime and Corruption Act 2001*, s.35(3).

8 *Crime and Corruption Act 2001*, s.5(3).



13. The ELT noted that the audit report raised several concerns around governance and corruption risks about the AQBD fund and the consideration of the Fortress Capstone application, in addition to the declarations of interests made by Barbagallo. Moreover, the ELT noted that, although Barbagallo had provided some information to the Integrity Commissioner for the purposes of seeking her advice, when the Integrity Commissioner sought further information, none was provided. On 26 September 2019, the ELT approved that the matter proceed to the feasibility stage of investigation.
14. The feasibility stage of the investigation involved the examination of a large quantity of documentation and records. At the conclusion of the feasibility stage it was apparent that further investigation was required, including in relation to allegedly misleading assertions made by Barbagallo (or a lack of candour) regarding the nature of his interests. The ELT noted the significant political and public interest in the matter, and the expectations that a person holding a high office such as Chief of Staff to the Premier would behave in an exemplary manner. The scope of the investigation approved by the ELT included investigating whether the decision to award funding was the result of any improper influence.

Decision to issue a public report

15. In relation to corruption, the CC Act sets out the roles, responsibilities and functions of the CCC, which include:
 - To continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.⁹
 - Helping to prevent corruption by, amongst other things, reporting on the ways to prevent corruption.¹⁰
 - To raise standards of integrity and conduct in units of public administration.¹¹
 - To investigate and otherwise deal with conduct liable to allow, encourage or cause corrupt conduct.¹²
 - The CCC has an overriding responsibility to promote public confidence in the integrity of units of public administration.¹³
16. The CCC does not publish reports on every matter it assesses or investigates. In this case, the CCC decided to issue a public report on this matter in order to contribute to the discharge of its roles, responsibilities and functions.
17. Barbagallo held a position of high office and trust as the Premier's chief advisor, which afforded him considerable influence within the State government. There is an expectation, as observed above, that he behave in an exemplary manner.
18. As the highest ranking ministerial staff member, Barbagallo had an obligation to comply with the standards as set out in various statutory and policy documents including the *Ministerial and Other Office Holder Staff Act 2010*, the Code of Conduct – Ministerial Staff Members, the *Public Sector Ethics Act 1994*, the Ministerial Handbook, and his contract of employment.
19. The position of Chief of Staff is not a merit-based appointment where the applicant is subjected to a merit-based selection process conducted by an independent panel. It is a position granted on trust by the Premier. This makes the position of Chief of Staff particularly vulnerable to perceptions of abuse of office and conflicts of interest where the holder of the position is the beneficiary of funds administered by or on behalf of the State government.

⁹ *Crime and Corruption Act 2001*, s.4(1)(b).

¹⁰ *Crime and Corruption Act 2001*, s.24(i).

¹¹ *Crime and Corruption Act 2001*, s.33(1)(a).

¹² *Crime and Corruption Act 2001*, s.33(2)(a)(i).

¹³ *Crime and Corruption Act 2001*, s.34(d).



20. The investigation found that Barbagallo was heavily involved in his own private business interests at the time he took up the role of the Premier's Chief of Staff. This placed a duty upon Barbagallo to fully declare and manage his conflicts openly and in a timely manner.
21. This report highlights important issues for the whole public sector with respect to the identification, documentation and management of conflicts of interest. It also makes important recommendations relating to transparency and governance issues detected during the course of the investigation.
22. Following the allegations being raised during the 2019 Parliamentary Estimates hearing, there was significant media scrutiny concerning Barbagallo's conduct and whether he declared his interests in Fortress Capstone to the Premier. The investigation found that Barbagallo did not fully declare his interests.
23. The complaint made to the CCC and which was the subject of the investigation alleged that Barbagallo inappropriately obtained funds and misused his position to obtain the funds. This complaint was the subject of significant media reporting which adversely affected Barbagallo and potentially others, for example, the investment panel. The investigation found no evidence to support these allegations. The CCC considers it is important to publicise not only that outcome, but also the extent of the CCC investigation and its reasons for reaching that conclusion.
24. The CCC considers publication of this report is in the public interest.
25. This report is published under s.69 of the CC Act.

The *Human Rights Act 2019*

26. Under the CC Act, the CCC must act independently, impartially and fairly having regard to the purposes of the CC Act and the importance of protecting the public interest.¹⁴
27. The CCC must also act in accordance with the *Human Rights Act 2019* (the HR Act) and must not act or make a decision in a way that is not compatible with human rights or, in making a decision, fail to give proper consideration to a human right relevant to the decision.¹⁵
28. The CCC acknowledges the publication of this report is likely to engage human rights in relation to equal protection of the law without discrimination,¹⁶ taking part in public life,¹⁷ and privacy and reputation.¹⁸ Having regard to the clear statutory basis and reasons for the publication of this report, together with the measures adopted to ensure fairness with respect to the content of the report,¹⁹ the CCC considers the decision to publish the report is compatible with human rights in that it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with s.13 of the HR Act.²⁰

¹⁴ *Crime and Corruption Act 2001*, s.57.

¹⁵ *Human Rights Act 2019*, s.58.

¹⁶ *Human Rights Act 2019*, ss.4, 15(3).

¹⁷ *Human Rights Act 2019*, s.23.

¹⁸ *Human Rights Act 2019*, s.25.

¹⁹ The procedural fairness process; and the inclusion of the content set out under the heading "Caution regarding the drawing of adverse inferences".

²⁰ *Human Rights Act 2019*, s.8(b).



Procedural fairness process

29. As mentioned above, the CCC has a statutory duty to act independently, impartially and fairly, in the public interest, having regard to the purposes of the CC Act, and in accordance with the HR Act.
30. Accordingly, for the purpose of procedural fairness, the CCC gave the draft report to Barbagallo and invited him to make submissions prior to the CCC determining the final form of the report. Barbagallo was able to provide a confidential or non-confidential submission. The CCC indicated to him that a non-confidential submission may be annexed to the final report, while a confidential submission would be noted as received but not attached to the final report. A redacted copy of Barbagallo's submission is included in Annexure 1.

Caution regarding the drawing of adverse inferences

31. A number of people and entities are referred to in this report. In all instances, those people and entities cooperated with the investigation. No adverse inferences should be drawn about those people or entities, unless the report specifically attributes wrongdoing to the person.
32. A number of witnesses were interviewed by the CCC, including Barbagallo. All witnesses, including Barbagallo, cooperated with the CCC.
33. One of the areas under examination by the CCC was whether Barbagallo obtained advice from the Integrity Commissioner as he stated during the audit conducted by EY and relied upon by the Premier in responding to questions asked during the 2019 Parliamentary Estimates hearing. This report contains information provided by the current and former Integrity Commissioners after Notices to Discover were served on them under s.75 of the CC Act.



Chapter 2 – The investigation

34. This chapter sets out the background to the investigation, including Barbagallo's role in Fortress Capstone, the funding grant it received, and his role, obligations and onboarding as the Premier's Chief of Staff.

David Barbagallo's multiple roles

Role as Chairman of the Board and Director of Fortress Capstone

35. On 23 March 2007, Fortress Capstone was registered as a company. Fortress Capstone is the parent company and 100 per cent shareholder of DCIP Pty Ltd and Geogenx Pty Ltd, the developer of a mobile device application named "CruiseTraka", and owns the trademark for the CruiseTraka application. Further information about CruiseTraka is provided on page 19.
36. Barbagallo is one of four directors of Fortress Capstone, and is the Chairman of the Board of Directors, for which he receives fees of \$6,000 per year.²¹ He is also a shareholder.
37. Barbagallo has been a director since the company was registered on 23 March 2007. As a director, Barbagallo must not let his private interests conflict with his fiduciary duties to the company. The *Corporations Act 2001* (Cth) sets out the statutory duties²² imposed on directors, prohibiting them from taking advantage of their position to secure a personal benefit or advantage for themselves or another, or cause a detriment to the company.

Role of Chief of Staff to the Premier

38. On 15 May 2017, Barbagallo commenced in the role of Chief of Staff to the Premier. He held this position until 15 October 2019.
39. Barbagallo was employed under the *Ministerial and Other Office Holder Staff Act 2010* (the Ministerial Act) as a ministerial staff member²³. Because Barbagallo was not a public service employee²⁴ the provisions of the *Public Service Act 2008* relating to administration, employment and management of public service employees, including work performance and personal conduct, did not apply to Barbagallo.
40. The duties of the Chief of Staff, as set out in Barbagallo's employment contract, are principally to:
- Function as a primary source of authoritative advice to the Premier, maintaining an integrative and strategic policy orientation both within and across portfolios
 - Provide the Premier with continuously up-to-date high-order policy and political context to facilitate effective governance and aid strategic decision-making
 - Control the flow of information to the Premier, ensuring that the Premier is fully informed on critical issues across the state.

21 Transcript of interview with David Barbagallo, page 35, lines 1588-1621.

22 *Corporations Act 2001* (Cth), ss.180-183.

23 *Ministerial and Other Office Holder Staff Act 2010*, s.6.

24 *Ministerial and Other Office Holder Staff Act 2010*, s.11.



41. In performing the duties of the role, Barbagallo must also:
 - Act honestly, fairly and in the public interest²⁵
 - Ensure his personal conduct does not reflect adversely on the reputation of the Premier²⁶
 - Comply with any code of conduct for Ministerial staff approved by the chief executive under s.19 of the Ministerial Act²⁷
 - Comply with the ethics values stated in the *Public Sector Ethics Act 1994*, Part 3, Division 2²⁸
 - Comply with any Directives.²⁹
42. It is noted that an inherent requirement of the engagement of Barbagallo in the Chief of Staff role is that the Premier must have and maintain trust and confidence in Barbagallo undertaking the duties of this role.³⁰
43. The role of Chief of Staff can be a significantly influential one, given that its primary function is to provide high-level advice on policy to aid the Premier in making decisions about governing the State of Queensland.

Barbagallo's obligations as Chief of Staff

44. The public expects Ministers and their staff to uphold high standards of ethical behaviour and perform their duties to the highest standards of probity within an environment that requires rigorous accountability.
45. Ministerial staff members are employed to provide advice and assistance to Ministers to aid in accountable and transparent decision-making. Therefore, ministerial staff members are to ensure their private interests do not conflict with, or are not seen to be in conflict with, the discharge of their official duties. To achieve this, there are a number of obligations imposed on ministerial staff members contained in the following readily accessible resources:
 - the *Ministerial and Other Office Holder Staff Act 2010* (the Ministerial Act)
 - the Declaration of Interests Directive (2014/01)
 - the Code of Conduct – Ministerial Staff Members, and
 - the Queensland Ministerial Handbook.

Declaration of interests

46. The Ministerial Act imposes certain obligations on staff members to declare their interests³¹ together with the interests of their partner and dependents to their Minister.
47. The *Declaration of Interests Directive (2014/01)* reinforces this obligation and provides guidance on the pecuniary and non-pecuniary interests that must be disclosed, which include, in part:
 - a. Shareholdings in public and private companies
 - ...
 - g. Directorships in or employment in public and private companies.

25 Employment contract of David Barbagallo, clause 4.6(a).

26 Employment contract of David Barbagallo, clause 4.6(e).

27 Employment contract of David Barbagallo, clause 4.6(g).

28 Employment contract of David Barbagallo, clause 4.6(h).

29 Employment contract of David Barbagallo, clause 4.6(i).

30 Employment contract of David Barbagallo, clause 3.2(a).

31 *Ministerial and Other Office Holder Staff Act 2010*, s.23 – The term interest has its ordinary meaning under the general law, and the definition of interest in the *Acts Interpretation Act 1954*, schedule 1, does not apply.



48. Section 24 of the Ministerial Act required Barbagallo, as the Premier's Chief of Staff, to declare his interests to her:
- within one month of starting employment³²
 - when there was a change to his interests,³³ and
 - in June of each year.³⁴
49. Ministerial staff members who knowingly fail to provide a Declaration of Interests or Variation of Interests by the specified date, or knowingly provide false or misleading information to the Minister, may, upon advice of the Minister, have their employment terminated immediately by the Director-General, Department of the Premier and Cabinet.³⁵

Conflicts of interest

50. Under s.25 of the Ministerial Act, Barbagallo was required to disclose any interests, including the nature of the interest that conflicted or may have conflicted with the discharge of his responsibilities,³⁶ and was required to not take any action concerning a matter that may be affected by the conflict unless authorised by the Premier.³⁷
51. Any conflict of interest that arose should have been resolved in favour of the Premier's Chief of Staff's official responsibilities.

Compliance with Code of Conduct – Ministerial Staff Members

52. The Code of Conduct – Ministerial Staff Members (the Code of Conduct) sets out the standards of conduct expected from ministerial staff members when performing their duties.
53. Barbagallo, as a ministerial staff member, had an obligation to direct his work performance and personal conduct in accordance with the following standards of conduct detailed in the Code of Conduct:
- acting honestly, fairly and in the public interest
 - ensuring the effective, efficient and appropriate use of public resources
 - interacting with public service employees respectfully, collaboratively and with integrity
 - observing all laws relevant to the staff member's employment
 - ensuring the staff member's personal conduct does not reflect adversely on the reputation of his or her employing member, and
 - complying with any code of conduct that applies to the staff member.
54. Barbagallo was obliged to comply with the Code of Conduct. Conduct that is inconsistent with the Code of Conduct may give rise to a ministerial staff member, such as Barbagallo, facing disciplinary action, termination of employment contract, and/or the institution of criminal proceedings.
55. The Code of Conduct directs ministerial staff members such as Barbagallo to seek advice from the Integrity Commissioner on conflict of interest or other integrity issues.

32 Ministerial and Other Office Holder Staff Act 2010, s.24(1)(a).

33 Ministerial and Other Office Holder Staff Act 2010, ss.24(1)(b) and (3).

34 Ministerial and Other Office Holder Staff Act 2010, s.24(1)(c).

35 The Queensland Ministerial Handbook, section 3.4.2, p.32.

36 Ministerial and Other Office Holder Staff Act 2010, s.25(1)(a).

37 Ministerial and Other Office Holder Staff Act 2010, s.25(1)(b).



Pre-employment interview with the Premier and Barbagallo's private business interests

56. Barbagallo was interviewed by the Premier for the Chief of Staff role on 12 May 2017. He stated in a statement dated 13 August 2019 that during that interview, *"I specifically raised my involvement with several startup and ICT companies during the interview with the Premier. The Premier indicated that there was a process for declaring and managing potential conflicts"*.³⁸
57. Further to this statement, Barbagallo told the CCC:
- I told her that I had investments in a number of startups and that I wanted to continue my involvement in those companies because my stay with her was going to be short term. You know, 'til the election. So, you know, I wanted to maintain that and she said – and I said, and there's potentially some perceived conflicts with – particularly with [company name omitted] I was concerned about. She said "yep, not a problem, just declare it all. There's a process".³⁹
58. As to whether Barbagallo told the Premier about Fortress Capstone or CruiseTraka during this meeting, Barbagallo stated *"I don't think so. I can't recall. I know that I talked to her pretty soon after when I knew about the cruise terminal"*.⁴⁰
59. The Premier recalled Barbagallo advised her during his interview that he was involved with a number of companies and she informed him that he would have to *"sort that out"* and would *"need to get Integrity Commissioner's advice. I was pretty clear on that"*.⁴¹ The Premier stated that the conversation was in general terms and could not recall Barbagallo giving more specific details or company names.⁴²
60. The Premier told the CCC that, to her knowledge, Barbagallo did not disclose to her that he was a director of Fortress Capstone, only that *"he said he had companies but not that he was a director to my knowledge"*.⁴³

Onboarding

61. After taking up the role of Chief of Staff on 15 May 2017, Barbagallo met with the Director-General, Department of the Premier and Cabinet on 16 May 2017. While the Director-General does not recall what was discussed during this meeting, it appears from his diary notes that there was some discussion around the topics of *"contract, email, [omitted], Declaration of Interest"*.⁴⁴
62. Barbagallo's employment contract was signed by the Director-General of the Department of the Premier and Cabinet on behalf of the State of Queensland on 23 May 2017. Barbagallo reported to the Premier and not to the Director-General.
63. On 16 May 2017, the Executive Manager of the Premier's Office emailed Barbagallo an induction pack containing all necessary documentation to inform him of his obligations to declare his pecuniary and non-pecuniary interests to the Premier. Attached to this email was a blank Declaration of Interests form to be completed by Barbagallo and a Human Resources Information Sheet titled *"Declaration of Interests FAQs for Ministerial Staff Members"*.

38 Statement of David Barbagallo to EY dated 13 August 2019.

39 Transcript of interview with David Barbagallo, page 79, lines 3698-3712; page 81, lines 3782-3811.

40 Transcript of interview with David Barbagallo, page 80, lines 3728-3736.

41 Transcript of interview with the Premier, page 3, lines 61-73.

42 Transcript of interview with the Premier, page 3, lines 75-85.

43 Transcript of interview with the Premier, page 5, line 182-page 6, line 203.

44 Transcript of NTD interview with the Director-General, page 23, lines 1039-1041.



64. As the Chief of Staff, the process for Barbagallo to submit his declaration forms was to provide the completed Declaration of Interests forms directly to the Premier for review. The forms are then given to the Executive Manager to be filed securely.
65. The Executive Manager told the CCC that he does not look at the Declaration of Interests forms submitted to the Premier for review to confirm they have been signed and dated by the Premier, as they are confidential. As discussed later in this report, Barbagallo's Declaration of Interests forms were not signed or dated by the Premier.

