

# Northern Territory Licensing Commission

## Decision on Penalty

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<b>Premises:</b>	Discovery / Lost Arc
<b>Licensee:</b>	Rediscover Pty Ltd (Receiver Manager appointed)
<b>Licence Number:</b>	80316240
<b>Complaints:</b>	Complaints pursuant to Section 48(2) of the <i>Liquor Act</i> – Breaches of sections 102, 121, 106B, 106C, 110 and 105 of the <i>Liquor Act</i>
<b>Heard Before:</b>	Mr Philip Timney (Presiding Member) Mrs Jane Large Mr David Brooker
<b>Date of Hearing:</b>	26 & 27 July 2011
<b>Appearances:</b>	Mr Miles Crawley, Counsel for the Licensee Mr Tom Anderson, Counsel for the Director of Licensing

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### Background

- 1) The Commission received a number of complaints, lodged by the Director of Licensing, in respect of the Licensee of premises known as Discovery / Lost Arc Nightclub alleging breaches of the *Liquor Act* (“the Act”) and licence conditions. The complaints relate to investigations conducted by Licensing Inspectors following inspections of the premises in December 2010 and January 2011 and the conduct of a wet T-shirt competition on various dates. The Commission determined, for the purpose of expeditiously dealing with the complaints, to conduct one Hearing in respect of the various complaints. At the Directions Hearing convened on 26 July 2011, Mr Anderson advised the Commission that negotiations were on foot between the parties aimed at achieving some consensus in respect of the factual background to the complaints that were to proceed to Hearing. He also indicated that those negotiations may result in the withdrawal of one or more of the complaints by the Director.
- 2) The complaints relate to incidents that occurred at the premises whilst it was under the control of the then corporate Licensee, Rediscover Pty Ltd. On 13 April 2011 Korda Mentha was appointed as Receiver Manager for the Licensee company. The Receiver Manager was advised of the complaints lodged with the Commission and appeared at the Hearing, through counsel.

### The Hearing

- 3) At the Commencement of the hearing Mr Anderson provided the Commission with the factual background to each of the complaints that remained on foot.

### Complaint 1:

- 4) The complaint alleged a breach of section 121 of the Act in that the Licensee failed to remove an intoxicated person from the licensed premises. At approximately 1.15 am on Saturday 18 December 2010 Licensing Inspectors were on duty conducting inspections of licensed venues in the Darwin CBD as part of Police operation “Unite” when they attended at the Discovery premises. At the time, presentations were being made from the stage for

the best dressed pyjama costume, which was the theme for the evening. One of the Inspectors noticed a female patron in a pyjama outfit standing approximately 2 rows back from the front of the stage in the vicinity of a security guard who was on the stage. The female appeared to the Inspectors to be arguing with a male patron and they noticed that the female was crying and appeared visibly upset. The female then lifted her elbows at her sides and barged through the crowd to the front of the stage, pushing aside other patrons in the vicinity. The Inspectors observed that the female appeared to be unsteady on her feet, was moving in a swaying motion and appeared to be intoxicated.

- 5) The Inspectors removed the female from the premises with the assistance of a Crowd Controller. Whilst speaking to the female it became evident to the Inspectors that she was significantly intoxicated as she was observed to continually sway backwards and forwards, was very confused, continued crying and remained unsteady on her feet. The female admitted to the Inspectors that she had had consumed an excessive amount of alcohol and wanted to go home. The Inspectors contacted the female's mother and arranged for her to be collected and driven home. Mr Anderson noted that the CCTV footage obtained from the Licensee confirmed the observations of the Inspectors in respect of the female's state of intoxication.
- 6) Mr Crawley, on behalf of the Receiver Manager Licensee, agreed to the facts as alleged and admitted the breach.

