

The Commissioner of Police for the State of South Australia v Beau Amodeo [2023]
SALC 50

LICENSING COURT OF SOUTH AUSTRALIA

THE COMMISSIONER OF POLICE FOR THE STATE OF SOUTH
AUSTRALIA

v

AMODEO, Beau

JURISDICTION: Application for Review of or an Appeal from a
Decision of the Commissioner

CASE NO/S: LC-22-00079

HEARING DATE: 23 February 2023
Written submissions dated 4 May 2023, 9 May
2023 and 16 June 2023

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 21 June 2023

The Commissioner of Police for the State of South Australia v Daniel Fontana
[2023] SALC 30
Benjamin Aspey [2022] SALC 82
Hughes and Vale Pty Ltd & Anor v The State of New South Wales & Ors
(No. 2) (1955) 93 CLR 127
Australian Broadcasting Tribunal v Bond & Ors (1990) 170 CLR 321
Sobey v Commercial and Private Agents Board (1979) 22 SASR 70
Midwinter v Commissioner for Consumer Affairs [2006] SADC 93
Adeels Palace Pty Ltd v Moubarak and Najem [2009] HCA 48
Paul Roper [2013] SALC 34
Ex parte Tziniolis; Re Medical Practitioners Act (1966) 67 SR (NSW) 448
Liquorland McLaren Vale (No 2) [2022] SALC 53
Executive Director of Health v Lily Creek International Pty Ltd [2000]
WASCA 258; (2000) 22 WAR 510

REPRESENTATION:

Counsel:

Applicant: Acting Sergeant M Osterstock

Respondent: Mr T Mellor

Intervenor: Ms C Harrison

Solicitors:

Applicant: Commissioner of Police

Respondent: Mellor Olsson

Intervenor: Crown Solicitor's Office

- 1 This is an application for review made by the Commissioner for Police (the Police Commissioner) in connection with a decision by a delegate of the Liquor and Gambling Commissioner (the delegate) to grant the respondent, Beau Amodeo, approval as a responsible person for the purposes of the *Liquor Licensing Act 1997*. The Police Commissioner contends that the approval should not have been granted and that this Court should make an order rejecting Mr Amodeo’s application for approval.
- 2 Underpinning the Police Commissioner’s concern is Mr Amodeo’s conviction in February 2014 of the charge of making a child amenable to sexual activity.
- 3 Pursuant to s 97(1) of the Act a business conducted under a liquor licence must, whilst open to the public, be personally supervised and managed by a responsible person. That person can be either a director of the licensee or a person approved as a responsible person. As was observed by this Court in *The Commissioner of Police for the State of South Australia v Daniel Fontana*:¹

It is an important position. The person is “responsible” for the business and is obliged to ensure that it is properly supervised and managed.²

- 4 The combined effects of s 97 and 55 of the Act are such that to be approved as a responsible person, the person must be found to be a fit and proper person. Section 55(1) of the Act gives a licensing authority certain instructions regarding making that determination. It provides:

In deciding whether a person is a fit and proper person for a particular purpose under this Act, a licensing authority must take into consideration—

- (a) the reputation, honesty and integrity (including the creditworthiness) of the person; and
- (b) the reputation, honesty and integrity of people with whom the person associates; and
- ...
- (d) any other factor relevant to the particular purpose to which the decision relates, including any relevant offence of which the person has been convicted or found guilty. (Emphasis added mine)

¹ [2023] SALC 30.

² *Ibid* at [2].