Barbagallo's awareness of his obligations

66. The CCC considers Barbagallo was fully aware of his obligations as a ministerial staff member when he took up the role of Chief of Staff to the Premier, having previously served as Chief of Staff to former Premier Wayne Goss from 1991 to 1994, as well as from:
 - being advised by the Premier that there was a process for declaring his private business interests
 - receiving the induction pack upon commencement
 - completing his first Declaration of Interests form dated 26 May 2017 which provided clear instructions to fully disclose all interests
 - signing his employment contract which provided for termination on a number of grounds, the first being failure to comply with a provision of the employment contract such as failing to comply with any directive (for example, the Declaration of Interests Directive (2014/01), or the Code of Conduct
 - meeting with the Integrity Commissioner about how to manage conflicts of interest, and
 - initiating training for all ministerial staff members addressing their obligations and responsibilities.
67. Barbagallo told the CCC that he "*had a good grasp*" of what his obligations and responsibilities were, despite him not having training himself:

...I initiated training for all ministerial staff...Now I personally didn't sit through the whole training but I went and sat in on the training, you know different times just to let all ministerial staff know that this was important and I would often say things about how important it was blah, blah, blah. So in that sense vicariously I'm sure I heard a bunch of things yeah.⁴⁵

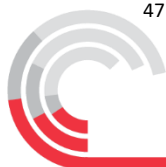
The Queensland Investment Corporation Limited (QIC)

68. The Queensland Investment Corporation (QIC), created on 1 July 1991 pursuant to the *Queensland Investment Corporation Act 1991*, is a government-owned corporation whose purpose is to serve government's long-term investment responsibilities.
69. The QIC reports to shareholding Ministers. The Premier became a QIC shareholding Minister after becoming the portfolio Minister of the QIC.⁴⁶ As such, she receives information from the QIC needed to make informed assessments on the operations, financial performance and financial position of QIC and its subsidiaries.⁴⁷ The QIC reports quarterly to the Premier on corporate performance.
70. The QIC administers the AQBD Fund on behalf of the Queensland government.

⁴⁵ Transcript of interview with David Barbagallo, page 78, lines 3640-3663.

⁴⁶ Queensland Government Gazette Vol. 368, No. 64 dated 27 March 2015, page 560; Queensland Government Gazette Vol. 377, No. 21 dated 2 February 2018, page 83.

⁴⁷ <https://www.qic.com.au/about-qic/corporate-information/corporate-governance/about> - accessed on 28 August 2020.



The Advance Queensland Business Development Fund (AQBD Fund)

71. The AQBD Fund was established in 2016 and focuses on the growth of innovative and emerging Queensland businesses by providing early stage co-investment funding. The promotion of angel and venture capital investment in Queensland-based businesses helps to facilitate the development of a sustainable private market for venture capital finance in Queensland. The emphasis is on investing in Queensland-based businesses that create high-value, knowledge-based and skilled jobs now and into the future.⁴⁸
72. The Fund may invest between \$125,000 and \$2.5 million in a business. The co-investment made by the Fund must be matched by a private sector co-investor. It is a direct investment in the business, not a grant, loan or payment to the co-investor. The Fund becomes a shareholder and will hold the investment until its shares are bought out through a merger, acquisition or initial public offering.⁴⁹

Investment criteria

73. To be eligible for co-investment funding, an application must meet the following criteria:
- The business must have the majority of its assets and employees located in Queensland
 - The co-investor's investment in a business must at least match the investment sought from the AQBD Fund
 - The business must not have property development, land ownership, finance, or construction as its predominant activity, and
 - The business must not be an investment fund.⁵⁰
74. Further, the business itself must:
- Be commercialising research, an innovative idea or an innovative product or service
 - Require seed, early stage or follow-on investment
 - Create opportunities for new, high-value and skilled employment
 - Have a realistic prospect of becoming commercially successful
 - Be or become a proprietary or public company prior to any investment
 - Be an Australian registered company, or an Australian registered subsidiary of a foreign registered company, prior to any investment.⁵¹
75. The business must also demonstrate that co-investment in the business will promote the Government's priorities.⁵²

48 <https://advance.qld.gov.au/entrepreneurs-and-startups-industry-investors-small-business/business-development-fund> - accessed on 28 August 2020.

49 <https://advance.qld.gov.au/entrepreneurs-and-startups-industry-investors-small-business/business-development-fund/business-development-fund-investment> - accessed on 28 August 2020.

50 <https://advance.qld.gov.au/entrepreneurs-and-startups-industry-investors-small-business/business-development-fund/bdf-criteria-and-roles> - accessed on 28 August 2020.

51 <https://advance.qld.gov.au/entrepreneurs-and-startups-industry-investors-small-business/business-development-fund/bdf-criteria-and-roles> - accessed on 28 August 2020.

52 <https://advance.qld.gov.au/entrepreneurs-and-startups-industry-investors-small-business/business-development-fund/bdf-criteria-and-roles> - accessed on 28 August 2020.



Investment panel

76. The AQBD Fund investment panel is responsible for:
- Assessing applications received from the QIC, including an appraisal of the application, funding sought, conformity to investment criteria, and due diligence to evaluate commercial viability and investment potential
 - Engaging at the evaluation stage (including the investment pitch)
 - Making investment decisions and setting terms of offer to be executed by the QIC
 - Providing regular advice and recommendations for continual improvement of the Fund's evaluation and investment process
 - Participating in any review of the effectiveness of the Fund, and
 - Acting on a fully informed basis, in good faith, with due diligence and care, and in the best interests of the AQBD Fund.⁵³
77. Panel members are appointed for a specified term and are not remunerated.⁵⁴
78. Panel members have an ongoing responsibility to declare a conflict of interest at the earliest opportunity when considering an application for co-investment funding. A panel member will be excluded from the evaluation process of an application if they have a material interest (actual, potential, or perceived) that may have a bearing on their ability to properly and impartially undertake their role as a panel member.⁵⁵
79. Panel members who are not excluded from the evaluation process because of a material interest are permitted to invest alongside the AQBD Fund in any business.⁵⁶

Fortress Capstone's application for co-investment funding to the AQBD Fund

80. Between 2013 and March 2017, Fortress Capstone had undertaken five rounds of capital raising to assist the company extend its operations, including funding the development of CruiseTraka. Barbagallo had been involved in all capital raisings.
81. In March 2017, its Board of Directors, which included Barbagallo as Chairman, resolved to undergo Round 6 of capital raising, which also included accepting a loan to Fortress Capstone of \$100,000. Barbagallo loaned Fortress Capstone \$42,743. The Director of ACAC Innovation Pty Ltd, who later became the co-investor for the application for co-investment funding to the AQBD Fund, loaned Fortress Capstone \$57,257. It was agreed that the loans would be repaid through conversion to shares in Fortress Capstone.⁵⁷
82. On or about 10 May 2017, the shareholders of Fortress Capstone were invited to participate in the new round of capital raising in accordance with their pre-emptive rights as existing shareholders.

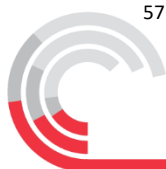
53 Advance Queensland BDF Governance Framework version as at 26 April 2017, page 8, section 4.1.

54 Advance Queensland BDF Governance Framework version as at 26 April 2017, page 8, section 4.2.

55 Advance Queensland BDF Governance Framework version as at 26 April 2017, page 10, section 4.5(i).

56 Advance Queensland BDF Governance Framework version as at 26 April 2017, page 11, section 4.5(iii).

57 Loan Agreement between David Barbagallo and Fortress Capstone Pty Ltd dated 27 March 2017.



83. On 16 May 2017, the Board resolved to pursue an application to the AQBD Fund for co-investment funding. While the Board Meeting minutes of 16 May 2017 are the first record of Fortress Capstone's intention to apply for co-investment funding from the AQBD Fund, the CCC identified that Fortress Capstone had been considering submitting such an application as early as January 2017, prior to Barbagallo commencing in the role of the Premier's Chief of Staff.
84. On 6 July 2017, the Board resolved out of session to:
 1. Submit the application for AQBD Fund funding as a separate funding round so as not to delay receipt of funds from current Round 6 capital raising from existing investors.
 2. In light of point 1, formally lower the minimum funding round required in order to be able to close the Round 6 investment.
85. On 18 July 2017, the Board resolved to submit an application to the AQBD Fund for co-investment funding. As discussed later in this report, Barbagallo declared to the Board members that he could not be involved in the application for co-investment funding from the AQBD Fund.
86. On 20 July 2017, Fortress Capstone submitted an application to the AQBD Fund.
87. Fortress Capstone sought co-investment funding of \$535,000 for its mobile device application "CruiseTraka", that would enable passengers travelling on cruise ships to share photos and stories with friends via social media. CruiseTraka was to be a marketing tool which converted information shared by passengers into sales leads which would then be sold to cruise ship operators and travel agents.
88. The application identified Barbagallo as one member of a syndicate investing in Fortress Capstone. The lead investor was ACAC Innovation Pty Ltd. Barbagallo's role of Chairman was also recorded in the application.
89. On 25 July 2017, the seven-member AQBD Fund investment panel assessed and shortlisted Fortress Capstone's application. In assessing whether to shortlist Fortress Capstone's application to proceed to the investment pitch stage, the investment panel considered criteria such as:
 - Alignment with industries that Queensland is building expertise in
 - Alignment with government priorities
 - Commercial viability – whether there was a market for the product or service
 - The presence of a reputable co-investor – whether they had invested in Queensland before and their capacity to oversee the company, and provide mentoring and support
 - The management team of the company – to ensure they have the relevant skills and experience to take the company forward, including financial performance and future plan
 - Financial return.
90. On 27 July 2017, the Chief Executive Officer of Fortress Capstone (CEO) and the co-investor were notified Fortress Capstone's application had been shortlisted and were invited to present an investment pitch to the AQBD Fund investment panel on 11 August 2017.
91. On 11 August 2017, the CEO and the co-investor pitched to the AQBD Fund investment panel. During the investment pitch, the investment panel were informed that Barbagallo was a Director and Chairman of Fortress Capstone. They were also informed that Barbagallo was the current Chief of Staff to the Premier and had been Chief of Staff to former Premier Wayne Goss.
92. Directly following the investment pitch, the investment panel deliberated and by majority vote approved co-investment funding in the amount of \$267,500, half of the original amount requested.



93. Each of the investment panel members stated that their decisions about Fortress Capstone — firstly to shortlist its application to the investment pitch stage, and subsequently to award it co-investment funding — were not influenced by the fact that Barbagallo was, at the time, the Chief of Staff to the Premier. As one investment panel member stated, there was:
- no direct relevance [that Barbagallo was Chief of Staff to the Premier] from my perspective, it's the business opportunity, providing for Queensland, the business model. It's focused on the business model and the team taking it forward as a business opportunity. In my mind his [Barbagallo] being Chief of Staff wouldn't have any bearing to the application.⁵⁸
94. Most panel members could not recall why they did not approve the full amount requested. One panel member, who did have this recollection, told the CCC that some of the reasons were that:
- There were \$100,000 worth of loans to two shareholders to the company, and the AQBD Fund excludes co-investment funding to be used to pay out loans.
 - There was a proposal to invest \$100,000 of the funding to bring in an American expert in the cruise industry to consult on behalf of the company. The panel considered Fortress Capstone could make better strategic partnerships without investing this sum of money.
95. No investment panel member invested alongside the AQBD Fund in Fortress Capstone.
96. On 16 August 2017, the CEO and the co-investor were advised their application was successful and co-investment funding for \$267,500 had been approved by the AQBD Fund investment panel. On the same date, the CEO advised Barbagallo via text message that Fortress Capstone's application had been successful.
97. The co-investment funding amount of \$267,890 was paid to Fortress Capstone on 8 March 2018.⁵⁹

Barbagallo's role in the application for co-investment funding

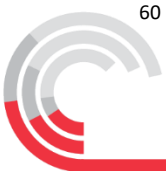
Fortress Capstone Board Meetings

98. Barbagallo told the CCC that the Directors started discussions about applying to the AQBD Fund in late 2016, *"long before there was any suggestion I'd go and work for the Premier"*.⁶⁰
99. Company documentation as early as January 2017 shows Fortress Capstone considered applying to the AQBD Fund for co-investment funding. This was in addition to the capital-raising venture commenced in May 2017. However, the first record confirming Fortress Capstone's intention to submit an application to the AQBD Fund for co-investment funding is the Board Meeting minutes of 16 May 2017.
100. There were a number of Board Meetings chaired by Barbagallo in which the application for co-investment funding was discussed. The CCC identified that the Board Meeting minutes are silent on a number of relevant decisions relating to the application. The decisions not recorded in detail in the minutes include:
- That the Director of ACAC Innovation would be the lead co-investor for the application.
 - Barbagallo declaring he could not participate or be involved in the application to the AQBD Fund for co-investment funding because of his position as the Premier's Chief of Staff.

58 CCC investigative hearing of panel member (witness 4).

59 The actual amount paid to Fortress Capstone by the AQBD Fund was \$267,890 which equates to 1,246 shares at \$215/share. The AQBD Fund acquired 3.88 per cent in Fortress Capstone.

60 Transcript of interview with David Barbagallo, page 43, lines 1975-1989.



101. Although Barbagallo's declaration that he had a conflict of interest with respect to Fortress Capstone making an application to the AQBD Fund was not recorded in the Board Meeting minutes, the Board members confirmed that Barbagallo did in fact declare a conflict. They raised that Barbagallo had also declared a previous conflict of interest when Fortress Capstone considered applying for funding through the Advance Queensland Ignite Ideas Fund.

102. The CEO told the CCC that it was his decision to pursue co-investment funding from the AQBD Fund:

I'm gonna make reference to reading stuff about this being DB's [Barbagallo's] company, it's not DB's company, he's in there as our chairman, I make these decisions, it was my decision to drive the funding through the QBDF [AQBD Fund]. I would have done that regardless of who my chairman was. To be quite honest if DB said "no you shouldn't do that" I would have said "well I'm gonna do it" because we fit the model perfectly for you know for the thing. So yeah, so I mean this is my business and I've got some supportive investors along the way.⁶¹

103. In relation to his knowledge of the AQBD Fund and support for Fortress Capstone to submit an application for co-investment funding, Barbagallo told the CCC:

I was aware through my contacts in the IT industry that the BDF fund [AQBD Fund] was run efficiently. I was sort of aware of that. So when [CEO] suggested it, I said you know yeah. I acquiesced in a sense. You know, I don't run the company. He's the CEO. And you know, he's often said to me, if you'd said we can't do it, we would've done it anyway. I mean, I'm just you know, the chairman and thing – that doesn't give you any veto rights. In fact, the law requires you to act in the interest of all shareholders, not your own interest, which is – you know, a point I want to make, that this is a private company. Directors are under the same obligations. You have to act in the interests of all shareholders. And what my personal interest is and potential conflicts are a consideration maybe for others but they're not things that can veto or drive their decisions...the law in respect of that company is what drives decisions, not your personal interests.⁶²

May 2017 – Fortress Capstone CEO contact with the QIC prior to submission of application

104. One of the action items from the Board Meeting held on 16 May 2017 was for the CEO to contact the QIC Analyst to discuss the application process. The Analyst is responsible for administering the funds, meeting with the investors, walking through the application process and assessing applications submitted to the AQBD Fund to determine whether they meet the eligibility criteria. If an application meets the eligibility criteria, the Analyst will send the application to the investment panel for consideration of shortlisting to the investment pitch stage.

105. The CEO confirmed he contacted the Analyst to obtain an overview of the application process. The CEO told the CCC that his motivation for talking to the Analyst was to ensure she knew who he was when the application came across her desk, that "*she knew that I was part of [co-investor's] group*"⁶³, and to ensure the application proceeded through the next meeting of the investment panel.⁶⁴

106. The Analyst recalls contact with the CEO of Fortress Capstone, confirming he sought information regarding the AQBD Fund process.

61 Transcript of interview with the CEO Fortress Capstone, page 19, lines 812-818.

62 Transcript of interview with David Barbagallo, page 42, lines 1924-1955.

63 Transcript of interview with the CEO Fortress Capstone, page 52, lines 2406-2414.

64 Transcript of interview with the CEO Fortress Capstone, page 53, line 2455-2456.



107. The Analyst told the CCC that at no stage did Barbagallo contact her to discuss Fortress Capstone's application for co-investment funding. The Analyst was aware that the only time Barbagallo had contact with the AQBD Fund was after the funding approval, when the AQBD Fund was seeking documentation from Barbagallo to complete the vetting process.

May 2017 – Fortress Capstone CEO meeting with a member of the AQBD Fund investment panel

108. In late May 2017, prior to submitting the application for co-investment funding to the AQBD Fund, the CEO met with one of the investment panel members seeking investment funding from her venture capital company. The CEO told the CCC that he did not recall whether he discussed the intended application to the AQBD Fund but stated:

I probably spoke to her, I, I you know thinking back I'd go God if I knew that she was on there, I'd probably, I'd probably would have reached out to her, I don't specifically recall but you know but maybe I did, I might have had a coffee with her or something.⁶⁵

109. The CEO told the CCC that he did not send Fortress Capstone's application to the investment panel member for review.⁶⁶

110. The investment panel member told the CCC that the CEO advised her that he would be applying to the AQBD Fund for co-investment funding and he sought tips from her to make the application strong. The investment panel member stated that the advice she provided to the CEO is the same advice she has provided to others who have similarly sought advice from her as an investment panel member. She stated:

...it's one of the things that I commonly do, I meet with founders and CEOs and provide them with feedback on their pitches and their business plans and their business models. This is a very regular part of the work that I do as a member of the innovation ecosystem...I provide that advice very regularly to particularly Brisbane-based startup companies because they know I'm on the investment panel.⁶⁷

111. The investment panel member told the CCC that she did receive an email attaching an investor pitch from the CEO prior to meeting her to discuss whether her venture capital company would invest in Fortress Capstone. The investment panel member's venture capital company did not invest in Fortress Capstone.

