

# REGULATING ADULT ENTERTAINMENT

A REVIEW OF THE LIVE ADULT ENTERTAINMENT INDUSTRY IN QUEENSLAND

DECEMBER 2004

**WARNING: This report contains sexually explicit references.**

CRIME AND  
MISCONDUCT  
COMMISSION



QUEENSLAND

**CMC Vision:**

To be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

**CMC Mission:**

To combat crime and improve public sector integrity.

**Acknowledgments**

The review of live adult entertainment was undertaken by the Research and Prevention arm of the Crime and Misconduct Commission, with this report written by Dr Samantha Jeffries, Dr Mark Lynch, Derran Moss and Jacqueline Jago. The authors gratefully acknowledge the assistance of Dr Margot Legosz and Rebecca Lowndes.

The report was prepared for publication by the CMC's Communications Unit.

---

© Crime and Misconduct Commission 2004

Apart from any fair dealing for the purpose of private study, research, criticism or review, as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without permission. Inquiries should be made to the publisher, the Crime and Misconduct Commission.

ISBN 1 876986 30 1

---

Crime and Misconduct Commission  
140 Creek Street, Brisbane, Queensland, Australia 4000

GPO Box 3123  
Brisbane Qld 4001

Tel.: (07) 3360 6060  
Fax: (07) 3360 6333  
Email: [mailbox@cmc.qld.gov.au](mailto:mailbox@cmc.qld.gov.au)

**Note: This publication is accessible through the CMC website – [www.cmc.qld.gov.au](http://www.cmc.qld.gov.au) – for a limited period.**

CRIME AND MISCONDUCT COMMISSION

GPO Box 3123  
Brisbane Qld 4001

Level 3, Terrica Place  
140 Creek St  
(Cnr Creek and Adelaide)  
Brisbane, Queensland

Tel: (07) 3360 6060  
Fax: (07) 3360 6333

Toll Free:  
1800 061 611

E-mail  
mailbox@cmc.qld.gov.au

www.cmc.qld.gov.au



The Honourable P D Beattie MP  
Premier and Minister for Trade  
15<sup>th</sup> Floor  
Executive Building  
100 George Street  
BRISBANE QLD 4000

The Honourable R Hollis MP  
Speaker of the Legislative Assembly  
Parliament House  
George Street  
BRISBANE QLD 4000

Mr G Wilson MP  
Chairman  
Parliamentary Crime and Misconduct Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Sirs

In accordance with section 69 of the *Crime and Misconduct Act 2001*, the Crime and Misconduct Commission hereby furnishes to each of you its report, *Regulating adult entertainment: a review of the live adult entertainment industry in Queensland*.

The Commission has adopted the report.

Yours faithfully



**BRENDAN BUTLER SC**  
Chairperson

# FOREWORD

---

Live adult entertainment has developed and diversified greatly over the past decade and now incorporates performances that go well beyond the traditional concept of a striptease show. These performances are able to occur legally under the criminal law. Despite this growth and diversification, adult entertainment in Queensland is not regulated except in venues that have a Liquor Licence and an attached Adult Entertainment Permit. This means that there are more than three times as many unregulated adult entertainment businesses as there are regulated ones. The CMC review suggests that, for a range of reasons including the need to protect minors and community amenity, and to prevent organised criminal activity in the industry, unregulated adult entertainment businesses should be brought within a uniform regulatory regime applying to all providers of adult entertainment.

In conducting its review of the live adult entertainment industry in Queensland, the CMC is drawn to the view that, to the extent that it operates, the current regulatory scheme based on Adult Entertainment Permits works well and provides a useful foundation for an extended regulatory regime. The CMC considers there is a persuasive argument for building on the strengths of the existing system and extending its reach to all providers of live adult entertainment. The CMC believes the new regulatory regime proposed in this report would make a generally welcomed contribution towards ensuring that community amenity is not undermined by the presence of businesses providing the wide range of services that characterise the live adult entertainment industry in Queensland today.

**Brendan Butler SC**  
**Chairperson**

# CONTENTS

---

<b>Acknowledgments</b>	<b>ii</b>
<b>Foreword</b>	<b>v</b>
<b>Abbreviations</b>	<b>ix</b>
<b>Summary</b>	<b>xi</b>
Role of the Crime and Misconduct Commission	xi
Research methods	xi
Regulated and unregulated sectors of the industry	xii
Specific concerns raised in the reference	xii
Key findings	xiii
Recommendations	xiv
Conclusion	xix
<b>Chapter 1: Background to the review of live adult entertainment in Queensland</b>	<b>1</b>
Introduction	1
Context leading to the review	3
Defining live adult entertainment	4
Objectives of the review	4
Review method	4
Conclusion	6
<b>Chapter 2: The landscape of live adult entertainment in Queensland: law and practice</b>	<b>7</b>
Introduction	7
Regulated entertainment: the AEP system	8
Defining live adult entertainment in the regulated sector	8
Assessing, granting and maintaining AEPs	10
Key features of AEP-controlled venues	14
Live adult entertainment in the unregulated (non-AEP-controlled) sector	20
Key features of non-AEP-controlled adult entertainment	23
Conclusion	27
<b>Chapter 3: Examining the review objectives</b>	<b>29</b>
Regulatory objective 1: Distinguishing live adult entertainment from prostitution, allowing both to be regulated separately	29
Regulatory objective 2: Keeping the live adult entertainment industry free of organised crime, illicit drugs and corruption	36
Regulatory objective 3: Eliminating the opportunities for the exploitation of minors in the live adult entertainment industry	41
Regulatory objective 4: Reducing negative impacts of the live adult entertainment industry on local communities	44
Conclusion	45

<b>Chapter 4: Examining other issues relating to regulatory efficacy</b>	<b>47</b>
The AEP application and approval process	47
Problematic legislative and regulatory issues	53
Practical application of the regulatory scheme	56
Advertising and marketing restrictions	58
Workplace health and safety issues	58
Conclusion	61
<b>Chapter 5: Overview and recommendations</b>	<b>63</b>
Introduction	63
A new regulatory regime for adult entertainment	65
Live adult entertainment regulatory and advisory body	78
Caveat against censorship of artistic performance	86
The way forward	87
<b>Appendix: Letter of referral from the Premier</b>	<b>89</b>
<b>Bibliography</b>	<b>93</b>

## ABBREVIATIONS

---

AEL	Adult Entertainment Licence
AEP	Adult Entertainment Permit
ABN	Australian Business Number
ALVA	Adult Licensed Venues Association
ATO	Australian Taxation Office
CMC	Crime and Misconduct Commission
CCYP	Commission for Children and Young People
DTFTWID	Department of Tourism, Fair Trading and Wine Industry Development
LLD	Liquor Licensing Division of the Department of Tourism, Fair Trading and Wine Industry Development
PETF	Prostitution Enforcement Task Force
PLA	Prostitution Licensing Authority
LGAQ	Local Government Association of Queensland
QPS	Queensland Police Service
SAA	Striptease Artists Australia Inc.
SQWISI	Self-Health for Queensland Workers in the Sex Industry

# SUMMARY

---

**This report documents the results of an extensive review of the live adult entertainment industry in Queensland. The term ‘live adult entertainment’ refers to a wide range of sexually explicit activities that have developed around the more traditional and limited concept of a striptease show. This report provides the first detailed account of the live adult entertainment industry in Queensland and the problems associated with the provision of entertainment that in its most extreme forms borders on prostitution.**

## ROLE OF THE CRIME AND MISCONDUCT COMMISSION

The CMC has a legislative responsibility to prevent major crime and misconduct. This responsibility is part of its prevention function, as set out in section 23 of the *Crime and Misconduct Act 2001* (Qld). The CMC may also undertake research into matters referred to it by the Premier relating to areas nominated in section 52(1)(c) of the same Act. These areas are:

- the administration of criminal justice
- misconduct.

On 15 September 2003 the CMC received a reference from the Honourable Peter Beattie (MP, Premier and Minister for Trade) requesting that it review the adult entertainment industry in Queensland. The review documented in this report has been undertaken by exercise of the CMC’s power under section 52(1)(c), in conjunction with the exercise of its section 23 major crime and misconduct prevention function.

