Australian Hotels Association (SA Branch) v Mark Richard Jones t/as Draft & Drift Bar
[2025] SALC 88

LICENSING COURT OF SOUTH AUSTRALIA

AUSTRALIAN HOTELS ASSOCIATION (SA BRANCH)

v

JONES, Mark Richard t/as DRAFT & DRIFT BAR

JURISDICTION: S 120 Disciplinary Matter

CASE NO/S: LC-25-00050

HEARING DATE: 6 June 2025

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 9 September 2025

CATCHWORDS:

Application for review of a decision of a delegate of the Liquor and Gambling Commissioner to grant an on premises license for proposed premises in Whyalla. The applicant's proposed business model contemplated a boutique cocktail bar – The Australian Hotels Association of SA (AHA) opposed the application on the grounds that the social problems relating to alcohol consumption in the Whyalla area were well known; the area has a relatively high unemployment rate, a relatively large number of Indigenous persons and that it rates very low in terms of social disadvantage: the locality already has around 60 licensed premises such that a further licensed venue was not in the community interest; the asserted employment opportunities and additional tourist appeal would be limited; and that the community consultation was not conducted with appropriate rigour – The delegate commenced her reasons with a summary of the AHA's submissions – The delegate then found that because in the locality there was no dedicated cocktail bar, one might be thought to be desirable – The delegate then found that the proposed premises would have positive economic impacts by providing additional employment opportunities and potentially drawing customers, including visitors and tourists into the main commercial area of Whyalla which hosts a number of other small local businesses – The delegate found that the applicant had a sound understanding of the legislative requirements of operating a licensed premises – Collectively these matters led the delegate to find that the grant of the application was in the

*community interest and the public interest – On review the AHA submitted that the delegate's reasons were legally inadequate; that she erred by seemingly applying the 'needs test' in deciding that the application should be granted because in the locality there was no dedicated cocktail bar, and one was thought to be desirable; the delegate erred by effectively finding that here were no opportunities for patrons to buy cocktails within the locality; the delegate had no justification for finding that proposed venue would have positive economic impacts by providing additional employment opportunities and potentially drawing customers, including visitors and tourists into the main commercial area of Whyalla; it challenged the delegate's finding that the applicant had a sound understanding of the legislative requirements of operating a licensed premises; and it submitted that the delegate erred because she provided no explanation as to why she ignored SEIFA data that showed that the locality has a high unemployment rate, is socially disadvantaged and has a high Indigenous population – **Held** that it is reasonable to construe the delegate's reasons as indicating that she regarded the range of liquor to be available at the proposed premises was likely to be different to what was on offer at other licensed facilities in the locality, that some would find it attractive and that this was a relevant consideration – **Held** that the delegate was right to take this into account as the expectations and aspirations of the community in respect of the sale and supply of liquor – **Held** that the AHA was right to complain that the delegate did not deal with its submissions regarding the SEIFA data and this failure rendered her reasons legally inadequate – **Held** that whilst the SEIFA data was important and paints a bleak picture of Whyalla, this Court is also permitted to know that the cost of liquor in a cocktail bar is likely to act as a disincentive for those who are socially and financially challenged from attending such premises, and if they do, that cost is likely to limit the amount of liquor that they might purchase there, such as to have a minimising impact of alcohol related harm – **Held** on balance, the positive aspects of the application outweigh the negative aspects – **Held** that in the public interest, conditions needed to be imposed upon the licence to ensure that the premises continue to trade under the proposed business model – Liquor Licensing Act 1997.*

Woolies Liquor Stores Pty Ltd [2018] SALC 40
Mansfield Park Hotel (SA) Pty Ltd [2023] SALC 83
Resi Corporation v Munzer [2016] SASCFC 15
Fairview Park Cellars **[**2023] SALC 18
Hove Sip n Save [2021] SALC 7

REPRESENTATION:

Applicant:	Mr G Coppola Australian Hotels Association, SA Branch
Respondent:	Mr J Ryan Ryan & Co Solicitors

1 This is an application by the Australian Hotels Association of SA (AHA) seeking a review of a decision of a delegate of the Liquor and Gambling Commissioner (the delegate) to grant an on premises licence to Mark Richard Jones to permit him operate a boutique-style cocktail bar in Whyalla, to be known as the Draft & Drift Bar.