112. The CCC observed that the same investment panel member approved shortlisting Fortress Capstone's application to proceed to the investment pitch stage seven minutes after she received the application from the AQBD Fund for consideration. The investment panel member explained:

...typically what I will do is skim it at the time that we make the decision for them to come forward to the pitching session with BDF so our role then is to either approve or disallow an application to pitch, to move to the pitching phase. So I would have skimmed it at that stage and then I would typically the night before the pitch session have read it in more detail so that I was prepared to be able to ask questions. So that's my typical process...

...at this stage really what we're doing is looking for any glaring reasons for them not to present, and I was familiar with the company so having had that meeting with [the

65 Transcript of interview with the CEO Fortress Capstone, page 54, lines 2509-2512.

66 Transcript of interview with the CEO Fortress Capstone, page 54, line 2514-page 55, line 2545.

67 CCC investigative hearing of panel member (witness 5).



CEO] a couple of months earlier I knew a little bit about what they were doing so I didn't need to go into the detail of understanding what Fortress Capstone did. Some companies are completely naïve to me and I might have to spend longer. In this case I knew a bit about the company and that they had you know a good product and that the market was there so it was easy for me to make a relatively quick decision for them to proceed to pitch.⁶⁸

113. This same investment panel member previously had a working professional relationship with Barbagallo and became aware, at some stage during the application process, he was the Premier's Chief of Staff.

114. As to whether her prior professional relationship and knowledge of Barbagallo's employment as Chief of Staff influenced her decision to shortlist and subsequently approve co-investment funding, the investment panel member stated:

To the extent that any individual would have influenced the decision to take the company to the pitch stage, it would have been on their ability to support the company and so my engagement with David Barbagallo previously had been as a director, an investor in technology companies. So the fact that he has acquitted himself many times in those sorts of roles would be seen as a benefit to the application as would [the co-investor's] experience, as would [the CEO's] as a repeat founder, successful founder. So the team is an important aspect of the assessment process and their ability to lead these companies through. So in so far as we look at people it's really about their capacity to contribute to the success of the company in the future.⁶⁹

115. Neither the CEO nor the investment panel member declared to the investment panel their knowledge of each other, the earlier meeting at which they discussed the AQBD Fund application, or that the CEO had sought investment funding from the investment panel member's venture company prior to submitting the application to the AQBD Fund.

18 July 2017 Board Meeting – Barbagallo declares conflict of interest

116. On 18 July 2017, Fortress Capstone held a Board Meeting at which Barbagallo informed the other three directors that he could not be involved in the application for co-investment funding from the AQBD Fund.

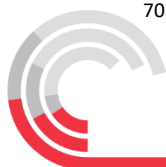
117. Barbagallo stated:

On the 18th July 2017 a Fortress Capstone Board meeting was held, and I indicated to my fellow Directors that I could take no part in the application process for the BDF co-funding investment **because of the possible perception of a conflict of interest given my current role**. The Board agreed that I should exclude myself from any part of the process and resolved that a fellow Director would be the lead investor as was required by the fund and he and the CEO would do the pitch to the independent panel that assessed applications.⁷⁰

68 CCC investigative hearing of panel member (witness 5).

69 CCC investigative hearing of panel member (witness 5).

70 Statement of David Barbagallo to EY dated 13 August 2019.



118. Barbagallo told the CCC:

...I only actually found out things about the BDF thing because of this process [CCC investigation], because right at the outset – I’m acutely aware I’m the Chief of Staff and I know how politics works and I just said I want nothing to do with this. And at the time, I wrongly concluded that my name –, I said to [CEO] I don’t – I can’t be involved in any aspect of this, cos I actually thought the BDF was determined by the department. I didn’t realise it was outsourced to QIC and then they outsourced it to...in addition to the Chief of Staff not having any decision making powers and no one in government actually has any say over how this thing works, I didn’t realise that it was two arms removed. But notwithstanding that, I said to [CEO] I want nothing to do with this. I can’t be involved.⁷¹

119. The Board Meeting minutes for 18 July 2017 do not record Barbagallo’s declaration of a conflict of interest.

120. During the audit review undertaken by EY into the process surrounding the application and approval of the co-investment funding to Fortress Capstone in 2019, the CEO declared in a statutory declaration, with reference to the Board Meeting of 18 July 2017:

That during that meeting it was agreed that the company would support an application by its shareholder, ACAC Innovation, to the QLD Business Development Fund (QBDF) [AQBD Fund] for co-funding against our most recent round of capital raising.

That during the ensuing discussion regarding the application to the QBDF [AQBD Fund] our Chairman David Barbagallo advised that consistent with his previous position [he] could not participate in the application process including any future funding pitch to the QBDF [AQBD Fund] assessment panel.⁷²

121. Each of the directors corroborated Barbagallo’s statement that he declared to the Board that he could not be involved in the application process for co-investment funding from the AQBD Fund. Each acknowledged that Barbagallo’s declaration was not recorded in the Board Meeting minutes for the meeting held on 18 July 2017. The CEO, who takes the minutes, told the CCC that Barbagallo’s declaration was not recorded in the minutes because:

...it wasn’t, it wasn’t something we put on the meeting to say we need to discuss DB’s potential involvement in this thing or whatever it just was no big deal to me at the time and hence it wasn’t a formal agenda item it just came up in the discussion that we’re doing this and he said well I can’t be involved in this and we moved on um. Ah yeah.⁷³

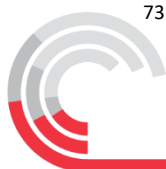
122. The co-investor understood that the reason Barbagallo could not be involved in the application to the AQBD Fund was:

Because he was the Premier’s Chief of Staff, completely inappropriate for him to be involved. And that’s why I went to pains to make sure that his role in Fortress Capstone was disclosed in our application and in our pitch deck. His role was fully disclosed, and bear in mind, the structure of the BDF [AQBD Fund] is a double blind...you don’t deal with government, you don’t even deal with QIC you only deal

71 Transcript of interview of David Barbagallo, page 44, lines 2030-2047.

72 Statutory Declaration signed by the CEO Fortress Capstone dated 13 August 2019.

73 Transcript of interview with the CEO Fortress Capstone, page 59, line 2753-page 60, line 2788.



with the advisory board so yeah it's, you're completely, you're two levels removed from government.⁷⁴

Fortress Capstone application submitted to the AQBD Fund

123. On 20 July 2017, Fortress Capstone's application for co-investment funding was submitted to the AQBD Fund.
124. Following the submission of Fortress Capstone's application to the AQBD Fund, Barbagallo was kept informed of the progress of the application by the CEO.
125. The CEO was advised on 25 July 2017 that Fortress Capstone's application had been shortlisted to proceed to the investment pitch stage on 11 August 2017. Barbagallo confirmed he was advised of this by the CEO.⁷⁵
126. Barbagallo told the CCC that he had no role in the development of the application or investment pitch presentation, "*absolutely nothing*".⁷⁶
127. The CEO and the co-investor both told the CCC that they worked on the application and investment pitch together and that Barbagallo was not involved in that process and did not want to be involved in the process, "*he had no role at all, nuh*".⁷⁷
128. The co-investor told the CCC:

I recall David Barbagallo declining to review the application, my application. [CEO] and I worked on the application, I would say [CEO] did most of the work but it's my application and I recall David Barbagallo declining to review it. I likewise have a recollection and I need to dredge my memory hard, I have a recollection that he declined to review the pitch cause after you do the application you get shortlisted, or not, we were shortlisted and you'd go in and present to their advisory board and you know I recall David Barbagallo declining to review the, what they call the pitch deck and then he absolutely bolted out of the room before [CEO] dropped his draft stat dec on the table, the 20 August 2019 board meeting. David went to some pains to make sure that he wasn't involved in my application.⁷⁸

Barbagallo's position as the Premier's Chief of Staff is raised during the investment pitch to the AQBD Fund investment panel

129. Barbagallo was unaware his position as the Premier's Chief of Staff was included in the investment pitch presentation provided by the CEO and the co-investor to the investment panel. Barbagallo stated he had no visibility and had not seen the presentation until the Opposition made an application for documents under the *Right to Information Act 2009* (RTI Act).⁷⁹
130. The CEO and the co-investor both told the CCC that they included Barbagallo's current role in the bio for the presentation to the investment panel as a means of being transparent and making full disclosure of who the directors were, and it was not an attempt to influence the investment panel's decision.⁸⁰

74 Transcript of interview with the co-investor, page 48, lines 2196-2229.

75 Transcript of interview with David Barbagallo, page 58, line 2714—page, 59, line 2759.

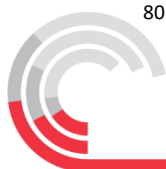
76 Transcript of interview with David Barbagallo, page 49, lines 2272-2283.

77 Transcript of interview with the CEO Fortress Capstone, page 48, line 2239.

78 Transcript of interview with the co-investor, page 46, line 2140 – page 47, line 2157.

79 Transcript of interview with David Barbagallo, page 60, lines 2773-2804.

80 Transcript of interview with the CEO Fortress Capstone, page 57, lines 2649-2668.



131. The co-investor told the CCC that the purpose of disclosing Barbagallo's role as the Premier's Chief of Staff was:

...it was an appropriate thing to do to disclose that because it was, it was germane to their consideration, it was you know, albeit it be a recent one and albeit for not for long, he was a government official and even though it was a double blind from government, it was a government investment to which he may be assigned some benefit.⁸¹

132. As to whether disclosing that Barbagallo was the Premier's Chief of Staff could potentially influence the investment panel, the co-investor stated:

No absolutely not. No, that was, first of all I can tell you from me that was not my intent and secondly, these are, these are sophisticated entrepreneur people that they wouldn't be in my view, they, none of them would be swayed by that, no...Their role is to advise the QIC on the probability of success of this business so the QIC can make a decision to invest on behalf of the government...Is this a good investment for the government? Will it create jobs? Will it be successful? Cause one of these startups fail, the government lost its money...when you look at the individuals on the panel their only mission is to advise QIC as to whether or not this business will be successful.⁸²

133. Barbagallo told the CCC that he did not, and still does not, know who was on the AQBD Fund panel that considered Fortress Capstone's application.⁸³ Barbagallo also stated he did not have any contact with or from any panel member prior to the investment pitch.⁸⁴

134. Four of the seven investment panel members knew or had knowledge of Barbagallo at the time of shortlisting the application to proceed to the investment pitch stage. Two of these panel members were aware Barbagallo was the Premier's Chief of Staff when shortlisting the application. One of these panel members had sent Barbagallo an email on 14 May 2017 congratulating him on obtaining the role of Chief of Staff and stated that she looked forward to working with him:

...Can't wait to see the impact of your technology understanding to whole of QLD Govt!! I'm actively involved in the Advance QLD and BD Fund parts of the strategy...Welcome aboard and let's get this state thriving. Shout out if you want any info or insights of progress thus far. There is a small but very committed industry collective behind the AQ and happy to help you engage.

135. Most of the investment panel members did not recall seeing Barbagallo's position as Chief of Staff to the Premier identified in the investment pitch presentation. The investment panel members told the CCC that irrespective of the fact that Barbagallo was the Premier's Chief of Staff at the time of the application, this fact did not influence them either in shortlisting the application to proceed to the investment pitch stage or in approving co-investment funding in the amount of \$267,500. One panel member told the CCC that if anything would have influenced her decision, which it did not, it would be the fact that the co-investor had a very good reputation as an angel investor and had invested in a number of successful startup companies previously.⁸⁵

81 Transcript of interview with the co-investor, page 49, lines 2277-2284.

82 Transcript of interview with the co-investor, page 71, line 3326 – page 72, line 3348.

83 Transcript of interview with David Barbagallo, page 44, lines 2012-2026; page 46, lines 2129-2143.

84 Transcript of interview with David Barbagallo, page 57, lines 2637-2640.

85 CCC investigative hearing of panel member (witness 1).



136. There is no evidence the application or the investment pitch presentation was provided to Barbagallo for consideration during the application process. There is no evidence Barbagallo had any contact or communication with any of the investment panel members before, during or after the application process.

Barbagallo advised of the success of Fortress Capstone's AQBD Fund application

137. On 16 August 2017, Barbagallo was advised by the CEO of Fortress Capstone that the AQBD Fund had approved co-investment funding. Barbagallo was advised that the AQBD Fund only approved half of the requested funding.
138. Barbagallo stated that he verbally advised the Premier of the success of Fortress Capstone's application:

Shortly after this I advised the Premier and the Director-General [name omitted] of the success of the application. I indicated I would as a precaution continue to take no part in any discussions regarding the proposed Brisbane Cruise Terminal and matters relating to the cruise ship industry generally.⁸⁶

139. As discussed later in this report, the Premier told the CCC that, in the absence of notes, the only recollection she had about a potential issue surrounding a company Barbagallo was associated with was immediately prior to the 2018 Parliamentary Estimates hearing. The CCC identified that prior to the 2018 Parliamentary Estimates hearing, Barbagallo sent an email to the acting Chief of Staff advising he was the Chairman of Fortress Capstone, one of the companies identified as receiving co-investment funding from the AQBD Fund. In this email, Barbagallo stated he had no involvement in the application or interview, and that the process was carried out by the QIC. Barbagallo also stated, *"I advised both the Premier and DG at the time of the application...last year in early July it was. The company had begun the process of preparing for the application some months before I joined the office. I also subsequently wrote an email to the Integrity Commissioner advising I had withdrawn from any involvement in the process..."* The Premier was not provided with any detailed information from the acting Chief of Staff other than being advised *"it's all above board"*.⁸⁷

86 Statement of David Barbagallo to EY dated 13 August 2019; Statement of David Barbagallo to EY dated 27 August 2019.

87 Transcript of interview with the Premier, page 8, lines 309-323, and page 11, lines 437-438.



Chapter 3 – Evidence and issues

140. This chapter focuses on:

- Whether Barbagallo’s role and involvement in the awarding of the funding to Fortress Capstone was properly disclosed;
- The accuracy of information provided by Barbagallo in response to concerns raised regarding his involvement in the awarding of the funding to Fortress Capstone;
- Whether the decision to award co-investment funding to Fortress Capstone was the result of any improper influence; and
- Whether Barbagallo misused his position to gain a benefit or advantage for Fortress Capstone.

Barbagallo’s Declarations of Interests

141. As previously stated, Barbagallo was required under s.24 of the Ministerial Act to declare his interests to the Premier at regular, stipulated intervals.⁸⁸
142. After commencing as Chief of Staff on 15 May 2017, and prior to his resignation in October 2019, Barbagallo declared his interests to the Premier on four occasions.

Failure to declare Directorship/Chairmanship of Fortress Capstone

143. The first two occasions involved Barbagallo submitting Declaration of Interests forms dated 26 May 2017 and 19 June 2018. He declared that he was a shareholder in Fortress Capstone, but did not declare he was a Director and the Chairman of the Board of Directors for that company. He did however declare that he received income from director’s fees.
144. The third occasion involved Barbagallo submitting a document titled “Annual Review of Declaration of Interests – No Variation” dated 30 May 2019. By submitting this document, Barbagallo declared that there was no change to the information he previously provided about his interests.
145. The fourth (and final) occasion occurred almost three months after the matter of Fortress Capstone receiving co-investment funding from the AQBD Fund was raised during the Parliamentary Estimates hearing on 23 July 2019. Barbagallo submitted a Declaration of Interests form dated 11 September 2019. On this occasion, Barbagallo disclosed he was a Director of Fortress Capstone. The timing of Barbagallo submitting this declaration coincided with the Department of the Premier and Cabinet receiving EY’s internal audit report into the process of Fortress Capstone receiving co-investment funding from the AQBD Fund and Barbagallo commencing leave on 20 September 2019 prior to him finishing in the role of the Premier’s Chief of Staff on 15 October 2019.⁸⁹

⁸⁸ Ministerial and Other Office Holder Staff Act 2010, s.24(1)(c).

⁸⁹ Barbagallo tendered his resignation to the Premier on or about 27 June 2019.