## RESEARCH METHODS

The following research methods were used during the review:

- Observation sessions were undertaken at 34 live adult entertainment sites across Queensland, including Mount Isa, Townsville, Cairns, Rockhampton, Gladstone, Brisbane, the Sunshine Coast and the Gold Coast.
- A total of 86 interviews were conducted with people in the live adult entertainment industry, including 33 owners/managers and 53 entertainers.
- Consultations were undertaken with a range of other key stakeholders, including:
  - Liquor Licensing Division (LLD) of the Department of Tourism, Fair Trading and Wine Industry Development (DTFTWID)
  - Queensland Police Service (QPS), including the Prostitution Enforcement Task Force (PETF)
  - Queensland Health
  - Prostitution Licensing Authority (PLA)
  - Commission for Children and Young People (CCYP)
  - legal representatives of Adult Entertainment Permit (AEP) holders.

- The CMC called for submissions from interested organisations and members of the public to provide comment on the objectives of the review. The CMC received 15 written submissions. These included submissions from government agencies/departments (DTFTWID, QPS), community and business groups, Striptease Artists Australia Inc. (SAA), Adult Licensed Venues Association (ALVA), one local council (Townsville City Council), two live adult entertainment business owners and eight members of the general public.
- The CMC reviewed relevant live adult entertainment literature and considered the regulatory frameworks established in other jurisdictions.

## REGULATED AND UNREGULATED SECTORS OF THE INDUSTRY

In the most general sense, the live adult entertainment industry is made up of two sectors: a small regulated sector and a larger unregulated sector.

Regulated live adult entertainment in Queensland occurs in conjunction with the sale/supply of alcohol and is governed by the *Liquor Act 1992*. Liquor licensees/permittees who wish to supply live adult entertainment must hold a current AEP that enables adult entertainers to perform acts of ‘an explicit sexual nature’, operationally defined by the LLD as performances where the genitalia are exposed and/or where the adult entertainer is touching the customer in a sexual way.

Unregulated live adult entertainment takes place in venues where liquor is sold/supplied, in venues where liquor is not sold/supplied, and through outcall services. In the first instance, the performances are governed by the Liquor Act and must not be sexually explicit (for example, non-contact topless striptease). In the two other cases, as long as the entertainment is not prostitution or criminally indecent it remains lawful; accordingly, services similar to those provided by the regulated sector, including full-nudity striptease, can legitimately be offered under certain circumstances.

In August 2004, there were 25 regulated live adult entertainment venues and at least 95 unregulated adult entertainment businesses operating in Queensland. It is important to recognise that over the past four years, the number of regulated live adult entertainment venues has steadily decreased while unregulated businesses have increased.

## SPECIFIC CONCERNS RAISED IN THE REFERENCE

The reference received by the CMC drew attention to the need to consider the general efficacy of the current regulatory framework, and to give consideration to whether the intentions of the regulatory framework introduced in 1999 had been achieved. These intentions were to:

- distinguish legitimate live adult entertainment from prostitution, allowing both to be regulated separately
- keep organised crime, illicit drugs and corruption out of the live adult entertainment industry
- eliminate opportunities for the exploitation of minors in the live adult entertainment industry
- reduce negative impacts of the live adult entertainment industry on local communities.

A particular concern highlighted in the reference to the CMC was that the growing unregulated part of the live adult entertainment industry may be undermining the regulatory framework established in 1999 and that:

- criminals and their associates may be entering the industry
- the exploitation of minors could be occurring
- there could be some impact on local community amenity.

## KEY FINDINGS

The CMC arrived at the following general conclusions:

- It seems that the current regulatory system is at least partly responsible for preventing illegal prostitution from occurring in AEP-controlled venues. The majority of reports, both from the industry and from regulatory authorities, relating to overt on-site illegal prostitution were linked mainly to the unregulated sector. The existing controls on the live adult entertainment industry appear to play a significant role in minimising the likelihood of overt illegal prostitution occurring.
- There is some information to suggest the existence (albeit at relatively modest levels) of prostitution, illicit drug use/dealing and organised crime within Queensland's live adult entertainment industry, especially within the unregulated industry sector.
- There are inconsistent policing/regulatory practices within both the regulated and the unregulated sectors of the live adult entertainment industry. These inconsistencies are one of the factors that have led to allegations of less than professional conduct on the part of some police and LLD Compliance Officers.
- There are isolated claims of public officials behaving inappropriately and disrespectfully towards those working in the live adult entertainment industry.

With regard to the possible exploitation of minors in the live adult entertainment industry:

- A small number of minors aged 16–17 years do appear to have worked as adult entertainers, but primarily within the unregulated sector as a consequence of having 'fallen through' some 'legal and regulatory gaps'.

With respect to the issue of community amenity:

- Although there are some community concerns about the unregulated sectors of the live adult entertainment industry touting for business, the live adult entertainment industry does not appear to be responsible for any significant negative impact upon community amenity.

Other factors that were found to be detracting from the efficacy of the regulatory framework included:

- a licensing regime that is currently limited to venues where liquor is sold/supplied and the entertainment is defined as 'sexually explicit'
- legislation and regulations that fail to provide certainty, among both the regulated and the regulators, about lawful conduct
- restrictive advertising/marketing in the regulated sector but few advertising/marketing restrictions in the unregulated arena; this has resulted in inequities between the regulated and unregulated sectors and has contributed to some concerns with regard to touting/spruiking in the unregulated sector
- an absence of industry-specific workplace health and safety standards.

The CMC is persuaded that many of the concerns associated with the live adult entertainment industry can be addressed by adapting and extending the existing regulatory regime to all parts of the live adult entertainment industry. Crucially, the industry itself is supportive of the idea of increased regulation if this provides certainty and consistency in terms of the services that can legally be offered to customers.

This report makes a range of recommendations that seek to strengthen the existing system by incorporating the currently unregulated sector into a more coordinated regulatory system.

What is proposed by the CMC in this report involves strengthening and extending the existing Adult Entertainment Code. In practical terms, this will mean an expansion of the role of the LLD, which is responsible for overseeing AEPs.

## RECOMMENDATIONS

### *Recommendation 1*

**That a new model for full regulation of Queensland's live adult entertainment industry incorporate the following:**

- amendments to the Criminal Code providing for a new offence of providing indecent acts, with exemption for those acting with authority of an Adult Entertainment Licence (AEL)
- amendments to the Criminal Code 'Indecent acts' provisions to clarify the definition of 'a place to which the public is permitted to have access'
- amendments to the Criminal Code providing new offences of procuring a minor to perform indecent acts and of providing a minor to perform indecent acts
- a licensing system for adult entertainment business owners, providing a general licence and two special permits, corresponding to the current range of activity in the adult entertainment industry
- an amended Adult Entertainment Code, including proscribed conduct for each licence and permit, to be made under regulation
- a set of specified conditions attaching to each licence and permit, including provision for advertising, the presence of minors, probity etc.

### *Recommendation 2*

**That the Criminal Code offence of indecent acts under section 227 be extended by defining the phrase 'place to which the public is permitted to have access' to include cubicles or other enclosed spaces in non-domestic premises.**

### *Recommendation 3*

**To ensure that minors are protected from exploitation for commercial sexualised performance, the CMC recommends that a criminal offence be created of procuring an indecent act by a minor under an arrangement of a commercial character.**

### *Recommendation 4*

**That an offence be created which makes illegal the provision of indecent acts under an arrangement of a commercial character, except in those circumstances where the individual in question possesses a relevant AEL. Further, that an offence be created which makes illegal the provision of indecent acts by a minor under an arrangement of a commercial character.**

### ***Recommendation 5***

The CMC recommends that the regulation of live adult entertainment be consolidated in a single regulatory scheme. Further, that the basic legislative structure of the current AEP scheme be maintained, but with substantial alteration to the necessary provisions. Under this structure, the details of each licence and permit are contained in the Adult Entertainment Code, which is made by regulation authorised in the Act. Reflecting the current legislative approach, the CMC recommends that the following matters be included in the Act:

- authority for the making of an Adult Entertainment Code through regulation
- sanction for the provision of adult entertainment in breach of the conditions of an AEL or special permit
- sanction for allowing minors in any venue where adult entertainment is taking place under an AEL
- general provisions concerning such matters as venue specification, probity checks, duration of licences, restrictions upon licence holders and supervision of venues, as is provided in the current Liquor Act.