2 An application for an on premises licence is a designated application[1] under the *Liquor Licensing Act 1997* (the Act). Such an application can only be granted if the relevant licensing authority determines that it is in the community interest to do so. This involves an evaluative judgment that weighs the positives and negatives of the application.

3 In respect of such an application an applicant must comply with the Community Impact Assessment Guidelines (the Guidelines) in establishing that the grant of the application is in the community interest. They also provide that in evaluating the application the licensing authority must:

- have regard to that nature of the business conducted or to be conducted under the licence;
- identify the relevant locality, as this informs what is the relevant community;
- consider the harm that the grant of the application might cause to the community as a whole or a group within the community due to excessive or inappropriate consumption of liquor;
- have regard to the cultural, recreational, employment or tourist impacts that the grant of the application might have;
- reflect upon the social impact that the grant of the application might have in the locality and the impact that it might have on the amenity of the locality; and
- have regard to the objects of the Act.

4 The Guidelines provide that the following must be considered in identifying the relevant locality:

- the area around the applicant's premises/proposed premises which is most likely to be affected by the grant of the application, and

[1] Section 4 of the Act.

- the area from where the applicant draws or expects to draw their customers, having regard to the nature of the premises/proposed premises.

5 The Guidelines then go on to provide that when considering the area from where the premises/proposed premises draws or expects to draw their customers, applicants should consider:

- any target customer groups or identifiable customer base and the areas they reside in; and

- anything that may attract customers to the premises/proposed premises and the areas from which these customers may be based, for example – where a premises/proposed premises is located/to be located on a main road, applicants may need to consider any areas which are serviced by that main road and include those areas in their locality, or – where a premises/proposed premises is located/to be located in or near to a shopping complex, applicants may need to consider the customer base of the shopping complex and where those customers reside and include those areas in the locality of their premises/proposed premises.

6 The Guidelines then state that as a guide, the locality of a premises in the Adelaide Metropolitan Area would generally be considered to be the area within a two kilometre radius of the site of the relevant premises. In respect of premises outside of the Metropolitan Area, that in country cities, towns or communities, unless remotely located, the locality of the premises would generally be considered to be the area within a five kilometre radius of the site of the relevant premises.

7 The licensing authority must also be satisfied that the pre-requisites of s 57 of the Act have been met. Section 57 concerns matters such as the suitability of the premises; the potential for them to cause undue offence, annoyance and the like to nearby workers, residents and worshippers in their vicinity; prejudice to the safety or welfare of children attending nearby kindergartens and schools; and whether the appropriate approvals, consents and the like, pertaining to the proposed premises have been granted. I did not understand these matters to be at issue in this case.

8 Finally, the applicant needs to satisfy the licensing authority that the grant of the application is in the public interest. This recognises that notwithstanding that the grant of the application may be in the community interest, there is some feature of the application that is of concern to the wider public interest and the application must be refused on that basis.

9 The applicant's business model contemplated creating an intimate and sophisticated experience that comprised of a rotating menu of cocktails, a handpicked list of quality wines, and a small selection of craft beers, all for on premises consumption, with a mix of standing and seating options for patrons.

10 The applicant identified the relevant locality as comprising of the area with a 0.5 kilometre of the proposed premises. He did so on the basis that this area aligned with where locals gather. He then identified a small number of hotels, clubs and a café within his proposed locality.

11 The applicant stated that his business will offer a "unique social venue that complements the existing hospitality scene rather than competing with larger pubs and hotels" and that it would provide "an inviting alternative for couples, small groups, and professionals looking for a refined yet relaxed atmosphere".

12 The applicant identified the customer base as including local residents looking for a stylish venue in which to have after work drinks, date nights or small gatherings, as well as visitors and tourists, business travellers and professionals, and locals looking for a point of difference and the opportunity to patronise a small bar of the type that they might have experienced in the Adelaide CBD.

13 The applicant stated that he intended to provide small, packaged bar snacks, such as nuts and savoury snacks, cheese, salami sticks, olives, chocolate, dried fruit and caramelised popcorn.