### **Complaint 2:**

- 7) This complaint alleged breaches of section 102 (failure to remove an intoxicated person), section 106B (allowing a minor to enter licensed premises), section 106C (supply of liquor to a minor), section 110 (breach of licence condition – camera surveillance condition) and section 121 (failure to remove an intoxicated person). At approximately 3 am on 18 December 2010 Licensing Inspectors were in the vicinity of Bar 1 at the Discovery premises conducting observations of patrons in the vicinity of that bar. The Inspectors observed a male patron wearing a black t-shirt with a white motif seated at a table overlooking the dance floor and drinking from a beer bottle. Inspectors observed that the male's upper body was swaying from left to right and that he bent his head forward in an attempt to place his lips around the opening of the bottle, which he missed. After another attempt he was successful and his mouth made contact with the bottle following which he threw his head backwards as he drank from the bottle. After a short time the male repeated this process and it appeared to the Inspectors that he was becoming increasingly unsteady in the seated position.
- 8) The Inspectors engaged the assistance of a Crowd Controller to remove the male from the Bar 1 area to the foyer of the premises where the Inspectors observed that the male was very unsteady on his feet, had trouble maintaining his balance and had slurred speech. His eyes were bloodshot and whilst talking he continually gesticulated with his arms and hands. The Inspectors also observed that the male appeared to have significant difficulty in maintaining a conversation and it took several attempts to ascertain that he had apparently lost his ID in Discovery. The male admitted that he had consumed too much alcohol and that he needed to get home.
- 9) As the male appeared very young and the Inspectors were concerned that he may be underage, NT Police were called and questioned the male further, finding identification documents that revealed he was 17 years of age having been born on 17 June 1993. The male informed Inspectors that he had consumed a number of Jim Beam pre mix drinks at home before coming to the city and that he had purchased at least two beers inside Discovery.
- 10) CCTV footage obtained from the Licensee showed the male entering the venue at approximately 11.40 pm (as per the time stamp on the CCTV images). At approximately 2.20 am (the next day) the CCTV footage shows the intoxicated male, without a drink in his hands, approaching and leaning over Bar 3 looking for a person to serve him. On realising

that the bar staff were at the other end of the bar and very busy serving other patrons, the male proceeded off to Bar 2. At approximately 2.31 am, and again at 2.58 am, the CCTV footage shows the male moving through the crowd and swigging from a bottle of beer that he is holding.

- 11) The male was formally interviewed by Inspectors on 22 December 2010 and admitted using his cousin's driving licence to gain entry to Discovery.
- 12) The complaint alleged further that the CCTV footage obtained from Discovery for the night in question was generally totally inadequate in image quality. Specifically, the images from Bar 1 and Bar 3 were not of sufficient size and clarity to clearly identify individual persons, with most images out of focus or only showing distant shots of the backs of patrons' heads. Only a small percentage of patrons present at these bars are able to be identified. Additionally, the images from a number of other bars within Discovery and Lost Arc did not allow for all patrons at these bars to be readily identified, including the mezzanine bar where a large pot plant was obscuring all images. The CCTV footage obtained that related to this complaint appeared to have incorrect time stamps on it, whereby the CCTV system clock was approximately 9 minutes out. CCTV footage obtained for 21 January 2011 confirmed that the CCTV system clock was 9 minutes behind real time. Monthly timing checks, as mandated in the camera surveillance plan for Discovery, have not been completed. Documents obtained from Discovery on 1 February 2011, including incident log books, provided confirmation that such timing checks had not been completed since at least mid 2010.
- 13) Mr Crawley agreed to the facts as alleged and admitted the breach. However, he submitted that the Commission should note that the Licensee had elected not to rely on the statutory defence contained in section 124A(2)(c) of the Act in that the minor in question had fraudulently tendered another person's driver's licence to gain entry to the premises.