146. In relation to the Declaration of Interests form dated 26 May 2017, the Executive Manager, Office of the Premier and Minister for Trade told the CCC that he completed this document based on information provided in a one-page document provided to him by Barbagallo. Barbagallo explained in his statement to EY that the one-page document declaring his interests was submitted as an interim measure and had previously been used by him when he was the Director and CEO of the Endeavour Foundation. The one-page document did not contain information that Barbagallo was a Director and the Chairman of Fortress Capstone, only that he was a shareholder.
147. The CCC also identified that the Declaration of Interests form dated 19 June 2018 was typed by an administration officer of the Premier's Office, based on a handwritten version provided to her by Barbagallo.
148. While Barbagallo may have had help from other people to complete his Declaration of Interests forms, he was solely responsible for ensuring that a true and accurate account of his interests was disclosed. In fact, Barbagallo told the CCC that he signed his Declaration of Interests forms but did not check the documents to ensure his interests were fully declared, and if he did he would have identified that he had not declared he was a Director of Fortress Capstone⁹⁰:

...I'm not making excuses. I should've checked it and all the rest but. And I must admit I signed it but I didn't actually, so where – when you send a note or the CCC sent a note saying “why didn't you declare yourself as a Director?” and I said “alright I did fill out everything, I know I did” but actually I hadn't ... so I gave them that then transferred into this and it, it kept 2018 I made some, some changes but once again rather slackly didn't actually read the document closely and didn't declare my Directorships. But I did in 2019. But you know after the whole kerfuffle started I went and thought I'll go and have a look at that and discovered that I hadn't been filling it out properly.⁹¹

... I start from the preposition [sic] or the presumption that I'm not going to do anything wrong right. And that's how I've always been alright. I worked for Goss we brought in the CCC stuff you know, we're from the good guys. You know that other mob are the ones that are corrupt and fucked over this State so you know I have an intellectual, philosophical and personal commitment and everywhere I've worked I've set up procurement policies and a whole bunch of things to ensure people aren't doing the wrong thing. So when you start from that position the rest is detail. Cos you know you're not going to do anything wrong. Having said that, that sort of arrogance leads to there is that you've already heard about you know not checking everything completely diligently. You work 100 hours a week in that job right. It's pretty hard yakka. Okay it's not an excuse but it's a reason why things get overlooked.⁹²

149. As stated earlier in this report, Barbagallo loaned Fortress Capstone the sum of \$42,743 in March 2017. This loan occurred prior to Barbagallo being considered as the Premier's Chief of Staff. As was always intended and contractually required, this loan was later converted to shares following the Round 6 capital raising venture.⁹³
150. Following this, Barbagallo increased his personal shareholdings in Fortress Capstone, investing \$57,232 in accordance with his commitment to participate in the Round 6 capital raising in the company that was offered to existing shareholders.

90 Transcript of interview with David Barbagallo, page 73, lines 3400-3412.

91 Transcript of interview with David Barbagallo, page 63, lines 2930-2952.

92 Transcript of interview with David Barbagallo, page 68, lines 3154-3192.

93 Loan Agreement between David Barbagallo and Fortress Capstone Pty Ltd dated 27 March 2017.



151. In total, Barbagallo's personal shareholdings increased in the amount of \$99,975. In doing so he exercised his pre-emptive right to invest in any new capital raising prior to them being offered to the public.
152. Barbagallo's contribution resulted in a total of \$535,565 being raised during the Round 6 capital raising venture.
153. Following the approval of co-investment funding by the AQBD Fund on 11 August 2017, due diligence and background checks on each of the directors were undertaken by the QIC.
154. The investment transaction documents were executed in full by the AQBD Fund and the directors on 28 February 2018.
155. The co-investment funding amount of \$267,890 was paid to Fortress Capstone on 8 March 2018 and took the form of a share purchase in Fortress Capstone by the QIC. The co-funding included a "call option" which allowed the Board of Fortress Capstone to purchase the shares back from QIC at a pre-determined price after a period of two years.
156. Queensland Treasury was notified of the investment in Fortress Capstone on 10 March 2018.
157. The awarding of co-investment funding by the AQBD Fund to a company where Barbagallo is a director and has a shareholding interest raises a potential or perceived conflict of interest. Barbagallo recognised he had a conflict of interest, which prompted him to write to the Integrity Commissioner on 28 February 2018. There were a number of transactions over time which should have reminded Barbagallo to declare his interest as a director – he did not do this.

Questions raised at the 2019 Parliamentary Estimates hearing re Fortress Capstone

158. On 23 July 2019, the Economics and Governance Committee examined the proposed expenditure for the portfolio areas of the Premier and Minister for Trade. During this hearing, the Premier was asked by the Leader of the Opposition:

Is the Premier aware that Fortress Capstone, a company owned by the Premier's chief of staff, received a business development grant of \$267,000 from the Palaszczuk government?⁹⁴

159. And further:

Has your chief of staff declared his interest in Fortress Capstone, as he is required to do as per the ministerial handbook?⁹⁵

160. The Premier responded to these questions and others:

The chief of staff has confirmed to me that it was declared.⁹⁶

...

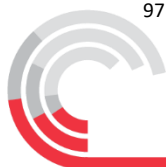
I am happy to do an audit of it. However, the chief of staff has advised me on his pecuniary interest register...I am happy, for clarity, to do an audit to ensure that all processes were followed. I know that the chief of staff is absolutely rigorous in making sure that processes are followed.⁹⁷

94 Transcript of the Economics and Governance Committee, Parliamentary Estimates hearing on 23 July 2019, page 12.

95 Transcript of the Economics and Governance Committee, Parliamentary Estimates hearing on 23 July 2019, page 12.

96 Transcript of the Economics and Governance Committee, Parliamentary Estimates hearing on 23 July 2019, page 21.

97 Transcript of the Economics and Governance Committee, Parliamentary Estimates hearing on 23 July 2019, page 22.



161. Barbagallo told the CCC that during the hearing break he had a discussion with the Premier about the questions raised about Fortress Capstone receiving co-investment funding from the AQBD Fund and his association with the company:

I said “Premier, I let [Director of Policy] know about this” and she said “hey, that’s right, I remember that now”. So she sort of initiated the recollection in a sense of her interaction with [Director of Policy].⁹⁸

I said “you know I declared it in my Declaration of Interest Premier, there’s nothing to worry about”. Something to that effect. I wasn’t particularly worried as I said.⁹⁹

162. As to whether Barbagallo spoke about getting advice from the Integrity Commissioner with the Premier in this discussion, Barbagallo stated “*Not that I recall, no*”.¹⁰⁰

Audit by EY

163. In August 2019, the Department of the Premier and Cabinet engaged EY to conduct an internal audit into the application process for approving the AQBD Fund’s co-investment in Fortress Capstone. The scope of the audit consisted of:

- The chronology and decision-making process for the investment made by the AQBD fund in relation to Fortress Capstone, including:
 - The assessment and approval of funding in line with documented processes, including but not limited to:
 - » Receipt of funding application by the fund
 - » Assessment of the application in line with prescribed criteria
 - » Approval process for awarding the funds.
 - Management of potential conflicts of interest throughout the application process.
- Compliance with the *Ministerial and Other Office Holder Staff Act 2010* (the Ministerial Act) and the Ministerial Handbook in relation to the declaration of interests and disclosure of conflicts of interest processes specifically in relation to Fortress Capstone.

164. The purpose of the audit was not to, and EY did not, investigate the allegations of corrupt conduct raised against Barbagallo. The audit was completed in August 2019 and a report was provided to the Department of the Premier and Cabinet.

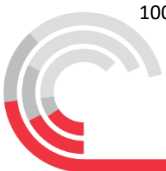
165. The internal audit observed:

- There was no evidence of a formal declaration by Barbagallo in relation to a change in interest in his investment in Fortress Capstone in July 2017
- There was no evidence of a formal declaration that the application and award of investment funding under the AQBD Fund had been made
- The assessment of Fortress Capstone’s eligibility for shortlisting against the criteria was not formally documented by the investment panel members, and
- Conflicts of interest (or the absence of conflicts of interest) were not documented or disclosed by the CEO of Fortress Capstone nor any of the investment panel members responsible for assessing Fortress Capstone’s application.

98 Transcript of interview with David Barbagallo, page 109, lines 5129-5152.

99 Transcript of interview with David Barbagallo, page 110, lines 5156-5158.

100 Transcript of interview with David Barbagallo, page 110, lines 5166-5172.



Barbagallo declares Directorship of Fortress Capstone

166. On 11 September 2019, some two months after the matter of Fortress Capstone receiving co-investment funding from the AQBD Fund was raised during the Parliamentary Estimates hearing, and after the audit by EY had been completed, Barbagallo submitted a Declaration of Interests form stating that he was a Director of Fortress Capstone.

Did Barbagallo properly disclose to the Premier his role and involvement in the awarding of co-investment funding to Fortress Capstone?

Disclosure of shareholding interest but not role as director or chairman

167. Barbagallo confirmed in his statement to EY and to the CCC that he is a director and the chairman of the Board of Directors of Fortress Capstone.
168. Barbagallo stated that during his interview with the Premier on 12 May 2017:
- I specifically raised my involvement with several startup and ICT companies during the interview with the Premier. The Premier indicated that there was a process for declaring and managing potential conflicts.¹⁰¹
169. The Premier recalled Barbagallo advising her during his interview that he was involved with a number of companies and she informed him that he would have to “*sort that out*” and would “*need to get Integrity Commissioner’s advice. I was pretty clear on that*”.¹⁰² The Premier stated that the conversation was in general terms and could not recall Barbagallo giving more specific details or company names.¹⁰³
170. The Premier told the CCC that, to her knowledge, Barbagallo did not disclose to her that he was a director of Fortress Capstone, only that “*he said he had companies but not that he was a director, to my knowledge*”.¹⁰⁴
171. As stated above, Barbagallo submitted two Declaration of Interest forms dated 26 May 2017 and 19 June 2018, and one “Annual Review of Declaration of Interests – No Variation” form dated 30 May 2019.
172. Barbagallo acknowledged submitting these documents to the Premier who he said noted the contents of the forms and then filed them with the Executive Manager of the Premier’s office.¹⁰⁵
173. In relation to the Declaration of Interests form dated 26 May 2017, the Premier stated, “*I don’t recall noting it, I recall it came in and then it would go to [Executive Manager, Premier’s Office]. So it would be handed to me, I’d look at it and then it would go to [Executive Manager, Premier’s Office] for filing*”.¹⁰⁶
174. The Declaration of Interests forms submitted by Barbagallo confirm he did declare his shareholding interest in Fortress Capstone. However, he did not declare that he was a director and Chairman of the Board of Directors of Fortress Capstone.

¹⁰¹ Statement of David Barbagallo to EY dated 13 August 2019.

¹⁰² Transcript of interview with the Premier, page 3, lines 61-73.

¹⁰³ Transcript of interview with the Premier, page 3, lines 75-85.

¹⁰⁴ Transcript of interview with the Premier, page 5, line 182-page 6, line 203.

¹⁰⁵ Statement of David Barbagallo to EY dated 13 August 2019.

¹⁰⁶ Transcript of interview with the Premier, page 5, lines 137-145.



175. The CCC considers this failure by Barbagallo breached s.24 of the Ministerial Act. The correct process to fully declare his roles in Fortress Capstone was to submit a Declaration of Interests form. He did not disclose his role in Fortress Capstone until 11 September 2019 when he submitted an updated Declaration of Interests form.

Whether Fortress Capstone’s application to the AQBD Fund was disclosed to the Premier

176. During the internal audit, Barbagallo stated in his statement to EY that he verbally advised both the Premier and the Director-General during morning briefings about Fortress Capstone’s application for co-investment funding to the AQBD Fund.¹⁰⁷ In support of his statement, Barbagallo relies on undated notes that are akin to agenda items of a meeting he had with the Premier and Director-General, which simply states “BDF” [AQBD Fund]¹⁰⁸.
177. The Premier told the CCC that she had “*no recollection*” of Barbagallo advising her of Fortress Capstone’s application for co-investment funding to the AQBD Fund.¹⁰⁹ The Premier had no records noting Barbagallo advising her of Fortress Capstone’s application for co-investment funding to the AQBD Fund.

Whether the success of Fortress Capstone’s application to the AQBD Fund was disclosed to the Premier

178. Barbagallo became aware the AQBD Fund approved co-investment funding to Fortress Capstone in the amount of \$267,500 on 16 August 2017. Barbagallo stated that shortly after becoming aware of the success of the application, he verbally advised the Premier.¹¹⁰
179. The Premier had no records noting Barbagallo advised her of the success of Fortress Capstone’s application for co-investment funding from the AQBD Fund. She told the CCC:

So the only recollection I have is during an Estimates hearing I think it was 20, or I don’t know if it’s 17 or 18... Mr Barbagallo was overseas and he wasn’t at the hearing. So [Director of Policy] received a call and [Director of Policy] as I was going into the Estimates hearing said, “There may be an issue raised about one of Mr Barbagallo’s companies, it’s all above board”. That was it.

I’m trying to think of the next time. Then when I was questioned at Estimates, I was questioned about the company and I have no recollection at the time of hearing the question. And then [Barbagallo] said “Remember I told you about this” and the only thing I can think of was the passing comment from [Director of Policy].¹¹¹

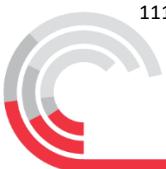
107 Statement of David Barbagallo to EY dated 13 August 2019.

108 Statement of David Barbagallo to EY dated 27 August 2019.

109 Transcript of interview with the Premier, page 8, lines 296-307, and page 12, line 515-page 13, line 526.

110 Statement of David Barbagallo to EY dated 13 August 2019; Statement of David Barbagallo to EY dated 27 August 2019.

111 Transcript of interview with the Premier, page 8, lines 309-323, and page 11, lines 437-438.



Whether Fortress Capstone's application to the AQBD Fund was disclosed to the Director-General

180. Barbagallo has stated that he also verbally advised the Director-General of Fortress Capstone's application for co-investment funding to the AQBD Fund.

181. In relation to the application and its success, the Director-General told the CCC:

I do recall a very brief discussion very early on in the appointment of Mr Barbagallo that he did say that his companies were involved in a particular grant or matter. There was no specific mention of what that company was...there was no specific mention of CruiseTraka...there was no specific mention of the Business Development Fund [AQBD Fund] and this is based on my recollection only, and I do recall under that process that he said that he had received integrity advice and was following that advice all the way through.¹¹²

...again to reiterate, I do have a recollection that there was a discussion but it was very broad and not specific.¹¹³

...to be very clear, I do not recall any specific discussion around Capstone, whatever his companies were called, and CruiseTraka...I do not recall a specific discussion about those issues.¹¹⁴

...That was never discussed when I was in the room, and with the Premier or me, so the answer is no.¹¹⁵

182. The Director-General was on leave during the 2019 Parliamentary Estimates hearing. Despite being on leave, the Director-General stated he listened to the Estimates hearing on the day. He stated this was the first time he heard of Fortress Capstone. He was not aware of Barbagallo's association with this company until the hearing.¹¹⁶

183. The Director-General had no records noting Barbagallo advised him of his interests in Fortress Capstone or CruiseTraka, or the application for and approval of co-investment funding from the AQBD Fund. A note made by the Director-General of a discussion with Barbagallo on 16 May 2017 recorded "*contract, email, [omitted], Declaration of Interest*".¹¹⁷

184. Barbagallo's notes do not corroborate his statement that he verbally advised the Premier and the Director-General about Fortress Capstone's application and the subsequent awarding of co-investment funding from the AQBD Fund. The state of the evidence available to the CCC is such that no firm conclusion can be drawn either way. Of course, had Declarations of Interests been properly completed, it would not be necessary to rely on people's recollections of discussions.

Whether Barbagallo disclosed to the Premier his personal investment into Fortress Capstone in 2017

185. The Premier told the CCC that Barbagallo did not disclose to her that he made a personal investment of \$99,975 into Fortress Capstone in July 2017: "*I would definitely remember if someone told me if they were putting \$100,000 of their own money into a company.*"¹¹⁸

112 Transcript of s75 NTD interview with the Director-General, page 10, line 422-page 11, line 439.

113 Transcript of s75 NTD interview with the Director-General, page 11, lines 461-466.

114 Transcript of s75 NTD interview with the Director-General, page 12, lines 511-513.

115 Transcript of s75 NTD interview with the Director-General, page 22, lines 985-986.

116 Transcript of s75 NTD interview with the Director-General, page 17, lines 723-737.

117 Transcript of s75 NTD interview with the Director-General, page 23, lines 1031-1048; Diary note of Director-General

118 Transcript of interview with the Premier, page 19, line 813-page 20, line 870.



Conflicts of interest, integrity advice and whether Barbagallo misled the Premier

186. One of the questions the Leader of the Opposition asked the Premier during the Parliamentary Estimates hearing was:

Leader of the Opposition: Are you aware whether your chief of staff has received advice from the Integrity Commissioner? Was that advice then provided to you and when?"¹¹⁹

Premier: I am advised that the chief of staff did get Integrity Commissioner advice.¹²⁰

187. Later the Premier stated:

The chief of staff filled out his pecuniary interest register in accordance with guidelines. The chief of staff sought Integrity Commission advice. The chief of staff advised me last year that a company had been successful and all measures were in place. For completion, the DG will conduct an audit.¹²¹

188. In Parliament on 20 August 2019, the Premier was asked:

Member for the Opposition: Will the Premier produce to the House the conflict of interest management plan for David Barbagallo?¹²²

Premier: In relation to any issues around my chief of staff, he has assured me that he has done everything appropriately and has always sought integrity advice – ...¹²³

189. In his statement to EY, Barbagallo stated:

As stated I usually verbally advise the Premier and [name omitted], the Director-General of DPC, of any possible conflicts regarding my role and interests. My pecuniary interests register was up to date.¹²⁴

Barbagallo's interactions with the Integrity Commissioner

190. Ministerial Staff Members who give advice to a Minister should be aware of the role of the Queensland Integrity Commissioner and seek counsel on any issue that may arise as a conflict of interest or potential conflict of interest.

191. Barbagallo relies on two interactions with the Integrity Commissioner to support his statement that he sought the advice of the Integrity Commissioner regarding his business interests in relation to Fortress Capstone.