14 The applicant stated that he intended to provide background recorded music and the occasional live acoustic performance, with no DJs or loud live bands.

15 The applicant set out his proposed security measures which included things like CCTV surveillance, security alarms, well placed interior and exterior lighting, staff trained in the responsible service of alcohol, anti-theft measures, and emergency exits and procedures.

16 The applicant proposed strict age verification policies, the monitoring of alcohol consumption, making low alcohol and non-alcoholic beverages available, free drinking water, and clear policies about refusing service to those affected by alcohol or behaving offensively.

17 The applicant submitted that because of the venue's emphasis on craft cocktails, fine wine, and a relaxed atmosphere, it would promote the responsible consumption of alcohol.

18 The applicant noted that there is a 24-hour taxi service available within Whyalla, and police and hospital services are nearby.

19 The applicant submitted that the proposal would enrich Whyalla's cultural landscape by offering a unique social space, and a cultural experience showcasing South Australian, wines, beers and spirits; and that it would enhance the local recreational scene by providing locals and visitors with a relaxed, upscale venue.

20 The applicant used a Facebook page to garner support for the application, that included posts such as: "Love this, I'm sure it'll be a great success"; "When in Whyalla I will go"; and "Sounds amazing! Can't wait til it's up and running".

21 The applicant sent circular letters to neighbouring businesses and received notations of support from several, such as the Plaza Business Association, Bloom Pilates, SRG Global, Colding Contracting, Whyalla Gifts Accessories, Snap Fitness Whyalla, and Peter Callis Real Estate.

22 The applicant also included, what appear to be the results of some type of internet voting platform, that recorded 185 positive responses to the question: Do you support the opening of "Draft and Drift" a boutique cocktail and wine bar wishing to open in Whyalla City.

23 The application was opposed by the AHA. It submitted that the relevant locality was a little further than the five kilometre radius suggested in the Guidelines. It submitted that the social problems relating to alcohol consumption in the Whyalla area were well known. In support of this, it included SEIFA data that showed that Whyalla has a relatively high unemployment rate, a relatively large number of Indigenous persons, and that it rates very low in terms of social and economic disadvantage. It contended that within the relevant locality there were already around 60 licensed premises, such that a further licensed venue was not in the community interest. It added that the application provided "nothing of real worth" in relation to harm minimisation, it gave no real data regarding staff numbers etc., the asserted employment opportunities and additional tourist appeal would be limited, and that the community consultation was not conducted with appropriate rigour.

24 The applicant responded to these submissions by contending that the suggested 0.5 kilometre radius was appropriate, because the premises was focussed on customers from the immediate commercial precinct. It added that in any event, there was no reason to extend the locality beyond the five kilometre benchmark.

25 The applicant countered the submission that there were already enough licensed venues in Whyalla by submitting that the proposed premises would "provide a differentiated experience", by introducing a boutique bar.

26 The applicant refuted the assertion that he had provided "nothing of real worth' in relation to harm minimisation. He submitted that he is committed to best-practice harm minimisation strategies by having a smaller controlled environment with trained staff, no gaming machines or high volume alcohol promotions, and focussing on high-quality drinks attracting a mature, responsible clientele.

The delegate's decision

27 The delegate commenced her reasons by summarising the AHA's submissions.

28 The delegate then noted that the applicant had identified a 0.5 kilometre radius as the appropriate locality. She stated that she agreed with the AHA that because this was a regional area, it ought to be extended. She then said that she did not agree with the submission that the locality is necessarily well served for liquor outlets before stating that:

> Whilst there is a responsibility on the Licensing Authority to prevent saturation of liquor outlets, this needs to be balanced with the requirement to support unique opportunities such as these that provide different offerings to the community and support associated industries such as tourism and hospitality.

29 The delegate then noted that the AHA rightfully pointed out that Whyalla is currently experiencing issues relating to anti-social behaviour because of alcohol consumption. But she appears to have dismissed any concern about this because the application was for an on premises licence that does not enable liquor to be sold for off premises consumption.

30 The delegate then added:

> Just because there are anti-social issues in this area does not automatically mean that all applications for a liquor licence ought to be refused and that the industry should grind to a halt in terms of development.