- 5 In light of this it is necessary to canvass in some detail the circumstances regarding Mr Amodeo's offending.
- 6 The victim of Mr Amodeo's offending was a 12-year-old girl whom he met at a local sporting club in about March 2012. At the time Mr Amodeo was 24 years old, was in a relationship, and had a child. Mr Amodeo and the victim became friends on Facebook about a month after they met. Initially their communications were superficial but by August 2012 the victim began to broach more serious matters, and she started to feel very close to him.
- 7 In October 2012 Mr Amodeo's communications with the victim became sexual in nature. On one occasion he sent her a text message that said: "like is that ok to grab ur ass because ur young?". Shortly after this he wrote: "Wow 12 years old damn they start young now". Over this period his messages included statements like: "you would love my hands down ur pants", "what if I sucked ur neck or rubbing your inner thighs?", "Do you mean its ok if u say is for me to go down??... well u are going to be one horny girl if u don't know if u would say no or yes to me ha ha". During some further exchanges Mr Amodeo wrote: "check ur wet I know sounds weird but yea" and later "Guys get hard girls get wet".
- 8 When the matter was reported to the police shortly thereafter, Mr Amodeo was interviewed. He admitted the allegations but contended that he did not know it was wrong to communicate in this way because the victim was a willing participant. Mr Amodeo was charged with making a child amenable to sexual activity. Because the victim was under the age of 14 it was an aggravated offence with a maximum penalty of 12 years imprisonment.
- 9 As part of the sentencing process Mr Amodeo was interviewed by the psychologist, Mr Balfour. Mr Balfour expressed concerns that despite Mr Amodeo's paedophilic behaviour, he did not view himself as a paedophile and that he had limited insight into his behaviour. Another psychologist, Ms Burnett, treated Mr Amodeo. She thought that the therapy had progressed to the point that he began to understand his offending and that he needed to ensure that it did not happen again.
- 10 Having pleaded guilty to the offence Mr Amodeo was sentenced in February 2014. In her extensive sentencing remarks the sentencing judge noted that Mr Amodeo claimed that he was unaware that the victim was so young and that he thought that she was at least 17 or 19 and had said as much to different psychologists. She stated that she rejected this and had no doubt that he well knew that the victim was only 12 years old as evidenced by his text messages that referred to her being young and 12 years old. She noted that Mr Amodeo stated that he had been in a

relationship for over four years, that it was stable, and he had a child. She noted that he had no physical health issues and that his mental health issues were limited to his counselling following his arrest. The sentencing judge noted that this was a serious offence. She said that but for Mr Amodeo's early plea she would have sentenced him to four years imprisonment. Because of his early plea she reduced that penalty to two years and nine months and set a non-parole period of 18 months. She suspended the sentence upon him entering into a good behaviour bond for three years subject to conditions that included participation in therapy related to sexual offending.

The proceedings before the delegate

- 11 Upon the lodgement of Mr Amodeo's application for approval, the Police Commissioner filed a notice of intervention under s 28AA of the Act. Section 28AA(2)(a) expressly empowers the Police Commissioner to intervene in connection with the issue of a person's fitness and propriety for the purposes of the Act. As a result Mr Amodeo was invited by the delegate to make written submissions in support of his application. In his submissions he stated that the offending occurred at a time when he was suffering from depression and was undergoing a rough patch in his relationship. He stated that in conformity with a condition of his bond he had undergone a 12-week course at Owenia House, it being a special facility aimed at providing therapy to reduce the incidence of sexual assaults. He stated that he had been upfront about his offending, he made no excuses for his behaviour and understood its seriousness. He stated that he had been working in the hospitality industry for the previous seven years and in the period following his court appearance had taken opportunities to improve himself and to be a better person.
- 12 The delegate noted that the application was supported by Mr Amodeo's current managers who described him as professional, reliable and trustworthy.
- 13 The delegate considered that notwithstanding the seriousness of his offending, the period of ten years between the offending and the application for approval was a sufficient period of time for Mr Amodeo to demonstrate that he had turned his life around and she was satisfied that he was not the same person as he was.
- 14 The delegate concluded that Mr Amodeo was a fit and proper person and that the concerns expressed by the Police Commissioner could be allayed by granting the approval on an interim basis for two years. In reaching this conclusion the delegate appears to have taken some comfort from the decision of this Court in *Benjamin Aspey*.³ That case concerned an

³ [2022] SALC 82.

application to disqualify a person who had previously obtained approval under the Act. Underpinning the complaint was a finding of guilt of the charge of persistent sexual abuse. Having made an order for disqualification the Court granted the respondent liberty to apply. The delegate thought it of significance that this Court did not order permanent disqualification. I think it is reasonable to infer the delegate considered the case as reflecting the view that sexual offending involving a child does not necessarily warrant a conclusion that the offender could never later be regarded as fit and proper for the purposes of the Act.