### ***Recommendation 6***

In order to achieve the objectives of the new regulatory regime, the CMC recommends that amendments to the Liquor Act be made in the following form:

#### **Section A**

- (1) There is to be an Adult Entertainment Code (the 'code').
- (2) The code prescribes the live entertainment that may be performed on premises to which a standard licence or special permit relates under an Adult Entertainment Licence.
- (3) Live adult entertainment is the provision of live entertainment that may be performed for an audience of one or more persons, under an arrangement of a commercial character, by a person performing an act of an explicit sexual nature.
- (4) Live adult entertainment that may be performed under the code does not include the following acts —
  - (a) sexual intercourse
  - (b) oral sex.
- (5) A person applying to be licensed to provide live adult entertainment must submit to appropriate criminal history checks.
- (6) An adult entertainment licensee or permittee may also hold a Liquor Licence except as otherwise provided in the code.

#### **Section B**

- (1) A person may apply for a Liquor Licence and a standard Adult Entertainment Licence concurrently.
- (2) A person is eligible to apply for an AEL Special Permit only concurrently with or subsequent to an application for a standard AEL.

#### **Section C**

A licensee or permittee must not provide adult entertainment in breach of the conditions of the Adult Entertainment Licence and permit held.

Maximum penalty — 200 penalty units.

#### **Section D**

- (1) This section applies despite any section allowing minors on liquor licensed premises.
- (2) The licensee, permittee or the licensee's or permittee's nominee or controller, if any, must ensure that a minor is not in an approved area when adult entertainment is being provided.

Maximum penalty — 200 penalty units.

- (3) To remove any doubt, it is declared that a minor cannot be in an approved area in any capacity including as a performer of adult entertainment.

### *Recommendation 7*

That the new live adult entertainment licensing system contain an Adult Entertainment Licence and two Special Permits, as follows:

#### **Adult Entertainment Licence**

This licence is available for all sexually explicit adult entertainment businesses and is sufficient in itself for those venues only providing striptease performances, involving partial or full nudity.

#### **Adult Entertainment Licence (Special Permit 1)**

This special permit is required for performances offering 'graphic' full-nudity striptease including performances involving genital self-penetration by performers. No physical contact will be allowed between performers and customers.

Venues must not hold a Liquor Licence concurrent with an Adult Entertainment Licence (Special Permit 1). Venues can therefore also not hold an Adult Entertainment Licence (Special Permit 1) in conjunction with an Adult Entertainment Licence (Special Permit 2).

#### **Adult Entertainment Licence (Special Permit 2)**

This licence is required for performances involving striptease with physical contact between performers and customers.

Venues must hold a Liquor Licence concurrently with an Adult Entertainment Licence (Special Permit 2). Venues can therefore also not hold an Adult Entertainment Licence (Special Permit 2) in conjunction with an Adult Entertainment Licence (Special Permit 1).

### *Recommendation 8*

Regulation of the entire adult entertainment industry should be undertaken by a single agency and that this agency should remain the Liquor Licensing Division. The role of this regulatory body should include the following:

- issue Adult Entertainment Licences and Special Permits
- monitor and enforce the suggested live adult entertainment regime and accompanying regulations
- Provide advice to both live adult entertainment business owners/managers and entertainers regarding permissible and impermissible conduct
- introduce (in negotiation with the live adult entertainment industry) some basic health, safety and workplace standards as conditions of Adult Entertainment Licences
- oversee compliance by licensees with regulations, licensing conditions and any other obligation contained in the new regime and in any relevant workplace health and safety legislation
- monitor venues offering live adult entertainment operating with an Adult Entertainment Licence or a Liquor Licence. In instances where a venue operating without the protection provided by an Adult Entertainment Licence appears to be in breach of the indecency provisions of the criminal code, such breaches must be immediately reported to QPS for action
- periodically audit enforcement practices
- establish a means by which adult entertainers and others in the industry may report (anonymously if they so choose) prostitution, other criminal activity (including illicit drug use/dealing and organised crime), the exploitation of minors, workplace harassment, assault, misconduct/corruption, and problems with workplace health/workplace safety conditions within any sector of the live adult entertainment industry.

### ***Recommendation 9***

That all publicly accessible venues offering live adult entertainment display appropriate signage for the purposes of warning persons that live adult entertainment occurs on the premises and preventing minors from entering in any capacity.

### ***Recommendation 10***

That the following licensing provisions be imposed on Adult Entertainment Licences for fixed adult entertainment venues (venues where adult entertainment is provided for more than three consecutive days or more than six times per year) only:

- 1 that the regulatory authority consider venue applications with regard to the number of licensed brothels and live adult entertainment premises already servicing a locale, to ensure that a red light district is not created
- 2 that the public be given and made aware of the opportunity to lodge objections against a venue licence application
- 3 that local government and the QPS be advised of venue licence applications and both be given the opportunity to object to the application on the grounds that the amenity, quiet or good order of the locality would be lessened if the licence were granted
- 4 that venues supplying these forms of live adult entertainment be fully enclosed in a way that prevents a person outside the area seeing inside it
- 5 that business names for these venues be approved by the regulatory authority.

### ***Recommendation 11***

To ensure that the live adult entertainment remains visible, and to reduce the risk of unlicensed prostitution taking place, that no venue operating under the terms of an Adult Entertainment Licence with an attached Special Permit 2 contain for private use a lounge, booth, compartment or cubicle.

### ***Recommendation 12***

That probity checks be retained at levels currently set out in the Liquor Act in relation to applicants for a Special Permit 2, with more limited checking for other applicants.

### ***Recommendation 13***

That attention be specifically given to the status of a spouse in relation to the question of an applicant's probity.

### ***Recommendation 14***

That the status of 'corporate' associates be clarified for the purposes of any applicant probity requirement.

### ***Recommendation 15***

That the probity checking process ensure that previous criminal convictions (especially for offences of a sexual nature) are relevant to determining the suitability of a person for a licence, but are not an automatic bar to the granting of a licence.

### ***Recommendation 16***

That as the authority responsible for issuing Adult Entertainment Licences, the LLD make inquiries to ensure applicants do not have interests in legal brothels and that section 8 of the Prostitution Act be amended to ensure that persons are ineligible to hold a brothel licence if they hold an Adult Entertainment Licence.

### ***Recommendation 17***

That a system of controllers supervising client–performer interactions wherever lap dancing takes place, as exists under current Liquor Act provisions, be maintained in the case of businesses operating under the terms of a Special Permit 2; but that controller licensing/registration be introduced to enable controllers to work across a range of venues, and that probity checking be limited to a criminal history check.

### ***Recommendation 18***

That the operation of a non-contact ‘dating’ service by the holder of a Special Permit 2 be permitted, subject to adequate provision being required in line with current industry practice, to maintain ‘date’ safety and deter prostitution.

### ***Recommendation 19***

That supervision be made a requirement for all Adult Entertainment Licences with or without a Special Permit 1 or 2 but that the means and level of supervision be made dependent on the licence type and the context in which the entertainment is being provided.

### ***Recommendation 20***

That the existing advertising restrictions applying to live adult entertainment businesses be retained and applied to all licensed providers of adult entertainment.

### ***Recommendation 21***

That spruiking and touting be restricted in every sector of the live adult entertainment industry. Licensees must ensure that spruiking or touting for business involving live adult entertainment occurs only on the premises in which the live adult entertainment is taking place and only on parts of the premises from which the spruiking or touting is not audible or visible to a person who is not on the premises.

### ***Recommendation 22***

That the amendments made to establish the proposed licensing scheme include a regulation-making power and a power to condition licences; and allow also for reasonable variations to be made to licensing conditions or licensee circumstances without triggering a cancellation of the licence.

### ***Recommendation 23***

That the new licensing scheme provide a mechanism for variation of conditions either at the instigation of the licensee or at the instigation of the licensing authority.

### ***Recommendation 24***

That provision be made to enable a person who has contracted to purchase premises, to make application for an Adult Entertainment Licence at the time when the contract is made.

### ***Recommendation 25***

That the length of Adult Entertainment Licences be extended (for example, three years), with a simple annual renewal process involving:

- payment of fees
- selected, random or targeted probity checks
- selected, random or targeted auditing of compliance with licensing conditions.