31 The delegate then stated that:

> The applicants provided well thought out responses to the questions surrounding harm minimisation and showed a clear understanding of the responsibility they will take on operating a licensed venue in this

> locality. The applicant sets out his extensive experience in compliance and safety roles and the liquor industry and the extensive experience of the venue manager. The applicant has set out clear methods in which they will address common issues such as theft, intoxication and supply to minors. The applicant also points out that both the Police station and local Hospital are both within 1km of the proposed premises.

32 The delegate concluded her reasons by identifying what she regarded as the positive aspects of the application:

> 1. This is a unique offering with no other boutique cocktail bars in the 6km locality, therefore they would be providing a truly unique offering to the community.
>
> 2. They will not be selling liquor for consumption off, and their proposed offerings for consumption on the licensed premises will be focused on premium products, rather than a full bar, reducing the potential impact the premises may have on vulnerable people.
>
> 3. The proposed venue would have positive economic impacts by providing additional employment opportunities and potentially drawing customers, including visitors and tourists into the main commercial area of Whyalla which hosts a number of other small local businesses.
>
> 4. The applicant has demonstrated a sound understanding of the legislative requirements of operating a licensed premises as well as an appreciation of the additional responsibility of operating a licensed venue in an area currently experiencing alcohol related anti-social behaviour.

33 She then stated that the granting of this application would be in the community interest and that the granting of the application was not contrary to the public interest.

The complaints made by the AHA on review

34 On review the AHA submitted that the delegate's reasons were legally inadequate. It submitted that in a case such as this it might have been expected that the reasons would been more structured in explaining to the AHA why the case succeeded and why its submissions were rejected.

35 It submitted that contrary to this, the delegate commenced by setting out its opposing submissions, thereby creating the impression that she approached the case from the premise that if she rejected its submissions,

the application succeeded. It submitted that this effectively reversed the burden of proof.

36 Next it said that the delegate appears to have reasoned that because in the locality there was no dedicated cocktail bar, and one was thought to be desirable, the application should be granted. It submitted that this appears to have been a return to the now redundant 'needs test'.

37 It then submitted that the delegate erred by effectively finding that there were no opportunities for patrons to buy cocktails within the locality, when there was no such evidence and the inference was that any one of the many hotels in the locality could meet a demand for cocktails.

38 It submitted that there was no justification for the delegate's findings that proposed venue would have positive economic impacts by providing additional employment opportunities and potentially drawing customers, including visitors and tourists into the main commercial area of Whyalla which hosts a number of other small local businesses.

39 It challenged the delegate's finding that the applicant had a sound understanding of the legislative requirements of operating a licensed premises. It submitted that his insistence that the relevant locality was within a 0.5 kilometre of the proposed premises demonstrated that he had no proper understanding of the concept of locality.

40 It submitted that the delegate provided no explanation as to why she ignored SEIFA data that showed that the locality has a high unemployment rate, is socially disadvantaged and has a high Indigenous population. It submitted that this was important information, and that it is data that the Guidelines require to be considered.

41 It added that on the face of the delegate's order there would be nothing to prevent the applicant, or a subsequent licensee, trading as a sports bar, a gin bar or a beer bar serving only tap beer, or any number of alternate non-cocktail bar trading models.

Consideration

42 I do not consider there is anything in the complaint by the AHA that the delegate commenced her reasons by setting out its opposing submissions.

43 Judgment writing is very much a matter of individual style. It is not uncommon for judgment writers to adopt a style that sets out the losing party's case before setting out why that case is rejected. This is so because often the flaws in the losing party's case reflect the strengths of the winning party's case, such that the exposition of those flaws effectively

sets out the winning party's case. Some judgment writers believe that this style avoids unnecessary duplication.

44 As to for the AHA's submission that the delegate's reasons should have been more structured, I reiterate my observation that judgment writing is very much a matter of individual style. I also take on board the note of warning issued by Lovell J in *Resi Corporation v Munzer*,[2] where he said:

> It is not the function of an appellate court to set standards as to the optimal, or even desirable, level of detail required to be revealed in reasons for judgment. The function of the appellate court is to determine whether the reasons provided have reached a minimum acceptable level to constitute a proper exercise of the judicial power.[3]

45 That said, cases involving designated applications are not straightforward. They call for a close consideration of the matters contained in the Guidelines and there is a risk that important matters may be overlooked. As such, a decision concerning a designated application that commences with a summary of the pre-requisites to the application, followed by a summary of the competing contentions, findings as to locality and any contentious matters, and an explanation as to why in light of those contentions and findings, the application is or is not in the community or public interest, has much to commend it.