Submissions on review

- 15 I received submissions from the Police Commissioner, the Liquor and Gambling Commissioner, and Mr Amodeo.
- 16 The Police Commissioner contended that the circumstances of Mr Amodeo's offending were so grave the only finding that could have been made was that he was not a fit and proper person.
- 17 The Liquor and Gambling Commissioner submitted by reference to various authorities⁴ that fitness and propriety is a broad concept encompassing a person's character, honesty, knowledge and ability to work in a specific occupation or trade and that decisions in relation to fitness and propriety require a value judgment about whether a person can be entrusted to work in a certain occupation. Reference was made to the observations of Walters J in *Sobey v Commercial and Private Agents Board (Sobey)* where he spoke of the person possessing the requisite knowledge of the duties and responsibilities involved and of being "possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further inquiry, as a person to be entrusted with the sort of work which the licence entails."⁵
- 18 The thrust of the Liquor and Gambling Commissioner's submissions was that fitness and propriety must not be judged at large but rather it should be judged with matters linked to the duties and responsibilities of a responsible person firmly in mind. Whilst the Liquor and Gambling Commissioner accepted that an applicant's antecedent history was highly relevant when assessing fitness and propriety, a criminal record does not necessarily preclude a person indefinitely, from obtaining approval under the Act.

⁴ *Hughes and Vale Pty Ltd & Anor v The State of New South Wales & Ors* (No. 2) (1955) 93 CLR 127, *Australian Broadcasting Tribunal v Bond & Ors* (1990) 170 CLR 321 and *Sobey v Commercial and Private Agents Board* (1979) 22 SASR 70.

⁵ *Ibid* at p 76.

- 19 The Liquor and Gambling Commissioner submitted that the decision of Judge Lovell (as he then was) in *Midwinter v Commissioner for Consumer Affairs*⁶ was particularly instructive. He submitted that the following principles can be drawn from that case:
- 20 The authority should:
- assess the application in light of the circumstances;
 - consider the nature of the work sought to be undertaken;
 - examine past events, including experience in the vocation and the personal antecedents of the applicant;
 - consider whether the applicant has been involved in breaches of the law, and/or has the propensity towards criminal conduct. If either of these apply, they must be regarded as of importance;
 - analyse the relevance of the previous convictions. This will be affected by the significance that those convictions have to the type of work to be undertaken pursuant to the licence sought;
 - in the case of a licensee who is inexperienced in the particular vocation, exercise caution in granting the licence. Such an applicant would be required to demonstrate a significant period of good behaviour following the relevant convictions before being granted a licence.
- 21 The Liquor and Gambling Commissioner submitted that the delegate's reasons demonstrated careful consideration of the factors set out by Judge Lovell in *Midwinter v Commissioner for Consumer Affairs* and the decision should be confirmed.
- 22 Mr Amodeo submitted that his offending was an isolated offence, and there was no pattern of offending established. He submitted that given that it occurred over ten years ago, it can be safely assumed that it is unlikely to be repeated. He referred to the references placed before the delegate and submitted that they attested to his trustworthy nature, personal integrity, and of him being reliable and professional in his outlook. He submitted that he has a strong work history in the hospitality industry and enjoys his employer's endorsement to undertake training towards future managerial roles.
- 23 Mr Amodeo adopted the submissions advanced on behalf of the Liquor and Gambling Commissioner and contended that the delegate was right

⁶ [2006] SADC 93.

to find that he had turned his life around, and any risk he poses to the public has lessened significantly.

- 24 Mr Amodeo submitted that the delegate had taken into careful consideration his background and all other factors pertinent to making the decision under review and the granting of his approval on a contingency basis of his being of good behaviour for a two-year period, was an appropriate safeguard to allay any concerns that the public might have.
- 25 Mr Amodeo concluded by submitting that in any event, as a matter of administrative process, there was no basis to assert that the delegate failed to properly to discharge this task, that she had plainly taken into account all relevant matters, and that the Court should not interfere with her decision.