***Recommendation 26***

**That a probity check be conducted at the beginning of any licence period and that the current licence continue to operate for the duration of any probity check made in the course of any change of licensee or nominee.**

***Recommendation 27***

**That all venues and operators currently holding a valid Adult Entertainment Permit should be granted an interim Adult Entertainment Licence and, on request, an interim Special Permit 2.**

***Recommendation 28***

**That any framework to regulate the live adult entertainment industry include a mechanism for periodic review — in the first instance to take place three years from the publication of this report.**

***Recommendation 29***

**That the codification regime referred to in Recommendations 5–7 be drafted with the intent of accommodating current practice in the performing arts industry in relation to the treatment of sexual themes, subject to limits established by the criminal law.**

## **CONCLUSION**

A robust live adult entertainment industry offering a variety of sexually oriented services exists in Queensland today. The industry is, however, largely unregulated. The CMC is persuaded that a more exhaustive, coherent and stringent approach to regulation of the live adult entertainment industry (in its entirety) is required for the purposes of preserving community amenity and minimising crimes such as illicit drug use or dealing, prostitution, and the sexual exploitation of minors.

The regulatory scheme proposed by the CMC in this report is largely neutral in terms of its impact on already well-established industry practices; but, to the extent that there are unavoidable changes associated with the imposition of a standardised scheme across both regulated and unregulated sectors, a conservative approach has generally been adopted. This means that some practices occurring on the margins of the broader adult entertainment industry would no longer be permitted.

The CMC is confident that the licensing system outlined in this report would foster the development of a more mature, accountable and crime-resistant live adult entertainment industry in Queensland.

# BACKGROUND TO THE REVIEW OF LIVE ADULT ENTERTAINMENT IN QUEENSLAND

Live adult entertainment is, like prostitution, a form of commodified sexual behaviour and thus a form of live sex work. Although there are a number of similarities between live adult entertainment and prostitution, a line may also be drawn between the two. Live adult entertainment is largely about sexual fantasy, and prostitution is largely about the reality. However, there is a point at which the line between the two variants of live sex work becomes blurred. It is therefore useful to think of live sex work (live adult entertainment as well as prostitution) as being a continuum of commodified sexual behaviour, with non-contact live adult entertainment situated at one pole, and prostitution at the other.

In 1999, the Queensland Government established a new regulatory framework for live adult entertainment. In late 2003, the CMC was requested by the government to undertake a review of this regulatory framework. This report presents the results of that review.

## INTRODUCTION

Live adult entertainment goes by many names, including striptease, erotic dance, exotic dance, lap dancing, private dancing, go-go dancing, sexualised performances and live, sexually explicit entertainment. Regardless of the terms used, all live adult entertainment involves a performance designed to sexually titillate customers through fantasy and illusion (Bernard et al. 2003; Lewis 1998). Conceptually, because of the sexual component inherent in these performances, live adult entertainment, like prostitution, can be considered a variant of live sex work, especially when touching is involved (Bernard et al. 2003; Lamoine 2000). Consequently, many of the debates that surround prostitution are pertinent to the live adult entertainment industry.

For example, both live adult entertainment and prostitution are considered by some to be a deviant enterprise. Live sex industry businesses, which include prostitution and live adult entertainment, are widely regarded as being especially prone to illegal activities such as drug use/dealing, organised crime and corruption (Bernard et al. 2003, p. 2). Adult entertainers, as well as prostitutes, are at times disparaged as 'whores' who are probably 'drug addicted' and 'psychologically troubled' (Bernard et al. 2003; Jordan 1997; Liepe-Levinson 2002; Neave 2002).

Both prostitution and live adult entertainment are also considered by some to be forms of gender victimisation. Both activities are seen as expressions of male dominance over women, with women compelled to cater to male sexual fantasies or desire at the expense of their own wants or needs (Bernard et al. 2003; Chapkis 1997; Liepe-Levinson 2002; Phoenix 2000; Wood 2000).

In contrast to these views, it is argued by some that live adult entertainment and prostitution can both, in their way, be 'empowering' for at least some women. They argue, for example, that both professions can provide a way for women to achieve economic independence and feel 'good' about themselves. Live sex work, it is asserted, is a viable and legitimate occupational choice that fulfils genuine and longstanding social needs (Dudash 1997; Hobson 1987).

With regard to the point concerning the fulfilment of longstanding social needs, live adult entertainment is seen by some as providing a range of social benefits, including the following:

- *A place where men can relax, have 'fun' and escape from the world of work and home.* For example, Frank (2002, p. 86) suggests that strip clubs provide a place where men faced with the increasing stresses of life can escape for a few hours — 'A place where choices and options are clear-cut, a place where "feminism" [is] a dirty word, a place where a man [can] be a man'.
- *A safe place to be sexually open without fear of rejection* (Lamoin 2000, pp. 37–38). Frank (2002, p. 112) notes that the customers in her research sought acceptance of their sexual desires; the male customers 'told dancers things they claimed they had never told their wife or lover, usually specific fantasies or experiences that they thought the other women in their life would not appreciate or understand'.
- *Female contact, company, an ego boost and a chance to pursue 'sexualised' (albeit fantastical and commodified) relationships with women.* 'The "beauties" are there as a live fantasy — young, available, interested and accepting' (Frank 2002, p. 111). Strip-club customers are given the opportunity to talk to women of a particular image or status, with whom many of them may not generally be able to interact for any number of reasons, including lack of attractiveness, age, class and ethnic characteristics, disability, or women's unwillingness to interact with them on an unpaid basis (Frank 2002, p. 109).
- *An outlet to satisfy a desire for sexual variety without threatening marriages or long-term partnerships* (see Frank 2002).

Many of the issues confronting prostitutes are also relevant to adult entertainers. Like prostitutes, adult entertainers perform emotional as well as physical labour. Customers not only want to be 'turned on' but seek something more psychologically intimate as well. Both performers and prostitutes must also negotiate the 'deviant' stigma attached to their chosen occupations. In addition, they need to cope with similar workplace health and safety issues, particularly with respect to sexual harassment and assaults (Lewis 1998, pp. 57–59; Wood 2000, p. 23). However, notwithstanding the fact that there are important similarities between live adult entertainment and prostitution, a critical distinction can be drawn between the two occupations. Live adult entertainment is about the fantasy of sex, but prostitution is about the reality of sex. The majority of men who visit prostitutes pay for a sexual service involving actual sexual contact, including genital contact, while the customers of the live adult entertainment industry seek a sexualised performance where touching is either forbidden, or restricted to non-genital contact. This fantasy–reality distinction between prostitution and live adult entertainment is crucial to those working in the live adult entertainment industry.

Although this distinction between live adult entertainment and prostitution is genuine and important, there is a point at which the line between the two variants of live sex work becomes blurred. Where adult entertainment involves a high degree of very direct sexualised contact, such as that occurring during a lap dance, it is more difficult to assert that adult entertainment is about fantasy rather than the reality of sex. It is therefore perhaps more useful and accurate to understand live sex work as a continuum of commodified sexual behaviour, with non-contact live adult entertainment situated at one pole, prostitution at the other pole and, somewhere in between, live adult entertainment involving physical contact between performer and customer.

## CONTEXT LEADING TO THE REVIEW

Before July 2000, a sexualised performance (live adult entertainment) was regulated by operation of the *Criminal Code 1899* (Qld), in particular through the provisions relating to indecency, indecent treatment of children under 16, obscenity and prostitution (see generally Chapter 22, 'Offences against morality', in the Criminal Code). Each of these, with the exception of the prostitution provisions, relies on an assessment as to what in law constitutes an 'indecent' act.

In 1999, the government established a new regulatory framework for live adult entertainment and prostitution through the enactment of the *Prostitution Act 1999* and amendments to the Criminal Code and the *Liquor Act 1992*. The present regulatory regime for live adult entertainment began in July 2000 and now operates alongside certain offences in the Criminal Code to define the parameters of the lawful live sex industry in Queensland. Amendments to the Liquor Act have created a class of permit authorising explicit sexual entertainment, and activated the Adult Entertainment Code, which describes the parameters of permissible live adult entertainment. Live adult entertainment is therefore regulated in conjunction with the regulation of alcohol in Queensland, and both come under the purview of the Liquor Licensing Division (LLD) of the Department of Tourism, Fair Trading and Wine Industry Development (DTFTWID).

The CMC has been charged with assessing the effectiveness of both the Prostitution Act,<sup>1</sup> which aims to regulate prostitution in Queensland, and the legislative regime that governs Queensland's live adult entertainment industry.