46 Turning now to the other complaints made by the AHA, I do not consider that there is any merit in its complaint about the delegate's finding that the applicant had a sound understanding of the legislative requirements of operating a licensed premises. It must be accepted that he was wrong to assert that the relevant locality was within a 0.5 kilometre of the proposed premises. But given the repeated statements by this Court and the Supreme Court that in connection with the Act that locality "is an elusive concept that defies precise definition"[4] that error can scarcely be regarded as irrefutable evidence of a lack of understanding of the legislative requirements of operating a licensed premises.

47 With respect, the delegate's statement that she did not agree with the submission that the locality is necessarily well served for liquor outlets because in the locality there was no dedicated cocktail bar, might have been better expressed. But it is clear enough what she was saying. The delegate was plainly aware that Whyalla has many licensed facilities. After all, she listed the various categories of licenses with the locality. It is reasonable to construe her reasons as indicating that she regarded the

[2] [2016] SASCFC 15.
[3] Ibid at [71].
[4] *Woolies Liquor Stores Pty Ltd* [2018] SALC 40 at [72].

range of liquor to be available at the proposed premises was likely to be different to what was on offer at those other licensed facilities, and that this was a relevant consideration.

48 In connection with this, the AHA might be right to contend that cocktails might be available at one of the many hotels in the locality. And, again with respect, it might have been better for the delegate to have dealt with this. But for her, what was significant, was not just the range of liquor, but also was the fact that there were no other dedicated boutique cocktail bars in the locality, and that the proposed premises would provide a unique offering to the community. She was entitled to take that view.

49 I also reject the submission that the delegate applied the "needs test". To be clear, that test no longer applies. But that does not mean that the expectations and aspirations of the community in respect of the sale and supply of liquor are irrelevant. Quite to the contrary, the objects of the Act indicate that they are relevant considerations.[5]

50 As for the complaint about the findings of additional employment opportunities and potentially drawing customers, including visitors and tourists into the main commercial area of Whyalla, I agree with the submission advanced by the AHA that people are unlikely to make a special trip to Whyalla to visit a cocktail bar. But that does not mean that the venue will have no potential tourist benefit. It is reasonable to infer that people visiting, or passing through Whyalla, might be attracted to a cocktail bar. That is sufficient to draw the inference that it may provide some tourist benefit. The proposed premises will plainly involve some construction and upon completion, staff will need to be engaged. This is sufficient to draw the inference that the grant of the application will provide additional employment opportunities.

51 There is, however, substance in the AHA's complaint about other aspects of the delegate's reasons.

52 In *Mansfield Park Hotel (SA) Pty Ltd*,[6] this Court stated in respect of the Commissioner's reasons:

> For Commissioner's reasons to be legally adequate, they must disclose material findings of fact and conclusions of fact. If he rejects or finds immaterial evidence that has been adduced, he must explain why he formed that view. In respect of submissions and arguments put, the reasons must reveal that they have "been understood and,

[5] Section 3(2) of the Act.
[6] [2023] SALC 83.

> either accepted, or, if rejected, that the rejection was based on a clear and rational process of reasoning."[7] (Footnotes omitted)

53 The AHA is right to complain that the delegate did not deal with its submissions regarding the SEIFA data. The delegate's failure to refer to this data creates the impression that she failed to take it into account. If she did take it into account, she provided no adequate explanation as to why she thought it was of no importance.

54 The delegate's failure to mention this renders her reasons legally inadequate.

55 Whilst the results of that data were not decisive of the fate of the application, they were important considerations. Had they been taken into account, it should have alerted the delegate to the need to put in place some protective measures should the application be granted. I shall return to this shortly.

56 My conclusion that the delegate's reasons were legally inadequate requires me to deal with the application on the merits.