Consideration

- 26 I commence by reflecting upon *Midwinter v Commissioner for Consumer Affairs*. That case concerned an application made in 2005 for a contractor's licence under the *Building Work Contractors Act 1995* to enable Mr Midwinter to be licensed to undertake the work of solid plastering and wall and floor tiling. The licence could only be granted upon a finding that Mr Midwinter was a fit and proper person. What prejudiced that finding was the fact that in 2000, Mr Midwinter had been found guilty of breaking and entering a building and assault occasioning actual bodily harm that resulted in him being sentenced to 2 years and 8 months imprisonment and a non-parole period of 15 months, suspended upon him entering a good behaviour bond for 3 years subject to conditions, and that in 2003 he was found guilty of resisting police and breaching that bond, resulting in a fine of \$600 and a further bond to be of good behaviour. The Commissioner for Consumer Affairs was sufficiently concerned about these offences to conclude that Mr Midwinter was not a fit and proper person. In reversing that decision, Judge Lovell observed that there was a significant difference between the facts in *Sobey*, which concerned an application to be licensed as a commercial agent or process server, which in turn meant that the person was involved in the administration of justice, and a case involving a builders licence. Judge Lovell noted that Mr Midwinter's offending was serious, but added that it had occurred 7 years earlier. He noted that the later offence was very minor. He also noted that Mr Midwinter had previously been licensed to carry out building work and there was no suggestion that he was anything other than an experienced and competent member of the building trade.

- 27 Contrary to the submissions advanced by the Liquor and Gambling Commissioner, I do not find the decision in *Midwinter* to be of much assistance in this case. It is understandable why in the context of licensing a tradesperson there would be considerable focus on the applicant's ability to perform the work and that unless an applicant's offending history was particularly serious and directly pertinent, it might not carry significant weight.
- 28 Licensed premises are not a typical public place or workplace. In *Adeels Palace Pty Ltd v Moubarak and Najem* the High Court recognised the special features of licensed premises, being as they are places where members of the public can congregate and mix with one another and purchase for consumption, either on or off the premises, a potentially intoxicating and harmful substance. The High Court held that the proprietors of such premises owe a duty of care "to minimise anti-social conduct both on and off licensed premises associated with the consumption of alcohol".⁷ In conformity with this, a responsible person should be seen as much more than simply a bar manager who might be well versed in the art of mixing cocktails. As was observed in *Paul Roper*:

When a licensing authority authorises a person under the Act it holds that person out as trustworthy. The public can assume that the person is honest and reliable. In the case of a Responsible Person they can assume that the person can be trusted to take appropriate steps to ensure that intoxicated persons and minors are not supplied with alcohol; that the person will do his or her best to ensure that patrons will be safe while under their charge; and that the obligations imposed by the Act and the conditions of the licence will be adhered to. The public can assume that the person will, without hesitation, when appropriate, engage with law enforcement agencies on issues concerning the licensed premises and the safety of patrons using those premises and that he or she will be candid and cooperative with such agencies.⁸

- 29 As such, I would regard the qualities of a responsible person as much more in line with the commercial agent that was the subject of the decision in *Sobey* and I think some of the observations made by Walters J in that case bear repeating. He said:

I cannot imagine anything which is more germane to the question whether a person is a fit and proper person than the matter of his record of previous offences. Any previous breaches of the law, and any propensity towards offending against the law must, in my view, be regarded as of crucial importance. I would not go so far as to say

⁷ [2009] HCA 48 at [25].

⁸ [2013] SALC 34 at [20].

that one criminal offence must necessarily deprive a person of that fitness and propriety which is a prerequisite for a licence under the Act. But, in the present case, I think the appellant's past conduct exposes an intrinsic defect of character which is incompatible with his being entrusted with a licence, either as a process server or a commercial sub-agent. The moral that he must learn is that he will have to demonstrate a greater respect for the law, before he can expect to obtain a licence under the Act. When a considerable period of time has elapsed from now, past facts might be viewed in the light of the lapse of time and weight might then be properly given to his subsequent good behaviour. In any case, however, the appellant bears the onus under s. 16(1) of the Act of satisfying the Board of the existence of matters qualifying him for a licence.