In late 2003, the CMC received a reference under the *Crime and Misconduct Act 2001* from the Honourable Peter Beattie MP, Premier and Minister for Trade, to undertake a review of Queensland's live adult entertainment industry, with the primary objective being to consider options for improving the current regulatory framework (see the Appendix 1 for a copy of the Premier's letter of referral to the CMC). The CMC was alerted to concerns that the unregulated part of the live adult entertainment industry might be undermining the effectiveness of the regulatory framework, the intentions of which are to:

- distinguish legitimate live adult entertainment from prostitution, allowing both to be regulated separately
- keep organised crime, illicit drugs and corruption out of the live adult entertainment industry
- eliminate opportunities for the exploitation of minors in the live adult entertainment industry
- reduce negative impacts of the live adult entertainment industry on local communities.

This review of live adult entertainment complements the CMC's review of prostitution and, taken together, the two reports (*Regulating prostitution in Queensland: an evaluation of the Prostitution Act 1999*, and *Regulating adult entertainment: a review of the live adult entertainment industry in Queensland*) provide a comprehensive analysis of the broader live sex industry in this state.

---

<sup>1</sup> The explanatory notes for the Prostitution Bill 1999 state that the Bill is to regulate and control prostitution and related services in Queensland. They identify the objective or underlying principles of the legislation as being to maintain quality of life for local communities, safeguard against corruption and organised crime, address social factors that contribute to involvement in the sex industry, ensure a healthy society, and promote safety.

## DEFINING LIVE ADULT ENTERTAINMENT

The review is restricted to considering the provision of live adult entertainment, whether regulated under the Liquor Act or unregulated, including:

- semi-nude or nude waitress/waiter services
- striptease performances for an audience
- striptease performances involving physical contact between performers and audience members.

## OBJECTIVES OF THE REVIEW

The general objectives of the review are to consider options for improving the current regulatory framework and to produce, in conjunction with the CMC's review of prostitution, a comprehensive analysis of Queensland's live sex industry that can be drawn upon in any process of regulatory reform. To achieve this, the review will describe live adult entertainment at the present time (in Queensland), pinpoint any issues pertinent to the efficacy of Queensland's current regulatory framework, assess more specifically whether the intentions of Queensland's live adult entertainment regime has met expectations, and expressly address concerns relating to the:

- possible entry of criminals and their associates into the industry
- possible exploitation of minors
- possibility of negative impacts on community amenity.

## REVIEW METHOD

The review method has four components:

- description of live adult entertainment: law and practice
- observations of live adult entertainment and LLD compliance enforcement strategies
- stakeholder consultations and interviews
- submissions.

### **Description of live adult entertainment: law and practice**

To date, very little research has been undertaken on the live adult entertainment industry in Queensland. As far as the CMC could ascertain, there is only one other publicly available research study concerning Queensland's live adult entertainment industry, but this was conducted before the current regulations took effect and was limited to the experiences of dancers in one Brisbane venue (see Lamoin 2000).

An understanding of Queensland's current live adult entertainment landscape was obtained by observing live adult entertainment in different contexts (site visits), interviewing key people in the live adult entertainment industry, consulting with relevant government and non-government stakeholders and calling for submissions (see below for further discussion of these research strategies).

### **Observations of live adult entertainment and LLD compliance enforcement strategies**

Observations were undertaken at 34 live adult entertainment sites across Queensland, including Mount Isa, Townsville, Cairns, Rockhampton, Gladstone, Brisbane, the Sunshine Coast and the Gold Coast. In addition, CMC Research

Officers accompanied Liquor Licensing Division (LLD) Compliance Officers on two occasions during routine compliance checks of live adult entertainment venues in Brisbane and Surfers Paradise. On one of these occasions, the LLD Compliance Officers were accompanied by Queensland Police Service (QPS) officers. All the performances observed involved female dancers. References to the issues that arose from these observations are made throughout this report. Observation of male striptease was not possible at the time of the review because of a number of liquor licensing and other issues.

## **Stakeholder consultations and interviews**

Informal discussions were undertaken with key people in the live adult entertainment industry, including entertainers, owners/ managers and hostesses. The issues raised during these informal discussions are referred to throughout this report.

Formalised in-depth interviews were undertaken with entertainers and live adult entertainment business owners/managers. These interviews were semi-structured, with a set interview schedule being followed. Dancers and business owners/managers were asked a similar set of questions. Both open and closed questions were posed. Interview questions were grouped under the following headings:

- Demographic, social, background information
- Live adult entertainment and prostitution
- Organised crime, illicit drugs and corruption
- Minors
- Impact on local communities
- Management and control.

Research methods based on the use of representative samples are virtually impossible within the live sex industry. At the time of the current review, the Prostitution Enforcement Task Force (PETF) had raided an unregulated venue and subsequently charged a number of unregulated business owners/managers and dancers with prostitution-related offences. The Australian Taxation Office (ATO) was also in the process of 'doing a sweep' of regulated live adult entertainment businesses throughout Queensland. Accessing a difficult population was made even harder because of these law-enforcement activities.

Furthermore, dancers are not registered and rarely use their own names while working. Although owners of regulated live adult entertainment venues are registered, those operating outside the regulatory framework are not. The LLD provided the CMC with a list of names of the owners of regulated businesses, and an invitation to participate in the review was extended to all of them. The *Yellow pages directory*, word-of-mouth referrals and physical visits to the sites of the entertainment were used to access unregulated live adult entertainment business owners/managers, with written or oral invitations being extended to the majority of known businesses in the Brisbane–Gold Coast–Sunshine Coast areas. Dancers were accessed either through the live adult entertainment business owners/managers, or by word-of-mouth referrals from dancer to dancer.

CMC researchers conducted 86 interviews with people in the live adult entertainment industry, including 33 owners/managers and 53 female entertainers. Although the CMC extended invitations to male adult entertainers to participate in the review process, none consented to be interviewed. The issues highlighted by interviewees are referred to throughout this report.

Consultations and discussions were also held with other key stakeholders, including:

- the Liquor Licensing Division (LLD) of the Department of Tourism, Fair Trading and Wine Industry Development (DTFTWID)
- the QPS (including the PETF and local police)
- Queensland Health
- the Prostitution Licensing Authority (PLA)
- the Commission for Children and Young People
- legal consultants representing Adult Entertainment Permit (AEP) holders.

References to the issues highlighted during this consultation/discussion process are made throughout this report.

### **Submissions**

The CMC called for submissions from interested organisations and members of the public to provide comment on the objectives of the review. The CMC received 15 written submissions. These included submissions from government agencies/ departments (DTFTWID, QPS), community and business groups, Striptease Artists Australia Inc. (SAA), Adult Licensed Venues Association (ALVA), one local council (Townsville City Council), two live adult entertainment business owners and eight members of the general public.

## **CONCLUSION**

Live adult entertainment is an under-researched aspect of social behaviour. This is perhaps surprising, given that the live sex industry is disparaged in some quarters and widely suspected of links to criminal activities of one sort or another. The review method employed by the CMC for its examination of the adult entertainment industry in Queensland provides the first detailed account of the services and operating environment characterising the industry.

# THE LANDSCAPE OF LIVE ADULT ENTERTAINMENT IN QUEENSLAND: LAW AND PRACTICE

Regulated live adult entertainment in Queensland occurs in conjunction with the sale/supply of alcohol and is governed by the Liquor Act. Liquor licensees/permittees who wish to supply live adult entertainment must hold a current AEP that enables adult entertainers to perform acts of ‘an explicit sexual nature’, operationally defined as performances where the genitalia are exposed and/or when the adult entertainer is touching the customer in a sexual way. In August 2004, there were 25 regulated live adult entertainment venues operating in Queensland.

In addition to the regulated live adult entertainment supplied through the AEP system, an unregulated industry is flourishing in Queensland. It is conservatively estimated that there are 95 unregulated adult entertainment businesses currently operating. Unregulated live adult entertainment takes place in venues where liquor is sold/supplied, in venues where liquor is not sold/supplied, and through outcall booking agencies. In the first type of venue, the performances are governed by the Liquor Act and must not be ‘sexually explicit’. In the latter two cases, the entertainment is only controlled insofar as it does not breach section 229E (Meaning of prostitution) and section 227 (Indecent acts) of the Criminal Code. In other words, as long as the entertainment does not contravene Queensland prostitution and indecency laws, it is permitted.

## INTRODUCTION

Under the current regulatory framework, an AEP is required in venues where liquor is sold/supplied if live adult entertainment is to be offered. Importantly, however, live adult entertainment may also occur lawfully outside venues that require AEP permits. Unregulated live adult entertainment takes place:

- in venues where liquor is not sold or supplied
- in venues where liquor is sold or supplied but performers do not expose their genitalia and/or touch customers in a sexual way
- through live adult entertainment outcall services.