### **Complaint 3:**

- 14) This complaint alleged breaches of section 102 and 121 of the Act in that the Licensee sold liquor to an intoxicated person and failed to remove that person from the licensed premises. At approximately 3.20 am on Saturday 18 December 2010 Licensing Inspectors attended Lost Arc and noted approximately 100 patrons in attendance and a DJ playing recorded music. A male patron was observed to approach the eastern end of the bar carrying two glasses of drink, one in either hand, and place them on the bar. The male appeared to be unsteady on his feet and was seen to sway from side to side as he approached the bar. The male turned from the bar to face the stage and whilst he stooped slightly forward he wiped his face and head with his hands and was again seen to sway from side to side. The male continued to sway from left to right as he continued to drink at the bar.
- 15) A second male approached the first male who stumbled forward to meet him following which he had a further drink from his glass and leant back into the bar. Inspectors spoke with the male and formed the opinion he was significantly intoxicated. He admitted to drinking rum and conceded he was drunk.
- 16) On Monday 17 January 2011 Inspectors reviewed the CCTV footage supplied by the Licensee of Lost Arc for Saturday 18 December 2010. In this footage the male the subject of the alleged breaches was identified and observed to enter Lost Arc at approximately 2.30 am. From approximately 2.30 am up through 3.17 am the male purchased what appeared to be 6 glasses of mixed spirit drinks. The last drink purchased by the male was at approximately 3.17 am, being a short time before he was located by Inspectors on licensed premises and observed to be intoxicated. The male admitted that he had been drinking rum at Lost Arc and prior to that at Wisdom Bar.
- 17) Mr Crawley agreed to the facts as alleged and admitted the breach.

**Complaint 4:**

- 18) This complaint alleged a breach of section 121 of the Act in that the Licensee failed to remove an intoxicated person from the licensed premises. On Saturday 1 January 2011 Licensing Inspectors were on duty conducting inspections of licensed premises in conjunction with Police as part of operation "Exdrone". At approximately 1.05 am the Inspectors visited the Lost Arc premises and were outside the venue speaking to a patron. A female approached the Inspectors and asked them what they were doing. The female appeared to the Inspectors be very intoxicated in that she was swaying gently, smelt strongly of liquor and was slurring her words. Approximately 10 minutes later the female was observed to approach a male security person on the front door of Lost Arc. The security person was observed to allow the female to enter the venue. A minute or so later the Inspectors and a Police officer approached the female who was standing with friends just inside the venue. The female was holding a full glass of drink in her hand. She was then escorted from the venue by the Inspectors and the police officer.
- 19) The Inspectors then spoke with the female outside the venue to ascertain her age and if she had been drinking that night. During this conversation the female was swaying continually, her speech was slurred, she had difficulty focusing on the Inspectors' questions and it was noticed that her breath smelt strongly of liquor. The Inspectors formed the view that the female was very intoxicated.
- 20) Mr Crawley agreed to the facts as alleged and admitted the breach.

**Complaint 5:**

- 21) This complaint also alleged a breach of section 121 of the Act, failure to remove an intoxicated person from licensed premises. On Saturday 1 January 2011 at approximately 12.50 am Licensing Inspectors visited the Discovery premises and proceeded to an area known as Bar 3. The Inspectors observed a female patron approach the eastern end of the bar in the company of a male. The female was observed to be swaying from side to side and leaning up against the male attempting to steady herself with the male appearing to be supporting the female. The female then left the bar and took a few steps towards a chair where she grabbed the side of the chair forcing it to tilt sideways on two legs nearly tipping the chair over and then slumping into the chair. The female then left the chair and took a few steps towards the bar and in doing so she nearly fell backwards before stumbling back towards the chair and falling into it. The female left the chair again and was observed to be unsteady on her feet as she headed towards the bar where she leant up against the male and stumbled from side to side before returning to the chair.
- 22) The female was then observed to leave the chair again and proceed towards the corner of the bar and in doing so was very unsteady on her feet, swaying side to side and bumping into other people. She appeared disorientated and was displaying signs of extreme intoxication when she returned to the chair. The Inspectors then approached a Crowd Controller and directed him to assist in removing the female from the premises. The female was then observed to be leaning into the Crowd Controller when she was escorted past Bar 1 to the Discovery foyer.
- 23) In the foyer the female admitted to being drunk whilst being spoken to by Inspectors. She was slurring her words, her breath smelt of liquor she had trouble controlling her balance and concentrating on the subject discussed. At the conclusion of the discussion with the Inspectors the female clutched the arm of an Inspector and lead him away from the front of the premises towards the taxi rank. A short time later the female returned to the front of Lost Arc where she remained extremely unsteady on her feet and was seen leaning into a male supporting herself. She then proceeded to the front door of Lost Arc where a Crowd Controller refused her entry and signalled her to leave the area. The female complied with that request.
- 24) Mr Crawley agreed to the facts as alleged and admitted the breach on behalf of the Receiver Manager Licensee.