119 Transcript of the Economics and Governance Committee, Parliamentary Estimates hearing on 23 July 2019, page 28.

120 Transcript of the Economics and Governance Committee, Parliamentary Estimates hearing on 23 July 2019, page 28.

121 Transcript of the Economics and Governance Committee, Parliamentary Estimates hearing on 23 July 2019, page 49.

122 Record of Proceedings First Session of the Fifty-Sixth Parliament, Tuesday 20 August 2019, page 2266.

123 Record of Proceedings First Session of the Fifty-Sixth Parliament, Tuesday 20 August 2019, page 2266.

124 Statement of David Barbagallo to EY dated 27 August 2019.



“Meet and Greet” with the Integrity Commissioner on 20 July 2017

192. Barbagallo stated:

On the 20th July 2017, I had a meeting with the Integrity Commissioner who had only been appointed on the 1st July 2017. I requested the meeting to discuss the arrangements I proposed to put in place should a conflict or a perception of a conflict arise in matters that might come before me in my role as Chief of Staff. The topics included my partner’s role as [omitted], my shareholdings in several ICT private companies including CruiseTraka, [company names omitted], as well as shares in public companies [company names omitted].

Essentially the understanding from the meeting was that I would ensure that [at] all times I advised the Premier of any potential conflicts and if necessary recuse myself from any discussions that the Government was considering in relation to such conflicts.¹²⁵

193. Barbagallo did not consider his meeting with the Integrity Commissioner was a simple “meet and greet” as described by the Integrity Commissioner, and stated the meeting on 20 July 2017 lasted over an hour. Barbagallo stated:

I wanted to meet with her and just outline how I was going to manage any conflicts. And in particular, to mention, obviously, [Barbagallo’s wife’s position] because, you know, [Barbagallo’s wife’s position] makes lots of decisions that impact on government, yeah.

So, I had a meeting with her to talk about that and general discussion about how to manage conflicts, how to – you know, I-I’m – I can – I have a direct recollection of mentioning [company name omitted] because, you know, I-I knew that was an existing thing. Um I made some notes after the thing. I think I talked about CruiseTraka cos it was a bit happening at the time, but it wasn’t a big issue. It was more – the issues I mostly spoke to her about was how do I manage all the people I know in the IT industry who will come and see me and say, you know, blah, blah, blah. So, we had a general discussion about how to manage it, and she said, oh you should report this, you should do that, in that instance you should create a plan and all the rest of it. And then subsequently in 2018, I sent her this letter about how I was going to manage the [name omitted] thing.¹²⁶

194. Accordingly, Barbagallo’s notes of this meeting tend to indicate he raised a number of topics with the Integrity Commissioner including Fortress Capstone and CruiseTraka.¹²⁷ Barbagallo claimed he was unaware that he was not being provided with advice, and was not advised by the Integrity Commissioner of any legislative requirement for such advice to be in writing.

195. Barbagallo told the CCC that he thought Fortress Capstone was discussed in the meeting and that the Integrity Commissioner provided him advice, “...she said you should declare that, you should make sure you tell th-, you know, the Premier or, you know, you should make a note or-or-whatever”.¹²⁸ While he thought the Integrity Commissioner provided him advice, Barbagallo stated he had no particular recollection of the Integrity Commissioner giving advice in relation to CruiseTraka.¹²⁹

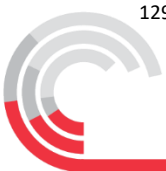
125 Statement of David Barbagallo to EY dated 13 August 2019.

126 Transcript of s.75 NTD interview with David Barbagallo, page 83, line 3911-page 84, line 3927.

127 David Barbagallo’s handwritten notes of 20 July 2017 meeting with the Integrity Commissioner.

128 Transcript of interview with David Barbagallo, page 88, line 4142 – page 89, line 4159.

129 Transcript of interview with David Barbagallo, page, 89, lines 4165-4172.



196. Barbagallo stated the message he took away from this meeting was “*err on the side of telling people*” and, according to Barbagallo, that was what he did.¹³⁰

Letter to the Integrity Commissioner dated 28 February 2018

197. The same day the investment transaction documents were executed, 28 February 2018, Barbagallo sent a letter to the Integrity Commissioner seeking advice as to whether any conflict of interest existed in relation to the application made by Fortress Capstone to the AQBD Fund for CruiseTraka. Barbagallo stated in the letter:

I am the Chairman of Fortress Capstone PTY LTD. This company owns a number of investment vehicles, including a start-up company called Cruise Trekka [sic].

At some time early in 2017, Cruise Trekka [sic] began an application for funding to the Advance Queensland’s Business Development Fund through the then Department of Science, Information Technology and Innovation (DSITI).

On 15 May 2017 I commenced working as Chief of Staff to the Premier of Queensland and Minister for the Arts, the Honourable Annastacia Palaszczuk MP. I then advised the CEO of Cruise Trekka [sic] that I could not be involved any further in the application, and he dealt with the application from that point. I also disclosed the fact of the funding application to the Premier, and declared it in my register of interests. I think I recall mentioning it to you when we met following my appointment.

...

I remained at arm’s length from Cruise Trekka’s [sic] application for funding. Other than providing the information required by a shareholder, I was not a party to any correspondence or communication in relation to the application.

198. Barbagallo then sought the following advice:

The purpose of this correspondence is to ask whether a conflict of interest exists in respect of the grant of funding made to Cruise Trekka [sic] from the Business Development Fund, and whether you are of the view that I need to take any further action in respect of this matter.

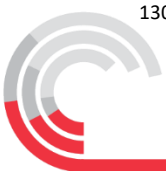
199. The Integrity Commissioner responded on 1 March 2018 seeking specific details and additional information.

200. On 13 March 2018, Barbagallo advised the Integrity Commissioner that he was collecting information which was only accessible through the CEO of Fortress Capstone.

201. Barbagallo told the CCC:

Oh she sent a whole list of clarifying questions and I just...some of which I couldn’t answer because I needed the CEO and he was overseas at the time I think. You know, part of it was, you know, as always I was super busy. And frankly when I read the series of questions, I just thought, oh, this is going to, this is just gonna go down a path that I don’t wanna know about frankly. Because what also happened is very soon after that, the BDF [AQBD Fund] invested the money so it was after the fact...I had nothing to do with the process, you know. My hands are clean sort of stuff. So

¹³⁰ Transcript of interview with David Barbagallo, page, 89, lines 4182-4200.



you know, from that perspective I just didn't feel like I needed to go any further with it, yeah.¹³¹

202. Barbagallo did not provide any additional information to the Integrity Commissioner who closed the matter on 23 July 2018, classifying the matter as a “withdrawal of a request”.

Integrity Commissioner's version of events

203. The Integrity Commissioner confirmed meeting with Barbagallo on 20 July 2017 in what she described as an “introductory meeting” or a “meet and greet” — *“it was not a meeting about advice”*.¹³² The Integrity Commissioner told the CCC that the meeting with Barbagallo was arranged in response to an email her office had sent to all CEOs of government departments (23 recipients) inviting them to meet her as she was newly appointed. Barbagallo was not included as a recipient in the email list.
204. The Integrity Commissioner told the CCC that Barbagallo's Executive Assistant requested on behalf of Barbagallo a meeting with her and subsequently generated a calendar invitation for the meeting to commence at 10:30am for 30 minutes. The calendar invitation indicated the meeting was an “introductory meeting”.
205. The Integrity Commissioner stated these introductory meetings involved the Integrity Commissioner explaining her role, how to get advice, what types of matters advice would be sought about, and the various processes to follow when seeking advice.¹³³ The Integrity Commissioner explained:

Under the Integrity Act [the *Integrity Act 2009*], for me to provide advice I need a request in writing with the full facts and then I need to provide the advice back in writing. It's only Members of Parliament who are able to request a meeting with me and provide me with oral facts and then get an oral opinion or advice.¹³⁴

206. The Integrity Commissioner recalled Barbagallo raised the appointment of his wife and explained that he had complex business arrangements¹³⁵ and did not recall any of Barbagallo's company names, including Fortress Capstone, being mentioned.¹³⁶ The Integrity Commissioner told the CCC *“I don't remember any particular interest that he raised”*¹³⁷ and *“would likely have perceived at the time and during the meeting, that any discussion was general in nature”*.¹³⁸ The Integrity Commissioner explained that her lack of recollection of the meeting on 20 July 2017 can be attributed to her having seven other introductory meetings that day which fell during the week of the 2019 Parliamentary Estimates hearing, and had 40 other “meet and greet” meetings that month.
207. There are no records held by the Integrity Commissioner evidencing that Barbagallo requested advice from her following his appointment as Chief of Staff to the Premier, or advice as to whether any of his business interests posed a conflict of interest, or particularly whether Fortress Capstone's application to the AQBD Fund for co-investment funding raised a conflict of interest.

131 Transcript of interview with David Barbagallo, page, 98, line 4618 – page 99, line 4653.

132 Transcript of s75 NTD interview with the Integrity Commissioner, page 6, line 213.

133 Transcript of s75 NTD interview with the Integrity Commissioner, page 3, lines 83-88.

134 Transcript of s75 NTD interview with the Integrity Commissioner, page 3, lines 75-78.

135 Transcript of s75 NTD interview with the Integrity Commissioner, page 4, lines 118-119; page 5, lines 145-146.

136 Transcript of s75 NTD interview with the Integrity Commissioner, page 6, line 233-page 7, line 235; Email to the CCC from the Integrity Commissioner dated 15 September 2020.

137 Transcript of s75 NTD interview with the Integrity Commissioner, page 4, lines 119-120.

138 Email to the CCC from the Integrity Commissioner dated 15 September 2020.



208. The Integrity Commissioner confirmed she received a letter from Barbagallo seeking advice as to whether any conflict of interest existed in relation to Fortress Capstone's application for and approval of co-investment funding from the AQBD Fund. The Integrity Commissioner stated the information initially provided was insufficient for her to provide advice and sent an email to Barbagallo on 1 March 2018 requesting further information. The Integrity Commissioner closed the file on 23 July 2018 due to Barbagallo not providing the information requested.

209. The Integrity Commissioner stated:

[Barbagallo] did not seek advice on this matter under the *Integrity Act 2009* until his letter of 28 February 2018. And, although he requested advice, I was not able to provide advice on this issue as I was not provided with sufficient information on which to base an advice.

210. The Integrity Commissioner advised that under the Integrity Act, she was unable to provide oral advice to anyone unless they were a Member of Parliament and it was their interest issue on which they were seeking advice. For others, advice can only be provided by the Integrity Commissioner in writing after a formal written request is received – "*any oral discussion should not be conceivably viewed as being 'advice'*".¹³⁹ The Integrity Commissioner told the CCC that she has generally found that most persons she has had dealings with are fully aware of the process to follow, including that a written request is required, and that she may request further information.

The Premier's understanding of Barbagallo's interaction with the Integrity Commissioner

211. The Premier told the CCC that Barbagallo assured her that he had obtained advice from the Integrity Commissioner in relation to his interests and any potential conflicts of interest that may arise:

...he said to me that he'd sought integrity advice every step of the way. So he had guaranteed to me that he had all that integrity advice.¹⁴⁰

...my understanding is the onus is on the individual to get that advice, just like the onus is on me to get my integrity advice.¹⁴¹

...he told me he sought advice every step of the way and that's what I stated to the Parliament.¹⁴²

The Director-General's understanding of Barbagallo's interaction with the Integrity Commissioner

212. The Director-General told the CCC:

I was not aware of any discussion he [Barbagallo] had [with the Integrity Commissioner] other than that very generic statement he said right at some stage and I think it was really at the beginning of the term that you know "my companies have involvement and I've got Integrity Commissioner advice", but I saw no Integrity Commissioner advice.¹⁴³

139 Email to the CCC from the Integrity Commissioner dated 15 September 2020.

140 Transcript of interview with the Premier, page 22, lines 956-958.

141 Transcript of interview with the Premier, page 23, lines 1031-1038.

142 Transcript of interview with the Premier, page 24, lines 1062-1063.

143 Transcript of s75 NTD interview with the Director-General, page 16, lines 677-702.



Lead-up to the 2018 Parliamentary Estimates hearing

213. One of the Questions on Notice asked by the Economics and Governance Committee to the then Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships in the lead-up to the 2018 Parliamentary Estimates hearing was:

With reference to page 29 of the SDS under the balance sheet, could the Treasurer
a) list the number of businesses that have benefitted directly from the Business Development Fund [AQBD Fund], b) how much funding each business has individually received, and c) how this funding has received oversight since being provided to each business?¹⁴⁴

214. As at 2 July 2018, the Business Development Fund [AQBD Fund] had made 30 investments totalling \$31.2 million in 27 different portfolio companies. Fortress Capstone was one of the companies noted as receiving co-investment funding of \$267,500.¹⁴⁵

215. Barbagallo was on leave during the 2018 Parliamentary Estimates hearing, however he became aware of the above Question on Notice after reading material prepared for Estimates.

216. On 22 July 2018, Barbagallo sent an email to the CEO requesting he set out a timeline of the AQBD Fund's investment in Fortress Capstone.

217. On 23 July 2018, the CEO responded:

Hi DB

I have attached the original application submitted and the slide deck that we used with our pitch to the fund.

Summary of key dates, etc:

1. Submitted our application seeking co-funding of \$535k – [co-investor] was the lead co-investor;
2. Presentation to the fund by [co-investor] and myself on Friday the 11th of August 2017;
3. Notified by the fund on the 16th of August 2017 that we were successful in our application for an amount of 50% of our original amount applied for - \$267,500;
4. Signed Term Sheet (signed by Fortress Capstone Investors) sent through to the QBDF on October 10th, 2017;
5. Final transaction documents all signed and sent through to QBDF [AQBD Fund] on 3rd of March, 2018;
6. 10th of March, 2018 – Notification received from QBDF [AQBD Fund] that the investment process was now complete and the funds were deposited into our Fortress Bank Account.

Let me know if you need anything else.

Regards

[CEO]¹⁴⁶

144 2018-19 Budget Estimates Volume of Additional Information, Reports No. 10 and 11, 56th Parliament Economics and Governance Committee, August 2018 – Question No.12.

145 2018-19 Budget Estimates Volume of Additional Information, Reports No. 10 and 11, 56th Parliament Economics and Governance Committee, August 2018 – Question No.12.

146 Email from the CEO of Fortress Capstone to David Barbagallo, dated 23 July 2018 at 9:52am.



218. On 24 July 2018, Barbagallo sent an email to the Director of Policy for the Department of the Premier and Cabinet in response to questions on notice in the lead-up to the 2018 Parliamentary Estimates hearing. The Director of Policy was acting Chief of Staff while Barbagallo was on leave. The email stated, in part:

[Name omitted], I was reading the material for Estimates and saw in an answer to a QON that the list of companies that had received funding was provided to the Opposition.

One of those is Fortress Capstone. It received approximately \$267,000.

I am the Chairman of that company. I had no involvement whatsoever in the application, interviews etc. The evaluation process is carried out by QIC.

I advised both the Premier and DG at the time of the application...last Year in early July it was. The company had begun the process of preparing for the application some months before I joined the Office. I also subsequently wrote an email to the Integrity Commissioner advising I had withdrawn from any involvement in the process to which she replied asking a series of clarifying questions. I did not respond to them because the CEO was overseas at the time and they were not particularly relevant to the issue.

I doubt any questions will be raised however best you have the knowledge of the connection...¹⁴⁷

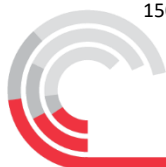
219. This is the first time Barbagallo declared he was the Chairman of Fortress Capstone.
220. The Director of Policy recalled Barbagallo gave him information that one of the companies he was involved in received AQBD funding and that Barbagallo stated he had made arrangements so that he was not part of the application process. The Director of Policy stated Barbagallo told him that *"everything was above board"*¹⁴⁸ and that *"he reassured me and I accepted that things had been done appropriately and the relevant people had been informed, including the Premier"*.¹⁴⁹ The Director of Policy was aware Barbagallo had business interests outside government and was a director of various companies, however he did not know anything about Fortress Capstone or any disclosures made in relation to Fortress Capstone at the time he received the information from Barbagallo in the lead-up to the 2018 Parliamentary Estimates hearing.
221. The Premier recalled Mr Barbagallo was overseas and was not at the 2018 Parliamentary Estimates hearing. The Director of Policy informed her as she was going into the 2018 Parliamentary Estimates hearing that *"There may be an issue raised about one of Mr Barbagallo's companies, it's all above board"*.¹⁵⁰
222. There was no issue raised about Fortress Capstone receiving co-investment funding from the AQBD Fund during the 2018 Parliamentary Estimates hearing.

147 Email from David Barbagallo to Director of Policy dated 24 July 2018 at 7:32am.

148 Interview with the Director of Policy.

149 Interview with the Director of Policy.

150 Transcript of interview with the Premier, page 8, lines 309-323, and page 11, lines 437-438.



Whether the decision to award co-investment funding to Fortress Capstone was the result of any improper influence

- 223. The investigation did not find any evidence that the decision by the AQBD Fund to award co-investment funding to Fortress Capstone was the result of any improper influence by Barbagallo or any other individual. In fact, the evidence is there was no improper influence.
- 224. There was no contact between Barbagallo and the QIC and/or AQBD Fund other than during the due diligence process when Barbagallo was required to complete documentation to progress the payment of funding.
- 225. The investment panel members who made the decision to award co-investment funding stated they had no contact with Barbagallo during the application process. Each of the panel members stated they were not influenced by the knowledge that Barbagallo was the Premier's Chief of Staff. They each considered the business concept behind CruiseTraka was innovative, and had a strong team of industry-based professionals who would drive the success of the company. The panel was familiar with the co-investor and was well aware of his previous success in co-investing in startup companies. This knowledge, and the knowledge that he had invested in Fortress Capstone, carried greater weight in making the decision to award co-investment funding to Fortress Capstone than their knowledge (or lack of knowledge on the part of some panel members) that Barbagallo was the Premier's Chief of Staff.
- 226. Whilst the reality is that there was no improper influence, the perception, given the potential influence Barbagallo had as the Premier's Chief of Staff, was quite the contrary. This is one of the reasons why conflicts of interest must be declared and managed appropriately.