The issue whether an appellant has shown himself to be “a fit and proper person”, within the meaning of s. 16(1) of the Act, is not capable of being stated with any degree of precision. But for the purposes of the case under appeal, I think all I need to say is that, in my opinion, what is meant by that expression is that an applicant must show not only that he is possessed of a requisite knowledge of the duties and responsibilities devolving upon him as the holder of the particular licence under the Act, but also that he is possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further inquiry, as a person to be entrusted with the sort of work which the licence entails.⁹

- 30 I now turn to make some observations about *Aspey*. In that case, the respondent failed to attend in Court and at the time all that was known was that he had entered a plea of guilty to a charge of persistent sexual abuse of a child. No details of the offending were then known, but the police were contending that the mere fact of an acknowledgement of guilt was enough for this Court to be satisfied that Mr Aspey was not a fit and proper person for the purposes of the Act. The Court accepted that submission. It granted Mr Aspey liberty to apply because it did not know the facts of the abuse. It recognised that without hearing from Mr Aspey and without knowing the full facts, it was not in a position to conclude that Mr Aspey could never be eligible for approval under the Act.
- 31 Importantly, in the context of this case, in *Aspey* the Court stated that in the case of sexual abuse, two issues in connection with fitness and propriety might arise. One being that the circumstances of the offending may cast a shadow over the person's ability to properly discharge the duties and responsibilities of an approved person. The other being that even if that were not so, this type of offending can be so repugnant and carry so much stigma, that depending upon the circumstances this Court

⁹ Ibid at p 75-6.

might conclude that it could not hold the person out as being fit and proper.

32 I will now elaborate on why this is so.

33 The fact that a person has sexually assaulted another or has behaved in a sexually inappropriate way, might establish that the person has oppressive attitudes and beliefs about others that are used to validate that behaviour, or it might disclose a propensity to exercise or abuse power through sex. Even though the law treats persons who are over the age of 18 as adults and they are lawfully permitted to frequent licensed premises, common experience informs us that some people in their late teens and early twenties can be quite immature and impressionable and be vulnerable, especially when intoxicated. Common experience also informs us that some persons under the age of 18 can use means to persuade licensees and others involved in the management of licensed premises that they are over 18 and that from time-to-time minors will be within licensed premises consuming alcohol and late in the night. All patrons of licensed premises are entitled to expect that the licensee and others involved in the management of licensed premises will act in their best interests and where necessary will take action to protect them. But especially this younger cohort. They and their parents and guardians need to be comforted by the knowledge that if they frequent licensed premises they are at no risk that those charged with the responsibility of protecting them will exploit them. Unfortunately, the experience of this Court is that this is not always the case.

34 In the case of sexual offending against a particularly young child, the offender's sexual proclivities might be directed to an age group that the person is very unlikely to encounter in licensed premises. But even so, a licensing authority might be compelled to conclude that the person was not fit and proper. Societal attitudes to sexual offending had evolved significantly over the last twenty years. We are now much more aware of its scope, how prevalent it is, and the lasting damage that it can cause. Thus, even though there might be little or no vocational connection with the offending, depending upon the circumstances, the licensing authority might conclude that because of the vile nature of the offending, to grant the approval would be an affront to the public conscience and would undermine the confidence of the public in the licensing authority's integrity.

35 Whilst there is a public interest in encouraging people to redeem and rehabilitate themselves, in the case of prior sexual misconduct, the observations made by Walsh JA in *Ex parte Tziniolis; Re Medical Practitioners Act*, that I referred to in *The Commissioner of Police for the*

*State of South Australia v Daniel Fontana*¹⁰ are of particular significance.

Reformations of character and of behaviour can doubtless occur but their occurrence is not the usual but the exceptional thing. One cannot assume that a change has occurred merely because some years have gone by, and it is not proved that anything of a discreditable kind has occurred. If a man has exhibited serious deficiencies in his standards of conduct and his attitudes, it must require clear proof to show that some years later he has established himself as a different man.¹¹ (Emphasis mine)