Unregulated live adult entertainment is lawful as long as it does not contravene the Criminal Code.

The purpose of this chapter is to:

- describe current live adult entertainment in Queensland in both the regulated and unregulated sectors
- outline the statutory framework within which both these industry sectors operate.

## REGULATED ENTERTAINMENT: THE AEP SYSTEM

Live adult entertainment in Queensland is regulated only in:

- premises with Liquor Licences — a Liquor Licence enables liquor to be sold/supplied on permanent premises, for example hotels, taverns and nightclubs
- venues operating under a General Purpose Permit, which allows the sale/supply of liquor by non-proprietary clubs or other groups, where the proceeds will be used for the benefit of the community, in public halls, function rooms, open-air venues or clubhouses
- premises with a Restricted Club Permit, which is also given to non-proprietary clubs so that they may sell/supply liquor on club premises to members and members' guests.

Liquor licensees/permittees wishing to supply live 'sexually explicit' adult entertainment must hold a current AEP. This means that an AEP is available only if live adult entertainment is on offer in a venue to which a Liquor Licence/permit attaches.

The LLD is responsible for:

- ensuring that venues with AEPs only supply legitimate/lawful live adult entertainment under the appropriate conditions
- assessing and granting AEPs
- ensuring that licensed premises and venues operating under General Purpose or Restricted Club Permits do not supply live adult entertainment without an AEP.

## DEFINING LIVE ADULT ENTERTAINMENT IN THE REGULATED SECTOR

The key provisions regarding the nature of regulated or AEP-controlled live adult entertainment appear in the Liquor Act and the Criminal Code.

### The Liquor Act

Legitimate live adult entertainment under an AEP is broadly defined under section 103E of the Liquor Act as 'live entertainment that may be performed for an audience, by a person performing an act of an explicit sexual nature'. More specifically, this section of the Act makes reference to the Adult Entertainment Code, which sets out what acts may not be performed by an adult entertainer in venues controlled by AEPs. The code, which is found in the Liquor (Approval of Adult Entertainment Code) Regulation 2002, notes that the:

... prescribed behaviour for the purposes of section 103E of the *Liquor Act 1992* is an act of an explicit sexual nature but does not include an adult entertainer:

- participating in sexual intercourse, masturbation or oral sex;
- touching the genitalia or anus of another person;
- allowing another person to touch the adult entertainer's genitalia or anus;
- allowing penetration, to any extent, of the vagina, vulva or anus, either by any part of the body or by an object;
- placing his or her face in the close proximity of the genitalia or anus of another person;
- allowing an audience member to put his or her face in the close proximity of the genitalia or anus of the adult entertainer;
- soliciting any person for the purposes of prostitution.

Apart from this exclusive definition, the meaning of 'explicit sexual nature' is not given anywhere in the Act or the associated regulations, nor is it given or defined in the Criminal Code.

Despite conflicting advice from the LLD (see Chapter 5) it would seem that a permissible 'act of an explicit sexual nature' is operationally defined in the regulated industry to include the provision of live adult entertainment where the genitalia are exposed and/or when the adult entertainer is touching the customer in a sexualised way.

## The Criminal Code

Section 229E (Meaning of prostitution), section 227 (Indecent acts) and section 228 (Obscene publications and exhibitions) of the *Criminal Code Act 1899* now expressly allow behaviours that might otherwise be regarded as criminally indecent or obscene, or as prostitution, to take place in AEP-regulated venues. Section 229E of the Criminal Code now states that:

- (1) A person engages in 'prostitution' if the person engages, or offers to engage, in the provision to another person, under an arrangement of a commercial character, of any of the following activities —
  - (a) sexual intercourse;
  - (b) masturbation;
  - (c) oral sex;
  - (d) any activity, other than sexual intercourse, masturbation or oral sex, that involves the use of 1 person by another for his or her sexual satisfaction involving physical contact.
- (2) However, a person does not engage in prostitution if —
  - (a) the activity is mentioned in subsection (1)(d); and
  - (b) the person is providing live adult entertainment under an adult entertainment permit and is an adult and is not an intellectually impaired person; and
  - (c) the activity is authorised under the permit.

The same AEP exemption found in section 229E(2) has been made in regard to indecent acts. The Criminal Code provides at section 227 that:

- (1) Any person who —
  - (a) wilfully and without lawful excuse does an indecent act in any place to which the public are permitted to have access, whether on payment of a charge for admission or not; or
  - (b) wilfully does any indecent act in any place with intent to insult or offend any person;

is guilty of a misdemeanour, and is liable to imprisonment for two years.

...

- (3) Subsection (1) does not apply to a person who does an indecent act under the authority of an adult entertainment permit.

Section 228 of the Criminal Code, which relates to obscene publications and exhibitions, states that:

- (1) Any person who knowingly, and without lawful justification or excuse —
  - (a) publicly sells, distributes or exposes for sale any obscene book or other obscene printed or written matter, any obscene computer generated image or any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or
  - (b) exposes to view in any place to which the public are permitted to have access, whether on payment of a charge for admission or not, any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or

- (c) publicly exhibits any indecent show or performance, whether on payment of a charge for admission to see the show or performance or not;

is guilty of a misdemeanour, and is liable to imprisonment for two years.

Section 228 contains no such express exemption in relation to AEPs but none is required, since the reference to an 'indecent' show or performance in that section imports the subsection (3) exemption from section 227.

## ASSESSING, GRANTING AND MAINTAINING AEPs

AEPs may be issued for a one-off function (at a cost of \$214 per day) of not more than three consecutive days and no more than six times per year, or for a period of up to 12 months (\$1284 for an annual permit). AEPs are not renewable (without undertaking the 'full' application process) or transferable.

As Table 2.1 shows, after four years of operation the number of AEP-approved venues and one-off permits has decreased.

**Table 2.1: Number of AEP approvals by year and permit type**

Year	Approved venues	Approved one-off permits
2000–01	35	12
2001–02	36	5
2002–03	30	10
2003–04	27	0

The latest available figures from the LLD show that in August 2004 there were 25 annual AEP-approved venues operating in Queensland and no one-off permits were granted.

Obtaining and keeping an AEP is dependent on a number of factors, each of which directly relates to the legislated regulatory framework. In broad terms this means ensuring that:

- venues, locales and persons involved in the operations of live adult entertainment venues are suitable
- establishments are well managed
- both advertising and marketing initiatives are kept within the prescribed boundaries of the Liquor Act.

### Locale and venue

To protect community amenity and prevent prostitution, there are a number of application and compliance requirements relating to the locality and venue of an AEP.

First, the legislation states that, when application is made for an AEP, the effect of a live adult entertainment venue on a particular locality must be considered; regard must be given to the number of licensed brothels and live adult entertainment premises already servicing the locality to ensure that a red-light district is not created [s. 107D(1)(b) of the Liquor Act].

Second, the public must be made aware of AEP applications through advertising (s. 118, Liquor Act) and extended the opportunity to lodge objections (s. 119) on the grounds that if the application were granted:

- (a) undue annoyance, disturbance or inconvenience to persons who reside, work or do business in the locality, or to persons in, or travelling to or from,

an existing or proposed place of public worship, hospital or school or other facility or place regularly frequented by children for cultural or recreational activities is likely to happen; or

- (b) the amenity, quiet or good order of the locality concerned would be lessened in some way.

It should be noted, however, that one-off AEP applications and subsequent permits do not have to be advertised unless the Chief Executive of the LLD is concerned that community amenity might be adversely affected by granting the applications.

Third, local government and the QPS must be informed of the AEP application and may comment on the reasonable requirements of the public in the locality, or object to the application on the grounds that the amenity, quiet or good order of the locality would be lessened if the AEP were granted (s. 117).

Fourth, AEP-approved live adult entertainment venues must be fully enclosed in a way that prevents a person outside the area seeing inside the area (s. 103H).

Fifth, AEP-approved live adult entertainment venues must, at all times when live adult entertainment is being provided, display a sign in every entrance area stating that live adult entertainment is being provided in the area and that minors must not enter the area (s. 143A).

Sixth, the name of the premises must be approved by the Chief Executive of the LLD and must not be changed without permission.

Seventh, venues for which an AEP application has been lodged must not contain a lounge, booth, compartment or cubicle (other than a toilet cubicle) (s. 103H). This keeps the live adult entertainment visible and theoretically reduces the possibility of prostitution taking place on the premises.