Did Barbagallo misuse his position to gain a benefit or advantage for Fortress Capstone?

- 227. The CCC was told that matters relevant to increasing cruise tourism along the Queensland coast were topical during Barbagallo's employment as the Premier's Chief of Staff. In October 2017, the Queensland Government approved the construction of the new Brisbane International Cruise Terminal at Brisbane Port. The terminal is to accommodate the world's largest and most luxurious mega cruise ships. Construction on the terminal commenced in May 2018. The CCC was told that in 2018 the Premier had visited the terminal being constructed, in her capacity as Premier.
- 228. The CCC was also told that during Barbagallo's employment as Chief of Staff, the Premier engaged in official duties with representatives of the cruise ship industry. On one occasion, after Cyclone Debbie, the Premier and the CEO of Carnival Cruise Lines made a public announcement together at Airlie Beach that Queensland was open for tourism. Witnesses, including the Premier, told the CCC that Barbagallo had raised with them that he could not be involved in discussions when matters arose regarding cruise tourism. The actions of Barbagallo demonstrated his understanding and acknowledgement that he had a perceived or potential conflict of interest.



229. During the examination of evidence seized during the investigation, a series of text messages exchanged between Barbagallo and the CEO of Fortress Capstone were identified. The text messages clearly create the perception that Barbagallo intended to use his position as Chief of Staff to assist Fortress Capstone advance their agenda within the cruise ship industry, which would subsequently benefit Barbagallo's financial holdings in the company. The exchange began on 16 February 2018:

Barbagallo at 3:10pm: [CEO] is there **anything you want me to get the Premier to tell Royal Carribean** [sic] when she visits them next week in New York

CEO at 3:29pm: I'll put a few thoughts down and get back to you

and continued on 20 February 2018:

CEO at 5:18pm: I've attached a slide pack. Hope I'm not too late.

230. The Premier travelled to the United States of America (USA) as a part of a national trade delegation from 20 February to 1 March 2018. Barbagallo did not accompany the Premier on this official visit to the USA. A report¹⁵¹ on the official visit was tabled to the Queensland Parliament on 20 March 2018.

231. On 23 February 2018, the Premier was in Washington DC and attended a "*Meeting with the Prime Minister and US CEOs*", followed by a "*Joint Australian-US Forum*" and a "*Reception on the occasion of the 2018 National Governors Association Meeting*". One of the members of the US CEO delegation was the President and CEO of Royal Caribbean International.

232. At the time Barbagallo and the CEO had this exchange, the QIC had settled various investment documents with Fortress Capstone and were undertaking due diligence on the Directors. The payment of \$267,890 to Fortress Capstone took place on 8 March 2018.

233. A similar exchange of text messages occurred on 6 August 2018:

Barbagallo at 8:46am: [CEO], I understand the CEO of Carnival is in town next week...Were you aware of this? db

CEO at 8:58am: No I wasn't – carnival Corp or Carnival Cruiselines? I feel like we have been close so many times with carnival but all roads lead us back to their internal app team who then squash it...still if we could crack them the upside is huge. What were you thinking? If I gave you a 4 page printed slide deck can you get it in front of him?

234. The above exchanges of text messages between Barbagallo and the CEO create a perception of there being a willingness, or at the very least, knowledge by Barbagallo that he was in a position to leverage an advantage for his private business interests.

235. The former Deputy Chief of Staff (Media) to the Premier who accompanied the Premier on the trade mission to the USA in February 2018 told the CCC that the Premier did not meet with any cruise industry representatives while on the overseas delegation.

151 Report to Parliament: Official Visit to the United States of America, 20 February-1 March 2018 – The Honourable Anastacia Palaszczuk MP Premier of Queensland and Minister for Trade – <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2018/5618T455.pdf> accessed on 31 August 2020.



236. The Premier told the CCC that the meeting, forum and reception referred to above were organised by the Australian Federal Government who determined the guest list and any seating arrangements. The events were hosted by the then Prime Minister of Australia, the Honourable Malcolm Turnbull and the then Australian Ambassador to the USA, Joe Hockey. The Premier recalled there were some arranged “short pull aside” meetings at the reception with certain attendees. The Premier did not recall having a meeting or a “short pull aside” meeting with the CEO of Royal Caribbean or anyone else from Royal Caribbean at the meeting, the forum or the reception or otherwise during the official visit to the USA. The Premier told the CCC that she does not have any recollection of Barbagallo giving her something in preparation for a meeting during the official visit with Royal Caribbean.¹⁵²

237. In relation to the text message exchange on 16 and 20 February 2018, Barbagallo told the CCC:

My recollection is that my query was in relation to the cruising industry generally, and the possible additional benefits for Queensland that could be achieved through active engagement with Royal Caribbean (as competition to Carnival) regarding the possibility of their establishing a cruising base in Queensland. I was seeking general information of the type that might be appropriately exchanged with an international business prospect (for the State) during a trade mission of this sort. I did not intend or expect to receive any information relevant to CruiseTraka specifically. I think that [CEO] misunderstood my message.¹⁵³

238. Barbagallo explained that he received a slide pack from the CEO which “*was an outline of a proposed joint venture between CruiseTraka and Royal Caribbean. I had no involvement in the creation of that content*”.¹⁵⁴ Barbagallo stated “*...I note the slides refer to “next steps” as including trying to get a message with key Royal Caribbean decision makers in Miami. I took no steps to arrange or facilitate any such meeting*”.¹⁵⁵

239. Barbagallo stated he did not give the slide pack to the Premier or any person connected to the Premier, “*I assessed that the slide pack was not the type of material that could appropriately be given by me to the Premier, or anyone connected to the Premier*”.¹⁵⁶

240. The CEO of Fortress Capstone confirmed he emailed a slide deck to Barbagallo on 20 February 2018. The slide deck was an introduction to CruiseTraka and a proposed joint venture strategy the CEO wished to discuss with Royal Caribbean Lines if he was able to arrange a meeting with the marketing team in Miami.¹⁵⁷ The CEO stated he did not have any expectations on giving the slide deck to Barbagallo:

I was hopeful that, at some later point, there may be a trade delegation promoting Queensland businesses associated with a trip by the Premier to the US. I hoped that, if such a trade delegation was planned, my business might be included in that delegation. The slide deck provided an overview of the opportunity I hoped to pursue with Royal Caribbean Lines.¹⁵⁸

152 Further information provided by the Premier dated 30 August 2020.

153 Further information provided by David Barbagallo pursuant to s.75 of the *Crime and Corruption Act 2001* dated 28 August 2020.

154 Further information provided by David Barbagallo pursuant to s.75 of the *Crime and Corruption Act 2001* dated 28 August 2020.

155 Further information provided by David Barbagallo pursuant to s.75 of the *Crime and Corruption Act 2001* dated 28 August 2020.

156 Further information provided by David Barbagallo pursuant to s.75 of the *Crime and Corruption Act 2001* dated 28 August 2020.

157 Email from the CEO of Fortress Capstone to the CCC dated 9 September 2020.

158 Email from the CEO of Fortress Capstone to the CCC dated 9 September 2020.

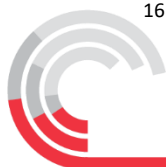


241. In relation to the text message exchange with the CEO on 6 August 2018, Barbagallo told the CCC that he was advising the CEO that the CEO of Carnival was in Brisbane, which was in the public domain at the time. Barbagallo stated, *"I have found no record of receiving anything from [CEO]"* and *"I took no steps to facilitate a meeting with, or provide information to, the CEO of Carnival"*.¹⁵⁹
242. The CEO confirmed that he did not provide a slide pack to Barbagallo on or after 6 August 2018.¹⁶⁰
243. The co-investor told the CCC that he had *"no knowledge"* whether Barbagallo in his role as Chief of Staff had any influence on the Premier in attracting the cruise industry towards Fortress Capstone, *"David never talked about his conversations with the Premier and I never asked"*.¹⁶¹
244. Notwithstanding the text messages referred to above, the CCC did not identify any evidence that Barbagallo misused his position to gain a benefit or advantage for Fortress Capstone or himself.
245. However, the content of the text messages is concerning. It is important for senior officials to comply with requirements relating to Declarations of Interests and conflicts of interest. Such compliance suggests a willingness to act with transparency and integrity. However, such willingness needs to extend to acting with transparency and integrity in all conduct. Senior officials need to be mindful that even subtle influence or minor involvement in matters can be improper where a conflict of interest exists. The exchanges should not have occurred.

159 Further information provided by David Barbagallo pursuant to s.75 of the *Crime and Corruption Act 2001* dated 28 August 2020.

160 Email from the CEO of Fortress Capstone to the CCC dated 9 September 2020.

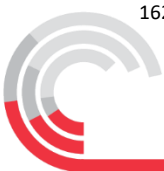
161 Transcript of interview with the co-investor, page 72, lines 3350-3357.



Chapter 4 – Conclusion

246. The investigation examined allegations that David Barbagallo, when Chief of Staff to the Premier of Queensland, engaged in corrupt conduct. It was alleged Barbagallo misused his position as Chief of Staff to obtain \$267,500 funding from the AQBD Fund through Fortress Capstone, a company in which he was a shareholder and director.
247. The investigation examined:
- Barbagallo's role in Fortress Capstone
 - Barbagallo's role and involvement in the application for funding made by Fortress Capstone to the QIC under the AQBD Fund
 - Whether Barbagallo's role and involvement in the awarding of co-investment funding to Fortress Capstone was properly disclosed
 - The accuracy of information provided by Barbagallo in response to concerns raised regarding his involvement in the awarding of the funding to Fortress Capstone
 - Whether the decision to award co-investment funding to Fortress Capstone was the result of any improper influence, and
 - Whether Barbagallo misused his position to gain a benefit or advantage for Fortress Capstone.
248. Barbagallo, in his role as director and chairman of Fortress Capstone, supported the company's decision to apply for co-investment funding through the AQBD Fund but had no involvement in the application or investment pitch to the AQBD Fund. Barbagallo had no knowledge that the presentation to the AQBD Fund included his position as Chief of Staff to the Premier. The CEO of Fortress Capstone and the co-investor made the decision to disclose Barbagallo's employment information to the AQBD Fund as a means of being transparent and not as a means of influencing the panel. According to the panel members, the fact that Barbagallo was the Premier's Chief of Staff did not influence their decision to approve co-investment funding.
249. In his private role, Barbagallo had no contact with the QIC or the AQBD Fund regarding the application and awarding of co-investment funding to Fortress Capstone, other than to complete due diligence paperwork to finalise the vetting process.
250. Barbagallo maintains that he verbally told the Premier and the Director-General about his role in Fortress Capstone, and about Fortress Capstone's application for and awarding of co-investment funding from the AQBD Fund. The state of the evidence is such that the CCC was unable to determine whether the Premier and the Director-General were aware of this information being provided by Barbagallo or through other means.
251. The Premier informed the committee during the 2019 Estimates hearing that Barbagallo "*did get Integrity Commissioner advice*".¹⁶² Barbagallo maintains that he sought the advice of the Integrity Commissioner regarding his business interests and other matters. The Integrity Commissioner is prohibited under the Integrity Act from giving verbal advice to persons other than Ministers. The meeting between the Integrity Commissioner and Barbagallo on 20 July 2017 was an introductory meeting. No advice was provided during this meeting. The only record of Barbagallo seeking advice from the Integrity Commissioner is a letter dated 28 February 2018. Barbagallo did not follow through in obtaining advice from the Integrity Commissioner. Barbagallo did not "*get Integrity Commissioner advice*" as stated by the Premier.

¹⁶² Transcript of the Economics and Governance Committee, Parliamentary Estimates hearing on 23 July 2019, page 28.



252. The investigation did not find any evidence that the decision to award co-investment funding to Fortress Capstone was the result of any improper influence.
253. The investigation found that there was no evidence Barbagallo misused his position as Chief of Staff to obtain funding from the AQBD Fund through Fortress Capstone. There are no grounds for consideration of prosecution proceedings against Barbagallo for the offence of misconduct in relation to public office, contrary to s.92A(1)(c) of the *Criminal Code*.
254. The investigation did find Barbagallo failed to fully and accurately declare his non-pecuniary interests throughout his employment as Chief of Staff. Despite Barbagallo submitting four Declaration of Interests forms to the Premier, he failed to declare:
- His directorship and chairmanship of Fortress Capstone, and
 - As shareholder and director of Fortress Capstone, the awarding of co-investment funding to Fortress Capstone.
255. Barbagallo asserts that any omissions in his Declaration of Interests forms were nothing more than innocent oversights on his part. Despite this, the Declaration of Interests form clearly sets out the interests to be declared and provides a section to include additional information if the interest does not fall within specified categories. If uncertain about what interests to declare and when, Barbagallo should have sought advice, which he did not.
256. The CCC considers Barbagallo's failure to declare his interests to the Premier breached the following legislative and policy documents, and would have provided grounds for consideration of disciplinary action, if he had not resigned from his position:
- the *Ministerial and Other Office Holder Staff Act 2010* (the Ministerial Act)
 - the Declaration of Interests Directive (2014/01)
 - the Code of Conduct – Ministerial Staff Members, and
 - the Queensland Ministerial Handbook.
257. Barbagallo is no longer employed as the Premier's Chief of Staff, having ceased his employment on 15 October 2019. The employment contract has ended and there is no provision in the contract, or under the Ministerial Act, that is available to the Director-General to consider post-separation disciplinary action against Barbagallo for his failure to declare his interests as required.
258. While the investigation did not identify evidence that Barbagallo misused his position as Chief of Staff to obtain funding from the AQBD Fund through Fortress Capstone, it does highlight the importance of avoiding conflicts of interest wherever possible, and properly declaring and managing conflicts of interest. Conflicts of interest can, if not identified, disclosed and managed appropriately, cause public officials to put their private interests above the public interest (or create a perception that this has been done), contrary to what the Queensland public expects.



Chapter 5 – Recommendations

Management of Declaration of Interests

259. Ministerial staff members are responsible for fully disclosing their pecuniary and non-pecuniary interests as well as the pecuniary and non-pecuniary interests of their partner and/or dependents.¹⁶³
260. The usual process for ministerial staff submitting Declaration of Interests forms involves the Executive Manager, Office of the Premier and Minister for Trade submitting the completed forms in an envelope to the Chief of Staff, who reviews them and then submits them to the Premier for her review. The documents are then returned to the Executive Manager to file securely in the Premier's office.
261. The process for Barbagallo, as the Chief of Staff, was different. He would submit his completed Declaration of Interests forms directly to the Premier for review, and they were then given to the Executive Manager to file securely in the Premier's office.
262. The Executive Manager told the CCC that he does not look at the Declaration of Interests forms submitted for review by the Premier to confirm they have been signed and dated by the Premier, as they are confidential.
263. The Declaration of Interests forms that Barbagallo stated he submitted to the Premier have not been signed or dated by the Premier. This is despite the Declaration of Interests Directive (2014/01) stating "*Ministers shall sign and date all Declaration of Interests upon lodgement*".¹⁶⁴
264. The fact that none of Barbagallo's Declaration of Interests forms have been signed and dated by the Premier does not establish that Barbagallo did not submit these documents for her review, or that the Premier did not review these documents. As the Premier stated during the 2019 Parliamentary Estimates hearing and later told the CCC, she confirmed sighting Barbagallo's Declaration of Interests forms.¹⁶⁵ There is no evidence to prove otherwise.
265. Barbagallo was required to amend his Declaration of Interests forms when there was a "significant change". There is no direction or guidance to ministerial staff members provided in the policy documents as to what is meant by the term "significant change".

Recommendation 1:

- a. That the Declaration of Interests form be amended to include a signatory section to record an acknowledgement that the form has been sighted and read by the staff member's supervisor.
- b. That an appropriately delegated person be appointed to review all Declaration of Interests forms and ensure they are signed before being safely filed.
- c. That the Ministerial Handbook and Declarations Directive (2014/01) and any other policy documents making reference to the term "significant change" be amended to clarify what type of changes to a ministerial staff member's circumstances would be considered "significant".