- 36 Returning to the facts of this case, it might be that Mr Amodeo never intended to do more than express his sexual fantasies and had no intention of taking matters any further. His participation in a 12-week course at Owenia House provides some evidence that he is a changed man.
- 37 But there are some troubling aspects of this case.
- 38 First, was the nature of the communications. Mr Amodeo made repeated sexually explicit statements to a child including statements about digital and oral sex.
- 39 Secondly, is what was said and what was not said by him when he was interviewed by the police. He did not say that his communications amounted to no more than an expression of sexual fantasies and that he was extremely remorseful for having made them. What he did say is that he did not know it was wrong to communicate in this way because the victim was a willing participant. Either he was being untruthful when he said this, or he had a very warped idea of what was acceptable behaviour. These communications were not between an immature 18-year-old boy and a 16-year-old girl with whom he was infatuated. They were between a man in his mid-twenties who was a parent, and a girl who was yet to be a teenager.
- 40 Thirdly, is the statement he made to the sentencing judge and the psychologists whereby Mr Amodeo attempted to justify his behaviour by claiming that he did not know the victim was so young and might have been 17 or 19, when he well knew that she was only 12 years old, as evidenced by one of his written messages.
- 41 Fourthly, is the submission made to the delegate that the offending occurred at a time when he was suffering from depression and was undergoing a rough patch in his relationship. The sentencing judge's

¹⁰ Ibid.

¹¹ (1966) 67 SR (NSW) 448 at 461.

remarks were very comprehensive, and she went into much detail about Mr Amodeo's personal circumstances. Her remarks record that she was told that Mr Amodeo's relationship was stable and that his mental health issues were limited to the circumstances of his offending. Had Mr Amodeo genuinely been experiencing mental health issues at the time of his offending it might have been expected that this would have been brought to the attention of the psychologists and the judge. The fact that it was not, suggests to me that Mr Amodeo's submission to the delegate about mental health issues and relationship difficulties are contrived recent inventions. If this is so, it is hardly consistent with his statement to the delegate that he was being upfront about his offending, understood its seriousness, and made no excuses for it. Quite to the contrary, the fact that Mr Amodeo made this submission is to my mind consistent with a continued lack of insight as to the gravity of his misconduct and an unwillingness to accept full responsibility for it.

- 42 Finally, is the absence of evidence from a suitably qualified expert that Mr Amodeo presents no risk of predatory behaviour.
- 43 Mr Amodeo might be a different man to the one that he once was. But on the material placed before the delegate, I am not certain of it. And in a case such as this, where through his criminal history the applicant has shown a proclivity to behave in a sexually inappropriate way to a girl of an age in the general vicinity of those whom he might encounter as a responsible person, nothing short of this was required. Just as it is appropriate for a licensing authority to act upon hypothesis and conjecture and possibilities that fall short of being probable in connection with the issues around the supply of alcohol and harm minimisation,¹² so it is in the case of protecting the public from the potential predatory behaviour of those in positions of authority in licensed premises. To adopt the words of Ipp JA in *Executive Director of Health v Lily Creek International Pty Ltd*,¹³ s 53(1) of the Act confers upon a licensing authority an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient. The potential of harm to patrons of licensed premises from the predatory behaviour of those in positions of authority in those premises, irrespective of whether the harm is proved on a balance of probabilities, would be a powerful public interest consideration. The section is therefore consistent with the view that the mere possibility of that harm would always be a relevant matter for the licensing authority to consider when discharging its functions, which in this case was determining fitness and propriety.

¹² *Liquorland McLaren Vale (No 2)* [2022] SALC 53 at [160].

¹³ [2000] WASCA 258; (2000) 22 WAR 510 at [29].

- 44 With respect, the delegate erred in finding that Mr Amodeo was a fit and proper person for the purposes of the Act. Through his offending Mr Amodeo exhibited serious deficiencies in his standards of conduct and his attitudes towards young women. To now hold him out as a fit and proper person for the purposes of the Act would require clear proof that he is a different man. The evidence fell short of establishing that to be so. Indeed, for the reasons explained above, the submissions that he made to the delegate pointed to the opposite conclusion.
- 45 Whilst in other cases, where approval has already been erroneously granted, because of its concerns about fairness, this Court has allowed the approval to remain in place. This is not such a case. The guiding principle as to whether something short of revocation of the approval can be considered was described in *The Commissioner of Police for the State of South Australia v Daniel Fontana* as being whether “there is a way in which the public interest can be suitably protected”.¹⁴ In this case, because I do not consider that the evidence has excluded the possibility that the public would be at risk if Mr Amodeo were to occupy a position of authority within licensed premises, something short of revocation of the approval is not open.
- 46 The application for review is allowed and Mr Amodeo’s approval as a responsible person is revoked.

¹⁴ Ibid at [25].