**Complaint 6:**

- 25) This complaint also alleged a breach of section 121 of the Act, failure to remove an intoxicated person from licensed premises. On Saturday 1 January 2011 at approximately 3.30 am Licensing Inspectors attended the Lost Arc premises in company with a Senior Station Officer from the Fire Department. The Inspectors observed approximately 130 patrons in attendance and a DJ was playing recorded music. The Inspectors observed a female patron standing in the vicinity of the eastern end of the bar holding a glass in her hand that appeared to contain a mixed spirit drink. The female was observed to be swaying from left to right, forwards and backwards in a staggering motion and appeared to be having difficulty in maintaining her balance. The female went to take a drink from the glass she was holding and spilt it as she continued to sway and remain unsteady on feet. An Inspector located one of the venue's Crowd Controllers and directed him to assist in removing the female from the premises as she appeared intoxicated.
- 26) The Inspectors then spoke to the female during which time she remained unsteady on her feet, had trouble maintaining her balance, was argumentative and spoke with slurred speech. She advised the Inspectors that she was "Sober Bob" which was of concern to the Inspectors as she appeared to them to be significantly intoxicated. The female further advised the Inspectors that she had been drinking vodka and orange and before attending Lost Arc she had been drinking Daiquiris at other venues.
- 27) The female then moved away from the Inspectors with her male companion before stopping in front of Lost Arc. She was observed lighting a cigarette and staggering about on the footpath. On one occasion she was observed to drop her cigarette and, after picking it up, staggered forward to keep her footing. She was also observed to speak on her mobile phone before dropping it on the ground. At approximately 3.53 am the female was observed to cross the roadway and in doing so block vehicles travelling on Mitchell Street as she staggered and remained unsteady on her feet.
- 28) Mr Crawley agreed to the facts as alleged and admitted the breach.

**Complaint 7:**

- 29) This complaint alleged breaches of section 102 and 121 of the Act in that the Licensee sold liquor to an intoxicated person and failed to remove that person from the licensed premises. At approximately 3.50 am on Saturday 1 January 2011 Licensing Inspectors attended the Discovery premises and entered via the front entry point. They noted approximately 600 patrons in attendance and a DJ playing recorded music. The Inspectors proceeded to an area within the premises known as Bar 3 and, on ascending the stairs from the ground floor level to the observation platform, observed a female patron who fell forward up the stairs directly in front of a Crowd Controller. The female picked herself up and was observed to be very unsteady on her feet but appeared uninjured from the fall. The female reached the observation platform and then climbed another set of stairs to Bar 3 at the western end. The female was observed to stagger from left to right before climbing the stairs and using the hand rail to steady herself.
- 30) On reaching Bar 3 the female moved to a small raised dais used by dancers at the venue on which she emptied the contents of a small handbag she was carrying. She was observed fumbling with and trying to sort through some coins before scraping them back into her bag. She then turned around and leaned back against the dais and checked a mobile telephone she had removed for her handbag. In doing so she was observed to sway in a backward and forward motion. A short time later the female placed her arms and hands behind her on to the dais for support. She bent her head forward then brought it up in a jerking motion before again bending her head towards her chest. Inspectors observed the female's head drop further towards her chest and her upper torso gradually moved forward. It was observed at this stage that the female had closed her eyes and appeared to be falling asleep.