### **Persons involved in the operations of AEP-controlled venues**

To keep prostitution, organised crime, illicit drugs and corruption out of the live adult entertainment industry and reduce the negative impacts of the industry on local communities, the legislation states that AEPs should be held only by honest persons of good character and integrity, with the skills to operate live adult entertainment venues without causing community upset [s. 107E(1)(a), Liquor Act].

More specifically, in section 107E it is noted that, when deciding whether an applicant for an AEP is a suitable person to provide adult entertainment, the Chief Executive of the LLD must consider whether the applicant has:

- been convicted of an indictable offence or offence against the Prostitution Act
- been charged with any offence of a sexual nature involving violence, intimidation, threats or children
- criminal associates defined as persons, corporation and/or executive officers convicted of an indictable offence or offences against the Prostitution Act
- a business structure sufficiently transparent to enable all associates of the applicant, whether individuals or bodies corporate, to be readily identified, and
- the ability to control the noise and behaviour or the number of persons that could reasonably be expected to be on and in the vicinity of the live adult entertainment premises.

To ensure that AEPs are only granted to appropriate people, the Chief Executive gives the details of each AEP application to the Commissioner of the QPS. The QPS

Prostitution Enforcement Task Force (PETF) then work in conjunction with the LLD to check the criminal history of applicants and make other inquiries, including to the PLA (to ensure that the applicant does not have interests in a legal brothel/ brothels).

The Police Commissioner then provides the Chief Executive of the LLD with a report that may include a recommendation to grant or deny the application but must include reference to, or disclosure of, convictions of the applicant (s. 107F, Liquor Act), including convictions the Police Commissioner would otherwise be unable to disclose because of the operation of section 6 of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. This means that permit applicants are subjected to a higher standard of probity than in comparable licensing/permit application regimes, in accordance with the legislature's intention to ensure that AEPs are restricted to persons of good character.

Persons with AEPs may nominate an individual to be a nominee in respect of the AEP (s. 109, Liquor Act). Nominees are essentially managers. They operate the licence and conduct the business on behalf of the applicant (who may be an individual, a group of persons or a company/corporation) and as such are responsible for ensuring that the conduct of entertainment under an AEP (if granted) is in accordance with the Liquor Act. Nominees must undergo the same probity checks as AEP applicants (s. 109).

Once an AEP has been issued, the suitability of the permittee and the nominees is monitored by the LLD. If the Chief Executive considers, on reasonable grounds, that either is no longer suitable to provide adult entertainment, action can be taken in the form of AEP cancellation, suspension or variation (ss. 134A, 134B and 135, Liquor Act).

## **Appropriate management**

Ensuring that the aims of the regulatory framework are met also requires live adult entertainment to be appropriately managed. Sound management is sought through the production of, and adherence to, a management plan and adequate supervision.

All AEP applications must be accompanied by a management plan that is verified by the LLD, and this plan must be adhered to once the AEP is granted or action can be taken against the venue. According to section 32 of the Liquor Regulation 2002, management plans must include the following:

- (a) A layout plan of the proposed area, drawn to a scale of 1:100 ...
- (b) The minimum number of staff and security persons who will be on duty in the area during performances; and
- (c) The name and contact details of the promoter of adult entertainment.

It is a legislative requirement that the entertainment provided in AEP-controlled venues is supervised at all times (s. 149B, Liquor Act) to ensure that the performances are provided in accordance with the Act and the conditions of the permit. The Act provides in section 155AA that minors (defined as those aged under 18 years) may not be in areas where live adult entertainment is taking place, either as a viewer or as a performer.

Supervision can be provided by the licensee/permittee and/or a nominee, but in reality it is rare that either is available to provide this level of supervision. A licensee or permit holder who holds an AEP may nominate an adult to be a controller and supervise the provision of live adult entertainment for them (s. 109B, Liquor Act). In deciding whether the nominated person is a suitable person to be a controller, the Chief Executive of the LLD must ask the QPS to conduct a probity

check (the same as that conducted for applicants and nominees) to ensure that the nominated controller does not have a criminal history or links with prostitution. If the probity check comes back clear, the Chief Executive may then authorise the controller.

## **Advertising and marketing restrictions**

AEP holders face a number of advertising and marketing restrictions. These restrictions appear in the Liquor Act and the Liquor Regulation and take various forms. It is reasonable to assume that the primary purpose of these restrictions is to protect community amenity by limiting the possibility of offence being caused.

First, section 168A(1) of the Liquor Act states that advertisements for AEP-controlled entertainment in the print media must not describe the sexually explicit nature of the entertainment provided. In addition, the advertisement must not:

- contain graphics or a photograph
- be more than eight centimetres by five centimetres in size (that is, it must be no bigger than a business card).

Second, section 168(3) of the Liquor Act prohibits advertising live adult entertainment through radio or television or by film or video recording, although it appears that the venue may be advertised as long as the live adult entertainment is not.

In consultation with Matthew Jones, Director of Liquor and Gaming Specialists Pty Ltd, the CMC was told that, in practice, the LLD had made it quite clear to venue owners that the mere mention of lap dancing, strippers, exotic dancing and so on in advertising, except on the Internet, would be regarded as describing the sexually explicit nature of the entertainment, and consequently would be illegal. The LLD indicated that advertisements for venues are distinct from advertisements for the adult entertainment. This means that the following advertising scenarios are permissible:

- publishing a full-page newspaper advertisement that only contains the name of the venue or advertises some other aspect of the venue, such as food or liquor service
- publishing a print advertisement that includes graphics or photos naming the venue or promoting some other aspect of the venue
- placing a television, radio, film or video advertisement naming the venue and/or promoting some other aspect of the venue.

Furthermore, while notices, signs, circulars, flyers, matchboxes, napkins and coasters qualify as advertisements, the LLD has told AEP holders that printed advertising material promoting live adult entertainment is permitted within their venues. This view is presumably based on a broad interpretation of the definition of 'publish' in section 168A(5) of the Liquor Act.

However, any advertisement for live adult entertainment must be approved by the Chief Executive of the LLD, who may accept certain types of advertisements in a general way or on an individual basis [s. 168(2), Liquor Act]. From consultation with the LLD, it appears that in practice this requirement is not enforced, except on a complaints basis.

In considering these advertising restrictions, it is important to recognise that Internet advertising is not controlled under the current legislative framework. Around one-third of all AEP venues in Queensland currently have websites.

Typically, the content of these sites includes:

- photographs of the entertainers semi-nude or nude
- photographs of the venue, including lap-dance and fantasy rooms
- a calendar of forthcoming events such as striptease competitions, special stage shows and theme nights
- membership information — many clubs offer VIP memberships, entitling a person to 'perks' such as free or discounted entry into the venue and invitations to venue Christmas parties
- information on holding a private function (such as a bucks' night) at the venue
- information on any outcall 'dating' or striptease services, if offered.

Finally, the Liquor Regulation 2002 states that AEP holders must 'ensure that spruiking or touting for business involving live adult entertainment occurs only on the permittee's premises and only on parts of the premises from which the spruiking or touting is not audible or visible to a person who is not on the premises'.

## KEY FEATURES OF AEP-CONTROLLED VENUES

### **Number of venues**

During the review every AEP-controlled venue in Queensland was visited and interviews were conducted with the owners/managers in 24 of the 25 establishments (the number as at August 2004).

### **Business owner/managers' time in the industry and at the current venue**

The owners/managers of AEP venues are an experienced group. The 24 owner/managers interviewed by the CMC had spent an average of 8.5 years working in the industry and an average of 5.5 years running the current venue.

### **Number of entertainers 'on the books'**

Entertainers are contracted directly by the venue or the venue contracts outcall agencies to supply them — see 'Outcall bookings', page 22, for a description of these agencies. Four AEP-controlled venues contracted entertainers through an agency. These four venues consequently had no entertainers 'on their books'. These businesses do not assume any responsibility for the employment status of individual entertainers, and payment is made directly to the agency rather than to the entertainer. The remaining 20 venues canvassed by the CMC had an average of 22 directly contracted entertainers per venue.

### **Types of entertainment provided**

The following types of live adult entertainment feature in AEP-controlled venues:

- stage/pole dancing
- tabletop dancing
- private dancing/ lap dancing
- non-contact 'dating' and outcall striptease services.

Descriptions of each appear below, having been adapted from those used by Striptease Artists Australia (SAA) in their log of claims document (2004).