163 Ministerial and Other Office Holder Staff Act 2010, s.24; Declaration of Interests Directive (2014/01), p.1.

164 Declaration of Interests Directive (2014/01), p.2.

165 Transcript of interview with the Premier, p.6, line 209-p.8, line 291.



Management of conflicts of interest

266. Conflicts of interest pose a significant corruption risk in the public sector, particularly when conflicts of interest are not properly identified, documented, managed and monitored.
267. A conflict of interest, whether potential¹⁶⁶, perceived¹⁶⁷, or actual¹⁶⁸ occurs when an employee's private interests interfere, or appear to interfere, with their duty to put the public interest first.¹⁶⁹ The risks of having a conflict will increase where an employee's role includes the authority to make decisions.¹⁷⁰

Ministerial staff members

268. In the role of Chief of Staff, Barbagallo was responsible for providing advice to the Premier to aid in decision-making. Pursuant to s.25 of the Ministerial Act, Barbagallo was required to *"disclose any interests, including the nature of the interest, that conflicted or may conflict with the discharge of his responsibilities"*,¹⁷¹ and *"must not take any action concerning a matter that may be affected by the conflict unless authorised by the Premier"*.¹⁷² The Ministerial handbook reinforces the obligations of staff members under the Ministerial Act. It states staff employed in ministerial offices must ensure their private interests do not conflict with the discharge of their official duties. Any occurrence of this may result in immediate termination of employment.
269. In the role of Chief of Staff, Barbagallo had visibility of matters relating to tourism and to the cruise ship tourism industry. The CCC was told that in 2018 the Premier had visited the second cruise ship terminal being constructed by the Port of Brisbane to accommodate large cruise ship vessels. Barbagallo did not attend with the Premier during these visits.
270. The responsibility for recognising a conflict of interest rested solely with Barbagallo.¹⁷³ Once a conflict of interest was recognised, the circumstances of the conflict of interest should have been disclosed to the Minister¹⁷⁴ — in this case, to the Premier.
271. Barbagallo recognised that his private interests in Fortress Capstone and the CruiseTraka mobile device application could interfere or appear to interfere with his performing his duties to the Premier. This recognition was raised during a Fortress Capstone Board Meeting on 18 July 2017 when Barbagallo stated he could not assist or be a party to the application for co-investment funding to the AQBD Fund because of his role as the Premier's Chief of Staff.
272. The CCC identified that Barbagallo's recognition did not extend to him advising the Premier formally or informally that he had an actual or potential conflict of interest. Further, no conflict of interest was formally recorded.

166 If you are employed in a role where your future decision making may be influenced by your private interest, you have a potential conflict of interest: <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Prevention-in-Focus-Conflicts-of-interest-2018.pdf>, p.2.

167 A perceived conflict arises where it appears that decisions you make in the course of your employment may be influenced by your private interests, whether or not this is in fact the case: <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Prevention-in-Focus-Conflicts-of-interest-2018.pdf>, p.2.

168 An actual conflict of interest exists where your actions as a government employee, right now, could be influenced by your private interests: <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Prevention-in-Focus-Conflicts-of-interest-2018.pdf>, p.2.

169 <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Prevention-in-Focus-Conflicts-of-interest-2018.pdf>, p.1.

170 <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Prevention-in-Focus-Conflicts-of-interest-2018.pdf>, p.1.

171 *Ministerial and Other Office Holder Staff Act 2010*, s.25(1)(a).

172 *Ministerial and Other Office Holder Staff Act 2010*, s.25(1)(b).

173 Declaration of Interests Directive (2014/01), p.1.

174 Declaration of Interests Directive (2014/01), p.2.



273. The Premier's knowledge of Barbagallo's conflict of interest extended to him telling her during a conversation that he could not talk to her about cruise ships. According to the Premier:

...there was one time, that [Barbagallo] said there was something on TV about cruise ships, and we were in the office talking about cruise ships and he said "stop right there, I can't talk to you about cruise ships. One of my overseas companies has something to do with cruise ships"...he was very adamant he couldn't talk to me about cruise ships...he said "I've got advice I can't talk to you about cruise ships, I can't have anything to do with cruise ships"...and to my knowledge he stuck to that.¹⁷⁵

274. While the Premier recalled Barbagallo raising he had a potential conflict of interest surrounding the cruise ship industry, the Premier thought she would have taken notes if Barbagallo "*sat down and told us this stuff at length and I don't recall that happening*".¹⁷⁶ The Premier had no records noting Barbagallo advising her of his potential conflict of interest surrounding the cruise ship industry.
275. The Acting Director-General recalled an occasion in April 2019 when Barbagallo declined to accompany the Premier to attend an event in relation to the new International Cruise Terminal at the Port of Brisbane, as he was conflicted due to his interests in relation to the CruiseTraka application. The Acting Director-General stated Barbagallo informed her that the Premier was aware of his potential conflict of interest.
276. The CCC identified there was no formal record of Barbagallo raising his potential conflict of interest surrounding the cruise ship industry. Even if Barbagallo wished to declare this conflict of interest, no form existed for ministerial staff members to declare conflicts of interest. Having said that, the absence of a specific form should not have been an impediment to a senior official properly declaring a conflict of interest.
277. The Chief of Staff is a position of considerable influence and must be seen to know and adhere to the same obligations as other ministerial staff. Ensuring all ministerial staff members undertake training on their obligations will create a workplace culture that encourages and supports the identification and declaration of conflicts of interest by all staff in accordance with legislative and policy requirements.

175 Transcript of interview with the Premier, page 13, lines 523-544.

176 Transcript of interview with the Premier, page 18, lines 770-786.



Recommendation 2:

- a. That a standing agenda item be implemented during meetings where declarations of conflicts of interest are sought and recorded.
- b. That a standardised conflict of interest form be implemented for use by ministerial staff members to record actual, potential and perceived conflicts of interest. This form should also record any plan implemented to manage the conflict of interest.
- c. That a conflict of interest register be implemented to record a staff member's conflict of interest. The register should also document any management plans implemented to manage the conflict of interest.
- d. That in addition to staff induction and provision of onboarding training materials, ministerial staff members, including the Chief of Staff, undertake regular training on their obligations to fully declare their interests, conflicts of interest and the process undertaken to formally record and manage any conflict of interest identified.
- e. That consideration be given to ensuring that training for ministerial staff members on their obligations is mandatory and conducted on an annual basis.
- f. That a training register be implemented to record training completed by ministerial staff members.

278. The CCC identified the necessity for the implementation of more formalised processes for declaring conflicts of interest to be extended to the AQBD Fund investment panel members, and applicants seeking co-investment funding from the AQBD Fund.

AQBD Fund investment panel

279. The AQBD Fund Governance Framework sets out the roles, responsibilities, and governance standards for QIC Ltd (the Fund Administrator) and the AQBD Fund investment panel; and the investment process from application to exit.

280. Section 4.5 of the AQBD Fund Governance Framework (the Governance Framework) addresses the obligations on the AQBD Fund investment panel if a member has a conflict of interest that may have a bearing on their ability to properly and impartially undertake their role.

A Panel Member is excluded from the evaluation process for a given application when the Panel Member or a family member or associate:

1. Is the business founder, a board member, employee, existing investor, or co-investor or otherwise has a material interest, whether direct or indirect, in the business subject to the application;
2. Has a material interest in a competing business in the same industry or market; or
3. Has had a significant influence in the development of the business prior to the Fund application.

Members must advise QIC at the earliest opportunity, but no later than the shortlisting stage, if they are to be excluded from any further role in the evaluation process relating to the particular application due to a conflict of interest.¹⁷⁷

¹⁷⁷ Advance Queensland Business Development Fund Governance Framework, section 4.5, p.10.



281. The Governance Framework does not define the terms “material interest” or “conflict of interest”.
282. The CCC identified that some of the AQBD Fund investment panel members knew of or had a business association or relationship with Barbagallo and the other three directors of Fortress Capstone, one of whom was also the co-investor to the application for co-investment funding.
283. The co-investor was well known by the AQBD Fund due to the number of previous applications he had been involved in as a co-investor, prior to the submission of Fortress Capstone’s application.
284. One investment panel member confirmed meeting with the CEO of Fortress Capstone in May 2017. The meeting was requested by the CEO with the purpose of requesting the investment panel member’s company to invest in Fortress Capstone. The investment panel member became aware at this time of Fortress Capstone’s intention to apply for co-investment funding through the AQBD Fund.
285. The same investment panel member confirmed that the co-investor to the Fortress Capstone application invested in her company, and that following a merger of companies, she and the co-investor are now directors of the merged company.
286. The CCC identified that none of the investment panel members declared a conflict of interest when assessing and approving Fortress Capstone’s application for co-investment funding. The CCC acknowledges that mere knowledge of a person may not be sufficient to ground an actual conflict of interest, but may give rise to a perceived conflict of interest.
287. The investment panel member who met with the CEO of Fortress Capstone prior to the application being submitted and considered should have declared not only her business relationship with the co-investor of this application, but also information about this meeting, during the shortlisting of Fortress Capstone’s application to attend the investment pitch stage.
288. The CCC identified that in the case of a conflict of interest being declared by a panel member, there is no standardised document available to be completed. The conflict is merely advised via email to the QIC during the shortlisting stage or at the commencement of the investment pitch which is then recorded in the meeting minutes.
289. As stated above, the AQBD Fund Governance Framework states that a panel member will be excluded from the evaluation process or investment pitch if they have a material interest (actual, potential, or perceived) that may have a bearing on their ability to properly and impartially undertake their role as a panel member.¹⁷⁸ The panel members told the CCC that this generally involves the panel member recusing themselves from the room while the evaluation process is undertaken and not being involved in the decision process when considering whether to approve co-investment funding. The CCC identified that there is no register recording a declared conflict of interest or management of the conflict during the application process.

¹⁷⁸ Advance Queensland Business Development Fund Governance Framework, section 4.5, p.10.



Applicants to the AQBD Fund

290. As noted above, the CEO of Fortress Capstone had a prior professional relationship with one of the investment panel members who considered Fortress Capstone's application for co-investment funding. The CEO and the investment panel member also met not only to discuss whether the panel member's venture company would invest in Fortress Capstone, but also discussed Fortress Capstone's anticipated application to the AQBD Fund.
291. The CEO acknowledged that he did not consider whether, in the circumstances described above, he should have declared a conflict of interest to the AQBD Fund investment panel during the evaluation process or investment pitch.
292. The co-investor told the CCC that at the time of Fortress Capstone's application, he was an investor in two funds managed by a venture company of one of the AQBD Fund panel members. Subsequent to Fortress Capstone's application, the co-investor entered into a number of investments where two different AQBD Fund panel members were also investors.
293. The CCC considers the importance of the AQBD Fund panel members declaring conflicts of interest when considering applications equally applies to applicants to the AQBD Fund. Implementing a process where applicants are also required to declare a conflict of interest will contribute to preserving the integrity of decisions made by the AQBD Fund panel members.

Recommendation 3:

- a. That the QIC develop a standardised document to record actual, potential, or perceived conflicts of interest raised by a panel member and/or an applicant during the application process. Panel members who do not have conflicts should also be required to record this.
- b. That a standing agenda item be implemented during the investment pitch stage where declarations of conflicts of interest are sought from the applicants and the AQBD Fund panel members and formally recorded in the minutes.
- c. That the QIC establish a register to record conflicts of interest raised by panel members and/or applicants. The register should document any management plans implemented to manage the conflict of interest.
- d. That the Governance Framework be amended to contain definitions and/or case studies to assist informing panel members of the meaning of the terms "material interests" and "conflicts of interest".



Strengthened recordkeeping practices

294. Accountability for decisions lies with the decision-maker. A decision-maker who fails to be accountable and transparent in their decision-making will erode the integrity of the process for which the decision was made. Therefore, effective recordkeeping not only strengthens transparency in decision-making but promotes good governance.
295. The QIC reviews an application for co-investment funding against key eligibility criteria outlined in the Governance Framework. All eligible applications are emailed to the members of the investment panel for consideration of shortlisting to proceed to the investment pitch stage. A panel member will advise the QIC via email, whether an application is approved to proceed to the investment pitch stage. The approval was observed to simply involve the panel member writing “Approved”.
296. The CCC identified the panel members did not record their reasons for shortlisting an application to proceed to the investment pitch stage. Other than the reference in the Governance Framework that the investment panel is to apply the *United Nations Principles of Responsible Investment* in making its investment decisions, the Governance Framework is silent on the criteria the investment panel should consider.
297. Some of the panel members stated the criteria they consider when shortlisting an application included:
- Alignment with industries that Queensland is building expertise in
 - Alignment with government priorities
 - Commercial viability – whether there is a market for the product or service
 - The presence of a reputable co-investor – whether they had invested in Queensland before and their capacity to oversee the company, and provide mentoring and support
 - The management team of the company – to ensure they have the relevant skills and experience to take the company forward, including financial performance
 - Financial return.
298. The CCC identified that the investment pitch presentation and the AQBD Fund’s investment panel deliberations are not digitally recorded. On occasions a panel member may make notes. However, the CCC identified that if a panel member made notes about an application at any stage of the application process, these notes were discarded at the conclusion of the deliberations stage where the panel members discussed approving or not approving the investment, and deciding on the offer terms.

Recommendation 4:

- a. That the QIC develop a standardised document for panel members to formally assess and record their reasons for whether an application is shortlisted to proceed to the investment pitch stage.
- b. That the panel members provide to the QIC any notes made regarding any assessment or decision about an application at the conclusion of the meeting held to decide an application for co-investment funding.
- c. That the QIC, as the entity responsible for providing administrative and secretariat support, retain any notes made by a panel member about an application in accordance with the requirements of the *Public Records Act 2002* (Qld) (PR Act).
- d. That the QIC, as the entity responsible for providing administrative and secretariat support, retain a digital recording of the investment pitch presentation and deliberations by panel members about an application in accordance with the requirements of the PR Act.



Disclosure of Integrity Commissioner advice

299. As a ministerial staff member who gave advice to the Premier, Barbagallo was able to request advice from the Integrity Commissioner.¹⁷⁹ The request for advice needed to be made in writing and all information relevant needed to be disclosed.¹⁸⁰ The Integrity Commissioner would have provided the advice in writing.¹⁸¹
300. Barbagallo maintains that he sought advice from the Integrity Commissioner. Seeking advice is distinct from actually receiving advice.
301. The CCC identified Barbagallo did not receive written advice from the Integrity Commissioner in relation to Fortress Capstone's application and awarding of co-investment funding from the AQBD Fund. Barbagallo sought advice from the Integrity Commissioner in February 2018 but failed to provide additional information requested by the Integrity Commissioner in order for her to provide him with informed advice. The CCC considers the information that the Premier provided to the committee during the 2019 Parliamentary Estimates hearing that Barbagallo "*did get Integrity Commissioner advice*"¹⁸² was not correct, due to her being provided with misleading information.
302. The question that arises is: If Barbagallo received written advice from the Integrity Commissioner, was he obligated to disclose that advice to the Premier, in his role as Chief of Staff?
303. The Integrity Act outlines when advice from the Integrity Commissioner or other relevant document¹⁸³ that relates to an ethics or integrity issue may be disclosed.
304. There is no obligation on a designated person under the Integrity Act to disclose advice from the Integrity Commissioner or other relevant document to their Minister.¹⁸⁴ While the Integrity Commissioner may strongly advise a designated person to disclose the advice to their Minister, it is at the designated person's discretion to do so or not.
305. There is, however, an obligation on the Integrity Commissioner to disclose advice if the Integrity Commissioner reasonably believes the designated person has an actual or perceived, and significant, ethics or integrity issue. The advice may also be disclosed if a request is made by the Premier.
306. The Premier did not request to be provided with any Integrity Commissioner advice Barbagallo stated he sought.

Recommendation 5:

- a. That consideration be given to amending the *Integrity Act 2009* to impose an obligation on a designated person to disclose any advice received from the Integrity Commissioner to the designated person's reporting supervisor to ensure any actual, potential or perceived conflicts of interest are appropriately managed and monitored. This should include all advice about whether a conflict of interest is identified or not.

179 *Integrity Act 2009*, s.12.

180 *Integrity Act 2009*, s.15.

181 *Integrity Act 2009*, s.21(2).

182 Transcript of Economics and Governance Committee, Estimates hearing on 23 July 2019, page 28.

183 *Integrity Act 2009*, s.25: "Relevant document" for an ethics or integrity issue, means each of the following documents – (a) the request under section 15 for advice on the ethics or integrity issue; (b) any information given to the integrity commissioner under section 15(4); (c) any further information requested by the integrity commissioner under section 15(5) and given to the integrity commissioner; (d) any written advice given by the integrity commissioner on the ethics or integrity issue; (e) any written reasons of the integrity commissioner for refusing to give the advice.

184 *Integrity Act 2009*, s.27.



Annexure 1: General submission on behalf of David Barbagallo

GENERAL SUBMISSIONS ON BEHALF OF DAVID BARBAGALLO

These general submissions are not to be taken as derogating from our principal submission (provided separately) that the Commission's report should not be made public. They should also be read in conjunction with our specific submissions on the report, also provided separately.

Introduction

We express serious concerns about the fairness and balance of the draft report in its current terms. In particular, we say that the draft report:

- betrays an unwillingness by the Commission to give due recognition and proper weight to the many matters which favour Mr Barbagallo;
- places undue weight on factors which are said to be against Mr Barbagallo's interests, and
- involves an obvious effort on the part of the Commission to find something (anything) against Mr Barbagallo, resulting in exaggerated and unfair conclusions against him.

A substantial reworking of the report is required.

The report identifies that the investigation did not find any evidence that:

- (a) the decision to award co-investment funding to Fortress Capstone was the result of any improper influence;¹
- (b) that Mr Barbagallo misused his position as Chief of Staff to obtain funding from the AQBD Fund through Fortress Capstone.²

Furthermore, it is noted that there are no grounds for consideration of prosecution proceedings against Mr Barbagallo for the offence of misconduct in relation to public office.³

Despite those findings, the report contains various findings against Mr Barbagallo with which we take issue, including:

- (a) That there is insufficient evidence to prove whether Mr Barbagallo's failure to make certain declarations was an intentional omission or an innocent oversight on his part⁴ and

¹ Paragraph 243 [paragraph 252 in published report]

² Paragraph 244 [paragraph 253 in published report]

³ Paragraph 244 [paragraph 253 in published report]

⁴ Paragraph 246 [paragraph 255 in published report]



- (b) Mr Barbagallo's failure to declare his interests would have provided sufficient grounds for consideration of termination of employment.⁵

We say both of those findings are unfair and unsustainable, for the reasons which follow. It is submitted that fair and balanced findings would in fact be as follows:

- (a) The evidence clearly points to a conclusion that Mr Barbagallo's failings in fully reporting his Fortress Capstone interests were a matter of oversight, and not deliberate;
- (b) Mr Barbagallo's failure to fully declare his interests may have amounted to a breach of his contract of employment, a matter that could have been considered had he still been employed.