- 31) The Inspectors noticed a male Crowd Controller walk directly past the female, taking no notice of her as he proceeded to a mobile bar positioned in the western corner where he spoke to a female barperson. The Inspectors directed the female to the rear stairs which lead from the viewing platform to the rear doors. The female descended the stairs holding on to the centre handrail to steady herself. Approximately three quarters of the way down the stairs the female stumbled and fell forward. However, as Inspectors were in front of her they were able to catch her and prevent her from injuring herself.
- 32) Outside the venue the female admitted to being drunk and drinking vodka sunrises whilst at Discovery. Whilst being spoken to by the Inspectors the female was aggressive, disorientated, slurred her speech and was unsteady on her feet.
- 33) On Friday 21 January 2011 Inspectors reviewed CCTV footage supplied by the Licensee for 1 January 2011. In this footage the female was identified and observed to attend Bar 3 within Discovery at approximately 3.14 am. At approximately 3.17 am and 3.27 am the female was observed to purchase what appeared to be 2 glasses of mixed spirit drinks. During this period of time, before and after purchasing these drinks, the female was observed to display signs of intoxication by being unsteady on her feet as she swayed forwards and backwards. In addition, on one occasion she was seen to lean on the bar with her forearms and rest her head on top of her arms and the bar.
- 34) Mr Crawley agreed to the facts as alleged and admitted the breaches of the Act.

#### **Complaint 8:**

- 35) This complaint alleges that the Licensee committed breaches of section 110 of the Act in not complying with the Camera Surveillance licence condition and Liquor Licence Special Condition 3, which prohibits the supply of complimentary drinks to patrons between midnight and closing time. The second element of the complaint alleges that the Licensee committed a breach of section 105 of the Act by permitting indecent conduct to occur on the licensed premises and, further, that the conduct of the business at the premises offended the Objects of the Act prescribed in section 3 and the Public Interest Criteria set out in section 6.
- 36) The complaint alleges that on Wednesday 25 August 2010, Wednesday 19 January 2011 and Wednesday 26 January 2011 ("the material dates"), the Licensee failed to display camera surveillance signs in the area known as Corporate Box 1 where CCTV cameras had been installed and were recording the activities of female "Tits out Tuesday" (T.O.T.) contestants in various stages of undress and nudity. Further, that the Licensee of Discovery failed to comply with the Camera Surveillance Requirements and Guidelines (October 2009) condition 3.6, thereby contravening section 110 of the Act.
- 37) The complaint alleged that CCTV footage obtained from the Discovery CCTV camera system showed female T.O.T. contestants using Corporate Box 1 as a change room on the material dates. On Tuesday 1 February 2011, Licensing Inspectors attended at discovery nightclub and conducted an inspection of the premises at which time it was noted that there were no camera surveillance signs displayed in Corporate Box 1 or 2, the Corporate Bar, or in the vicinity of the entrance to these areas as required by the Camera Surveillance licence condition.
- 38) On Thursday 31 March 2011, the Nominee of Discovery provided Licensing Inspectors with 'Wet T-shirt Competition Participant Guidelines' contracts signed by female contestants for Wednesday 19 January 2011 and Wednesday 26 January 2011. No advice to the contestants or mention of CCTV cameras recording their activities whilst present in Corporate Box 1 appears in those contracts. Further the Licensee failed to meet the self-imposed guidelines and responsibilities as outlined in a document titled 'A Code of Practice for Camera Surveillance System - Operated by Rediscover Pty Ltd'.
- 39) This complaint alleged further that on the material dates the Licensee supplied female T.O.T contestants in Corporate Box 1, complimentary drinks in contravention of its Liquor

Licence special condition 3 which provides that no complimentary drinks shall be supplied after midnight on any day the premises trades beyond 2.00 am thereby contravening section 110 of the Act. The complaint alleges that the CCTV footage obtained shows female T.O.T contestants were served and consumed complimentary alcoholic drinks, commonly known as 'Jager Bombs' after midnight in Corporate Box 1 which was being used as a change room on the material dates. A summary of the complimentary drinks provided to the contestants is as follows:

- 25 August 2010 – 10 female contestants – 22 'Jager Bombs' served.
- 19 January 2011 – 5 female contestants – 15 'Jager Bombs' served.
- 26 January 2011 – 10 female contestants – 37 'Jager Bombs' served.