57 Considering the business plan that has been elaborated upon in the papers before the delegate, there is every reason to think that the proposed premises will draw custom from all over Whyalla and perhaps beyond. Therefore, the rule of thumb contained in the Guidelines of a locality of a five kilometre radius seems about right. Given the elusive quality of the concept of locality, I need not be any more precise than that.

58 As for the complaint about a lack of rigour in respect of community consultation, I have previously expressed my concern about the value of and shortcomings of surveys.[8] But given that the Guidelines expressly state that evidence of consultation may include petitions, survey results and/or letters of support, I must put those concerns to one side. In this case, I find that the Facebook posts, the responses to circular letters to neighbouring businesses, and the results of the internet voting platform, provide adequate evidence of community consultation.

59 Whilst it is true that all of the licensed premises in the locality have to be considered, subject to what I will later say about subjecting the licence to conditions, the unique nature of the business is a relevant factor. This Court is permitted to rely upon its accumulated experience to observe that in terms of harm from alcohol consumption, there is a significant difference between a large country hotel, with multiple bars and a large

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[7] Ibid at [51].
[8] *Fairview Park Cellars* **[**2023] SALC 18 at [57].

drive through bottle department, and a boutique offering, selling up-market liquor for on premises consumption only.

60 The SEIFA data is important. It paints a bleak picture. It confirms what is self-evident from a visit to Whyalla, that is, that it is a socially and economically challenged community that can be expected to have more than its fair share of persons vulnerable to harm from alcohol consumption.

61 But this Court is also permitted to know that the cost of liquor in a cocktail bar is likely to act as a disincentive for those who are socially and financially challenged from attending such premises, and if they do attend, that cost is likely to limit the amount of liquor that they might purchase there.

62 These matters enable the finding that those that live in the Whyalla area who are experiencing the social and economic disadvantage reflected in the SEIFA data, are unlikely to be affected by the grant of this application, at least whilst its proposed business model remains.

63 The proposed premises promise to be an attractive licensed facility appealing to a niche market. For the reasons explained above, it is reasonable to draw the inference that the application, if granted, would provide some additional employment and it might have some positive impact upon tourism in the area.

64 Based on the proposed business model the grant of the application is unlikely to have a negative impact upon the community. That being so, on balance, the positive aspects of the application outweigh the negative aspects.

65 Subject to what I am about to say, I find that the grant of the application is in the community interest.

66 I now turn to consider the public interest discretion.

67 A powerful public interest consideration is the potential for a ruling to create an undesirable precedent.[9] The AHA correctly submits that in its present form, the licence does not prevent the applicant from trading under a revised business model that may not be as protective from the potential harm from excessive alcohol consumption that I find is a characteristic of the current proposed business model. To preserve the integrity of the licensing authority, and to discourage applicants from applying for licences based on an assumed business model that later changes, it was

[9] *Hove Sip n Save* [2021] SALC 7 at [130]-[139].

appropriate to impose conditions on the grant of this application to prevent that change from occurring. In my respectful opinion, the delegate erred in not doing so.

68 I foreshadowed that this might be a possible outcome, and encouraged the applicant and the AHA to discuss the matter.

69 The following are agreed orders and conditions that were endorsed by this Court:

> The decision of the Commissioner dated 9 April 2025 is varied by imposing the following conditions on the licence:
>
> 1. The Licensee cannot sell or supply beer from a keg.
>
> 2. The Licensee (or any other person for or on behalf of the licensee) will not promote the premises in any way whatsoever (either at the premises – including by way of any art display – or in any external or online advertising or promotion) as a Hotel, Tavern or Pub.
>
> 3. The service model will focus on the service of:
>
>   a) Cocktails: a rotating menu of mixed cocktails using premium spirits and fresh ingredients.
>
>   b) Wine Selection: a handpicked wine list of quality wines, including South Australian varietals, to appeal to wine enthusiasts.
>
>   c) Craft Beers: a selection of craft beers, not main stream beers and not to be available from a keg.
>
> 4. The Licensee shall provide a range of pre-packaged snacks to complement the drink offering e.g. nuts, cheese, crisps and cured meats.
>
> 5. The Licensee shall install CCTV cameras at the premises.
>
> 6. Any live entertainment is limited to acoustic solo and duo performances.