Each of these issues are further explored below.

Failure to declare – oversight or deliberate?

What was declared?

In considering this issue, it is instructive to consider what exactly Mr Barbagallo did declare, and what he didn't.

The evidence establishes that Mr Barbagallo failed to declare his directorship of Fortress Capstone in his 2017 and 2018 Declarations of Interests. It can also be said that he didn't follow through with obtaining further advice from the Integrity Commissioner after writing to her in February 2018.

Beyond that, there is no cogent evidence about any other failings on his part. The highest the other evidence gets is that the Premier and the Director General have little memory of specific disclosures on his part. As will be discussed further below, those claims cannot be used to find the negative – that he didn't disclose matters. Their lack of memory and notes has to be weighed against all of the other evidence suggestive that Mr Barbagallo did make both oral and written disclosures of his interests in Fortress Capstone (or more relevantly, the business of Fortress Capstone) even if his written disclosures were incomplete.

That is it. That is the sum total of Mr Barbagallo's failings regarding his disclosures to government.⁶

⁵ Paragraph 248 [paragraph 256 in published report]

⁶ It might be said that the Board minutes of Fortress Capstone were also lacking, but that is quite separate to the issue of what was disclosed to government.



That can be contrasted with what he did actually do. Starting with Mr Barbagallo's own version, he has advised the Commission (and Ernst and Young before that), that:

- He had absolutely no involvement in Fortress Capstone's AQBD Fund application;⁷
- He did tell the Premier and the DG of his interest and potential conflict in relation to the cruising industry, for which reason he removed himself entirely from all matters of government business involving cruising and ports;⁸
- He did tell the Premier and the DG of Fortress Capstone's AQBD Fund application, and then obtaining AQBD funds;⁹
- He innocently overlooked noting his directorship of Fortress Capstone in two of his annual declarations, and
- He did not use his position as Chief of Staff for his personal benefit in any way.

It is crucial, although not noted in the Commission's draft report in these terms, that Mr Barbagallo's version is corroborated in almost every material particular by independent evidence gathered by the Commission during its investigation. The incontrovertible evidence gathered by the Commission is as follows:

- Mr Barbagallo declared, in every Disclosure of Interest form completed during his term as Chief of Staff, his *pecuniary* interest (i.e. his shareholding) in Fortress Capstone;
- Notes of his 20 July 2017 meeting with the Integrity Commissioner suggest he raised the name Cruise Traka (amongst others) with her;
- He told the Premier "*I can't talk to you about cruise ships*", a point about which (the Premier remembers) he was "adamant".¹⁰
- The Director-General recalls him mentioning his companies were involved in a particular grant or matter;¹¹
- The Acting Director-General recalls him declining to accompany the Premier to an event at the international cruise ship terminal due to a conflict of interest, specifically in relation to the Cruise Traka application.¹²
- His email to the Acting Chief of Staff [REDACTED] (and others) dated 24 July 2018 not only disclosed his involvement in the company (including his directorship and

⁷ See for example p61 of his interview of 19 August 2020.

⁸ See for example p77, and p93ff of his interview of 19 August 2020. We pause here to emphasise the over-caution displayed by this decision. Fortress Capstone was a company whose business was essentially located in the United States. It had almost no involvement or dealings in Queensland. Nonetheless, Mr Barbagallo stayed entirely clear of the cruise industry in his government role.

⁹ Surprisingly, this issue didn't achieve much prominence in his interview. See for example page 117. See also [REDACTED] memory at [180] of this draft report.

¹⁰ Paragraph 265 [paragraph 273 in published report]

¹¹ Paragraph 180. [paragraph 181 in published report]

¹² Paragraph 267. [paragraph 275 in published report]



chairmanship) but also the AQBD funding, noting that he had advised the Director-General and Premier of these matters previously.

- He formally wrote to the Integrity Commissioner, fully exposing the issue for her attention.¹³
- The CEO of Fortress Capstone has provided a statutory declaration, as well as evidence to the CCC¹⁴, attesting to the fact that Mr Barbagallo refused to have any involvement whatsoever in the company's AQBD Fund application.
- The Fortress Capstone co-investor told the CCC that Mr Barbagallo declined to even review the AQBD Fund application and the pitch, recalling that Mr Barbagallo “went to some pains to ensure that he wasn't involved in the AQBD Fund application”.¹⁵
- He point blank refused to assist his Fortress Capstone CEO in relation to a similar funding application to the Advance Queensland Ignite Ideas Fund.¹⁶

All that evidence is independent of Mr Barbagallo's recollection, and all of it absolutely corroborates his version, a fact not noted or seemingly considered in the Commission's draft report.

Disclosure of his interest in cruising industry

Although mentioned already, special attention should be paid to Mr Barbagallo's approach to the cruising industry. As discussed below, the draft report treats this evidence in an entirely unfair way.

At the relevant time, Fortress Capstone's only business was in relation to its *Cruise Traka* mobile application. It was essentially focussed on the American market.¹⁷ Even so, it is clear - consistent with Mr Barbagallo's evidence - that multiple witnesses reported to the Commission that Mr Barbagallo disclosed interests in the cruising industry and took proactive steps to remove himself from any aspect of Queensland Government business concerning such matters.¹⁸ Most curiously, the Premier's specific knowledge of that conflict of interest declaration and management by Mr Barbagallo only appears in the report as something of an after-thought – it turns up in the *Recommendations* section of the report. Why it is not given prominence earlier in the course of discussing and analysing the evidence is difficult to understand, and betrays, we say, the Commission's jaundiced approach to this entire matter.

¹³ Which he admittedly didn't follow up, a matter fully explained in his interview at p98ff.

¹⁴ CEO's interview of 11 June 2020 at pages 20, 49, and 59-60.

¹⁵ Paragraph 122. [paragraph 128 in published report]

¹⁶ See Mr Barbagallo's email exchange with the CEO on 10-11 July 2017.

¹⁷ See the CEO's interview, page 76, and Mr Barbagallo's interview at p16 and p80.

¹⁸ Paragraphs 265-266. [paragraphs 273-274 in published report]



Equally unfairly, the fact that Mr Barbagallo obviously made such disclosures is (incredibly) used *against* him, with the suggestion being only that it demonstrates Mr Barbagallo's "understanding and acknowledgement that he had a perceived or potential conflict of interest".¹⁹ No recognition or credit is given to Mr Barbagallo in the draft report for his obvious efforts to disclose and manage this perceived area of conflict. Perhaps the issue is that no-one recalls a specific detailed declaration in which the precise details of the potential conflict were laid out in full. That is hardly surprising in a busy office dealing with important and urgent issues every day. The practical effect of what people were advised however can bear no description other than a declaration of a potential conflict in a particular area. How else, and why else, would people have memories of Mr Barbagallo discussing his inability to engage with the cruise industry? The draft report simply does not acknowledge that.

Furthermore, it appears the Commission has not asked itself, as a matter of fairness, why would Mr Barbagallo disclose his interest in the cruising industry, in the manner he did, if there was any sinister intention on his part, or any intention to hide or obscure his involvement with this company.

True it is that his 2017 and 2018 Declarations of Interests do not disclose his *directorship* of Fortress Capstone, but that needs to be understood in the context of him disclosing, on the same form, his *shareholding* in that company. One would think, in considering any conflict of interest, that one's pecuniary interest (i.e. shareholding) would be more important than a directorship. In any event, it seems that the Commission seeks to draw an important corruption risk distinction between him declaring his shareholding but failing to declare his directorship on the same form.

To dispel any lingering doubt that his non-declaration of directorships was an innocent oversight, it is relevant that all of his Declaration of Interests forms declared director's fees under "*Other substantial sources of income*", despite him not declaring any directorships.

It is in the face of all this evidence that the Commission seriously suggests that it is not possible to determine if Mr Barbagallo's disclosure failings were innocent or deliberate. These matters are not the hallmarks of someone embarking on a sinister campaign to hide his directorship of a cruising company which might then benefit from his patronage within government.

¹⁹ Paragraph 221 [paragraph 228 in published report]



Conflict management obligations

Consideration should also be given to the actual obligations upon Mr Barbagallo in relation to any conflicts (real or perceived) that he may have had. All of the guidance and advice available to him was that any such matters had to be: a) disclosed, and then b) managed appropriately.

We have discussed above the wealth of evidence suggesting that although Mr Barbagallo did not disclose his directorship of Fortress Capstone, he did:

- disclose his shareholding;
- advise the Premier and others of his conflict in respect of the cruise industry;
- remove himself from all government business regarding the cruise industry, and
- have no involvement in Fortress Capstone's AQBD Fund application.

That shows that Mr Barbagallo disclosed and managed the perceived conflict of interest, as he was required to, in practical and effective terms.

The draft report doesn't recognise this, however. There is a disconnect in the report which notes the objective evidence that Mr Barbagallo told the Premier and others of his interest in the cruising industry, but does not recognise that this amounted to a legitimate disclosure of his potential area of conflict of interest in this regard.

This brings us to the distinction between practical (and effective) conflict management on the one hand, and formal or technical management on the other. Again, this point is not recognised properly in the Commission's report. Some passages of the report²⁰ seem to be critical of Mr Barbagallo for not disclosing to others the specific name of the company involved (Fortress Capstone) or the mobile application it had developed (Cruise Traka). That is reported as if that would have been a meaningful disclosure.²¹ That is a nonsense – Fortress Capstone was a shelf company whose name would have meant nothing to anyone outside the company itself. The name of the company's app would also have meant nothing to anyone.

The real issue from a corruption perspective is that the true *subject matter* of the conflict was disclosed and managed, and that is precisely what Mr Barbagallo did. He advised the Premier and others of his interest in the cruise industry, and then purposefully removed himself entirely from any decisions or conduct involving that industry. From a corruption risk management perspective, it matters not whether Mr Barbagallo stood on a soap box and formally announced: *"I am the director and chairman of a company called Fortress Capstone, and we*

²⁰ Such as paragraph 169, and 180. [paragraphs 170 and 181 in published report]

²¹ It is noted though that the Acting Director-General does in fact recall the name Cruise Traka being disclosed to her – paragraph 267. [paragraph 275 in published report]



have an app called Cruise Traka". That would have been meaningless. The true risk management process needed was to advise them that he had business interests in respect of a particular industry, and to then take practical and overt steps to avoid any involvement in decision-making or government process concerning that industry. That is precisely what he did, and precisely what the CCC does not recognise in its draft report.

The Commission might respond by again pointing to the incomplete Declaration of Interests forms. In this regard, we suggest, there is an air of unreality in the Commission's attitude. Mr Barbagallo has candidly recognised his oversight in not declaring his directorship of Fortress Capstone, although declaring his shareholding (as well as his receipt of director's fees as a source of other income). The evidence suggests that the practice within the Premier's office, upon completion of the relevant forms, was that they were given to the Premier (who didn't sign them as required) and then they were then simply filed, (probably) not to be looked at again. Nonetheless the report seems to suggest²² some magical quality would have pertained to a declaration by Mr Barbagallo of his directorship in the company, not just his shareholding, as if that was somehow essential to the suppression of any corruption risk here.

Conclusion

The simple question (which the Commission has seemingly not asked itself, or addressed) is would Mr Barbagallo have taken the steps he did, as outlined above, if there was any intention on his part to not declare his interest in Fortress Capstone? It is a nonsense to suggest that any such intention can be discerned from a simple failure to declare his directorship, in circumstances where he declared his shareholding, and told the Premier and others that he could have nothing to do with cruise ships, a matter he then adhered to. Combine those features with the evidence from the other end of the equation – the Fortress Capstone directors who uniformly assert he distanced himself entirely from the AQBD Fund application process, and there is no room for any doubt that the declaration failings were inadvertent.

The Commission's report should be amended to recognise that.

Possible grounds for termination?

The report concludes that Mr Barbagallo's failure to declare his interests would have provided sufficient grounds for consideration of termination of employment.²³

²² See for example paragraph 183. [\[paragraph 184 in published report\]](#)

²³ Paragraph 248 [\[paragraph 256 in published report\]](#)



The first thing to note is that this phrase does not reflect the legislative definition of corrupt conduct. A limb of that definition²⁴ requires conduct which, if proved, would provide reasonable grounds for termination of a person's services. Simply noting that his conduct would inspire *consideration* of termination demonstrates the lack of substantive evidence against Mr Barbagallo (and, as addressed elsewhere, the unfairness of publicly reporting these matters).

In any event, it is suggested that in the circumstances as outlined above, it could not fairly be said that Mr Barbagallo's mistake in completing his Declaration of Interest forms would provide reasonable grounds for termination. It is not the law that any breach of contract, however innocent or trifling, provides grounds for termination. Any such termination decision would have to be based on *reasonable* grounds. A consideration of this issue would have to conclude that it was an innocent mistake, especially where he declared his shareholding in the company in question, as well as the payment of directorship fees.

Pursuant to the Queensland Ministerial Handbook, the prospect of employment being terminated by the Director-General arises in the context of someone who *knowingly* provides false or misleading information to the Minister. As the evidence presents here, there is no reasonable basis to assume that could ever be proved in this case. It was clearly an oversight.

With respect, a suggestion that this type of failure would give reasonable grounds for the termination of employment is untenable. To suggest otherwise raises the spectre of the Commission seeking to 'salvage' something from this investigation, in circumstances where the evidence was overwhelmingly in favour of a conclusion that Mr Barbagallo has acted honestly and ethically, even if making some errors in his handling of this matter.

The draft report should be amended to remove the suggestion of his conduct providing grounds for the consideration of termination of his contract.

Other matters

Pecuniary v non-pecuniary interests

There is another aspect of the report with which we take issue. It is repeatedly noted that Mr Barbagallo failed to declare his pecuniary and non-pecuniary interests in Fortress Capstone.²⁵

²⁴ Section 15 CC Act 2001.

²⁵ See paragraphs 9, 149, 245, for example. [paragraphs 9 and 254 in published report] [paragraph 149 deleted prior to publication]



It is acknowledged of course that he overlooked declaring his directorship of that company. He did though declare his shareholding, which is his pecuniary interest in the company.

If the reference to his failure to declare pecuniary interests in Fortress Capstone is a reference to his very modest director's fees that he earned each year, then that overlooks the fact that he did declare director's fees under "Other substantial sources of income" within his Declarations of Interest.

The report should only refer to Mr Barbagallo's oversight in not fully declaring his *non-pecuniary* interests.

Other behaviour of credit

There are other aspects of his behaviour for which Mr Barbagallo has been given no proper credit, and which, when assessed fairly, would assist in reaching a conclusion that his overall behaviour in the role of Chief of Staff was entirely ethical, and that his omission in declaring his directorships was no more than an innocent oversight.

His handling of the request for assistance in respect of an application for Ignite funding has been noted already.

The Commission also knows that he did not pass on to the Premier information from Fortress Capstone's CEO which the CEO hoped might be given to a leading cruise industry representative.²⁶

Positive regard should also be had to his extra-cautious decision to avoid any government business associated with Disney Films, simply because of that company's perceived association with Disney Cruises – a matter he also told the Premier about.²⁷

Another example is that he initiated training for all ministerial staff regarding obligations and responsibilities of disclosure.²⁸ The fact that no such training was in place before his commencement in the role is somewhat striking in itself, but no credit or allowance is given to Mr Barbagallo for his initiative in facilitating such training. This is another of those matters that go to his credit when considering whether any failure of declaration was deliberate or innocent.

²⁶ Paragraph 229. [paragraph 236 in published report]

²⁷ See Mr Barbagallo's interview at p90.

²⁸ See Mr Barbagallo's interview at p78.



A fair conclusion

We have set out above the areas where the draft report is unbalanced and/or unfair. Other issues are addressed in our specific submissions dealing with individual paragraphs of the draft report.

In light of the matters raised above, we submit that any fair report would include a prominent concluding paragraph which clearly notes the Commission's findings as follows:

- Mr Barbagallo did not misuse his position as Chief of Staff to obtain funding from the AQBD Fund through Fortress Capstone;
- There is no evidence that Fortress Capstone's AQBD funding application or investment pitch presentation was provided to Barbagallo;
- There is no evidence Barbagallo had any contact or communication with any of the investment panel members at any relevant time;
- The decision to award co-investment funding to Fortress Capstone was not the result of any improper influence;
- Mr Barbagallo *orally* declared his interests in the business of Fortress Capstone to the Premier and others;
- Mr Barbagallo absented himself from all aspects of government business concerning Fortress Capstone's area of business (cruising);
- That at all times he properly declared his *shareholding* in Fortress Capstone, but by way of oversight, failed to declare his *directorship* of that company;
- There is no basis to suggest any criminal offending on the part of Mr Barbagallo;
- Although two of his Register of Interests were not accurately completed, there is no basis to suggest that the conduct in question would be reasonably regarded as sufficient to justify the termination of his employment if he was still so employed.





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