The relevant trading hours for Discovery Nightclub are Tuesday 10.00 pm hours to Wednesday 4.00 am.

- 40) This complaint alleged further that on Wednesday 25 August 2010 and Wednesday 19 January 2011, the Licensee committed breaches of section 105 of the Act, by permitting indecent conduct to occur on and at its licensed premises. It is alleged that on Wednesday 25 August 2010, the Licensee permitted two females, one of whom was a contestant in the T.O.T competition, to act indecently in Corporate Box 1 as they were seen on CCTV footage to embrace, fondle each other and one female kissed the others breasts. On Wednesday 19 January 2011 it is alleged that the Licensee permitted two female contestants of T.O.T to act indecently in Corporate Box 1 as they were seen on CCTV footage to embrace, fondle each other and one female kissed the others breasts. On both occasions the licensee's staff are shown to be in close proximity of these incidents and took no action to stop it. In addition, two male bar staff employees of the licensee appear on the CCTV footage to encourage these activities and for female contestants to expose their breasts.
- 41) The complaint further alleges that by the conduct described above the Licensee offended the Objects of the Act prescribed in section 3 and the Public Interest Criteria prescribed by section 6 by the irresponsible provision and consumption of liquor on licensed premises.
- 42) Mr Crawley agreed to the facts as alleged and admitted the breach. He asked that the Commission note that not all of the "Jager Bombs" served in Corporate Box 1 prior to the T.O.T contests were consumed by the competitors and some appeared to have been consumed by staff of the premises.

## **Submissions on Penalty**

- 43) Mr Anderson noted that Rediscover Pty Ltd had been the Licensee of the premises since 2006 and had previously appeared before the Commission in 2006 in respect of breaches associated with the T.O.T. competition and licence conditions, for which a suspended penalty was applied. He also noted the Commission's decision of 30 March 2011 in respect of complaints arising from the conduct of the T.O.T. competition during which contestants bared their breasts in breach of the Adult Entertainment Guidelines and other breaches of licence conditions, including the fire safety licence condition. Mr Anderson also noted that in 2008 the Licence for Discovery had been suspended for 2 days following a contested Hearing into a complaint of allowing minors to enter the premises and purchase alcohol.
- 44) Mr Anderson submitted that the Commission, in determining the appropriate penalty, should take account of this Licensees past record of offending, the number of discrete breaches the subject of the current Hearing and the unusual and serious breaches that have been admitted in respect of the conduct of the T.O.T. competition and the priming of the contestants with alcohol prior to the event.
- 45) Mr Anderson also submitted that a relevant consideration for the Commission is the fact that the Licensee Company is currently under Receiver Management, with the aim of

selling the premises due to the untenable financial situation of the former Licensee. He noted that the Director was not seeking cancellation of the Licence as a result of the current breaches however a significant period of suspension was appropriate. Mr Anderson submitted that the appropriate penalty in the circumstances was the suspension of the Licence for the premises for a period of 2 weeks.

- 46) Mr Crawley noted that, apart from the T.O.T. breaches, the majority of the offending currently before the Commission occurred around the Christmas / New Year period when the venue was experiencing capacity crowds which made it more difficult for staff and Crowd Controllers to detect breaches in respect of intoxication and under age patrons. He noted that this was put forward as a reason for the breaches and not as an excuse for those failings. Mr Crawley acknowledged that the premises were not well managed under the previous regime and noted that the Receiver Manager had been in place since April 2011 and no breaches had occurred during that period. Mr Crawley submitted that a penalty of 2 weeks suspension of licence was agreed by the Receiver Manager Licensee as being appropriate in the circumstances. He added that if the Commission was minded to impose a penalty of that order the Receiver Manager would prefer that the penalty be served as soon as possible so as to not jeopardize or delay any potential sale of the premises.

## Consideration of the Issues

- 47) The Commission considers the complaints before it to be at the serious end of offending. In particular it is noted that a number of the patrons of the premises who were intoxicated were females who were so drunk as to be unable to properly take care of themselves. Allowing that these people were assessed as being severely intoxicated in the early hours of the morning the very real potential for harm to those patrons in such circumstances is self evident. Given Rediscover Pty Ltd's history of past offending an actual suspension of licence is warranted for those breaches.
- 48) The Commission agrees with the submission of Mr Anderson that the breaches arising from the conduct of the T.O.T. competition are unusual and unprecedented. The Commission regards these breaches as the most serious of those currently under consideration. The invasion of the privacy of the female contestants of T.O.T. by recording them on the CCTV system in various stages of nudity is regarded as despicable behaviour, as is the plying of the contestants with alcohol before they went on stage in front of generally large crowds of patrons. Given the previous offence by the Licensee in respect of the T.O.T. competition and Mr Gray's obvious inadequate control of the event, as evidenced from his last appearance before the Commission, the Commission is of the view this offending warrants a significant period of suspension of Licence.
- 49) The Commission expresses its dismay that the former Licensee could condone the events that occurred in Corporate Box 1, not only by having no notification that the impromptu change room was under CCTV surveillance but that male staff were also in the room preparing high alcohol content cocktails for themselves and the contestants. The sleazy nature of this activity is highlighted by the fact that the DJ for the T.O.T. contest found it necessary to visit the Corporate Box when the females were changing and one of the Licensees managers found it necessary to visit the room to conduct identification checks of the women, despite the fact he is not engaged by the Licensee as a Crowd Controller.
- 50) The Commission acknowledges that the breaches currently under consideration were not committed under the watch of the Receiver Manager, Korda Mentha. Were that not the case, and given the former Licensee's poor track record in terms of prior breaches and failure to properly manage the premises, the penalty would have been significantly higher. The prospect of complete cancellation of the Licence was a potential outcome.
- 51) The Commission does however issue a warning to the current Licensee, in respect to the T.O.T. competitions, that in the event of another breach during the period the Receivers and Managers are in place, the Commission, particularly if this same hearing panel is

convened, will be minded to remove the Adult Entertainment licence condition from Discovery's licence and issue a directive that the T.O.T. contest will no longer be permitted. It will actually be banned.

- 52) The Commission appreciates that there have been no breaches of the Act or Licence Conditions by the current Licensee, the Receivers Manager. However the Commission does express concern that the Receivers Managers are not in consistent day to day control of the business as it would appear that they reside in Adelaide. It is also apparent that they are not in direct or effective control of the T.O.T. event as it occurs in the early hours of Wednesday morning. The Commission notes that the event was actually very heavily promoted during the week in which this Hearing was held, including the promotion of a celebrity adult entertainer who was to appear as a guest performer. The Commission assumes that the T.O.T. contests continue to be conducted with the knowledge of the Receivers Managers and that they are fully aware of the conditions that apply to such events when conducted on licensed premises. The Commission assumes that the Receiver Manager will take very firm control of that event henceforth, until the premises are sold or the period of management comes to an end. If there is any future proven complaint from the Inspectors that is referred to the Commission arising out of the conduct of the T.O.T. competition the Receiver Manager is now on clear notice that the event will be cancelled permanently through an amendment to the licence conditions for the premises.

## **Decision**

- 53) The Commission has determined to impose a cumulative penalty of 14 days suspension of the liquor licence of the Discovery / Lost Arc premises in respect of the 8 complaints considered in this Decision. The commencement date for that 14 day penalty will be Wednesday 10 August 2011.

Philip Timney  
Presiding Member

5 August 2011