### ***Stage/pole dancing***

Every AEP-regulated venue offers stage dancing. Typically, stage dancing in regulated live adult entertainment venues involves semi-nude or full-nude striptease performances on a stage in the main bar area of the club. These performances may involve 'open leg work', where the entertainers spread their legs, fully exposing the genital area to audience members. Stage dancing may involve a limited degree of audience participation — for example, with dancers rubbing their breasts on audience members. The stage on which the entertainers perform usually has one or more poles as a performance prop and may have other props such as chairs and swings.

The degree of nudity and use of 'open leg work' during a stage performance is a question of dancer choice and club protocol. Some dancers will refuse to strip completely and/or open their legs during stage performances unless they are tipped a certain amount of money by audience members; others feel self-conscious about doing 'open leg work' in front of large audiences and some argue that they should not have to 'give anything away for free'.

The majority of entertainers identify themselves as independent contractors and unless tipped will receive no payment for performing on the main stage. Instead, these dancers make their money during more private performances given in areas away from the main stage. Other dancers, however, are quite happy to 'bare all' on the main stage, considering it advertising for the more private shows that actually generate their income.

A dancer's choice to not perform topless or naked, or engage in 'open leg work', unless tipped is supported by venue policy in some clubs. In these circumstances, DJs may make regular announcements stating what dancers will take off for what prices, there may be notices to this effect posted around the club, and/or the immediate seating around the stage may be allocated as a 'tipping only' area.

### ***Tabletop dancing***

Five venues were identified by the CMC as offering tabletop dancing. Tabletop dancing involves semi-nude or full-nude striptease performances on a 'table top' in the main bar area of the club. This table top could have a pole; performances may involve 'open leg work' and some audience participation. Compared with stage dancing, tabletop performances are more private, being directed at the smaller group sitting around the table rather than the entire bar area. Dancers are either paid to perform a set number of songs for a certain price on the table top or payment is derived solely from tips. In the latter case, the tipping amounts may determine how much clothing the dancer will remove during the performance.

### ***Private dancing /lap dancing***

Private dancing involves semi-nude or full-nude striptease performed for an exclusive audience (usually one person). It may involve 'open leg work' and some audience contact, although to be consistent with the Adult Entertainment Code it should not involve genital contact.

Lap dancing is an especially intimate form of private dance, involving a high degree of sexually charged physical contact between the entertainer and the customer. Lap dancers can rub against audience members in a sexually suggestive

manner, and audience members can touch the dancers in a similarly intimate way — for example, caressing, kissing or suckling dancers' breasts. The buttocks, back and thighs may also be caressed by the customer. The only areas of the body out of bounds during a lap dance are the genitalia (penis, testicles, vagina, vulva) or anus and the rule regarding close proximity must be adhered to (see the *Liquor Act 1992* and the *Liquor (Approval of Adult Entertainment Code) Regulation 2002*). This type of activity occurs on the edge of behaviour permissible under the Code, and where nudity is involved it would meet the definition of prostitution under the Criminal Code were it not for the express exception contained there in relation to acts authorised by an AEP.

It appears that there may have been an intention<sup>2</sup> in the legislation to exclude lap dancing, especially where it involved touching, from the purview of the Adult Entertainment Code and thus to proscribe it by law.<sup>3</sup> However, both the Adult Entertainment Code and the Criminal Code appear to authorise it. In the former case, there is a failure to explicitly exclude lap dancing because 'sexually explicit' is not defined. In the latter, section 229E(2) permits the use of one person by another for their sexual satisfaction involving physical contact (lap dancing) under an AEP. The LLD has subsequently defined permissible 'sexually explicit entertainment' to include touching (and therefore lap dancing).

Private/lap dancing was being performed in 21 of the 24 venues consulted during the review. The majority of venues offer what the CMC describes as unrestricted and uncontrolled touching. In the remaining private/lap-dance venues, further venue-specific restrictions have been placed on touching by in-house policies. Here, touching is either:

- not allowed, or
- restricted in some way — for example, no touching above the waist, no oral contact on breasts, no kissing, no touching once the dancer's G-string has been removed, and/or
- controlled by the dancers, who guide the client's hands over their bodies.

In addition to the physical intimacy involved, what can be described as a simulation of psychological intimacy is also an important aspect of the private/lap dance (Frank 1998). During the CMC review, dancers and live adult entertainment business owners/managers commented that private/lap dancing is as much about emotional labour as it is about physical work. As noted by Bruckert (2002, p. 83), 'the primary service is private dances or erotic entertainment ... equally prevalent, but largely unacknowledged, however, is another private interactional emotional service.'

According to one interviewee during the CMC's review process:

Guys want company, they want counsellors when they get divorced, if they are lonely [in their marriages], when they have a fetish they can't tell anyone else about; we don't discriminate. (Adult entertainer)

---

2 See p. 5887 of the Hansard record of 3 December 1999, for parliamentary debate following the second reading speech: '... we know that people who ... put on lap dancing keep blurring the borders ... There may be some physical contact [under the Adult Entertainment Code] but it is not going to be sexual physical contact, which is covered in the definition of prostitution.' (Honourable Peter Beattie (MP, Premier and Minister for Trade).

3 See the second reading speech of the Minister for Police and Corrective Services when introducing the Prostitution Bill to Parliament, Hansard, 10 November 1999, pp. 4828–29.

In some cases the provision of the social service takes precedence over the physical performance:

Lap dances are about selling companionship. Most of the time they [the customers] just want the girls to sit with them, hold their hands and make them feel wanted. Most of the money is made when the girls' clothes stay on and the guys just want to talk for hours. (Owner/manager)

Not surprisingly, given the 'social service' side of the private/lap dance, once audience members are in the private room they become clients and the dancer's role becomes one of making them feel as though they are 'out on a date':

It is all about making the guy feel comfortable like he is out on a date. (Owner/manager)

After the first 'date' (dance), a skilled private/lap dancer will nurture the development of an intimate relationship between herself and the client. Cultivating a regular client base is important for adult entertainers because 'regulars' provide dancers in this sector of the industry with the majority of their income (Bruckert 2002, p. 86). While the relationship between a dancer and the client is obviously based on a form of commodified intimacy, with the client paying the dancer to simulate intimacy, it may nonetheless involve genuine 'emotional exchanges, intimate moments, mutual respect, and displays of affection, just as more legitimate relationships are expected to' (Frank 2002, p. 155).

### ***Non-contact 'dating' services and outcall striptease services***

There are two types of outcall services attached to AEP-controlled venues: outcall striptease and outcall 'dates'.

Some AEP-controlled venues offer outcall striptease services for events, functions and other social gatherings. These are illegal, constituting a breach under section 152 of the Liquor Act (conducting a business other than that authorised). At the venues the sexual explicitness of shows is limited to ensure compliance with the Adult Entertainment Code. Leaving aside the question of a breach of section 152 of the Act, entertainment provided outside the venue is no longer regulated by the Adult Entertainment Code, and the Criminal Code offers the only limitation to the degree of sexualised performance (see discussion in the next section on the unregulated sector). Outcall customers may, for example, order masturbation and/or sex-toy insertion shows, and these may infringe the relevant criminal provisions, depending on the circumstances.

A few AEP-controlled venues offer a non-contact outcall 'dating' service that allows customers to take a dancer 'on a date' outside the club.<sup>4</sup> This 'date' is usually controlled by a strict set of guidelines that aim to ensure dancers' safety and prevent prostitution, including requirements that:

- the 'date' be conducted in a busy public place, such as a bar, nightclub, restaurant or casino, but not a park or other isolated public area
- only public transportation will be used during the 'date'
- venue management will make regular phone calls to the dancer's mobile telephone (usually every 30 minutes to an hour) over the course of the 'date' to check that every thing is all right
- the dancer must telephone venue management when changing location during the date — for example, when moving from a restaurant to a nightclub — so that the venue knows the dancer's whereabouts at all times

---

<sup>4</sup> While specialist booking agencies also offer prostitution-based escort services, this component of the wider sex industry is considered to fall outside the realm of adult entertainment.

- the dancer returns to the venue before it closes for the evening
- no striptease performances of any kind are to take place during the 'date'
- no sexual relations are to take place between the dancer and the customer
- the dancer and/or customer sign a contract acknowledging that they understand and will adhere to the venue's out-booking protocol (above).
- customers supply photographic identification to venue management before the out-booking begins.<sup>5</sup>

The 'dating' services provided by live adult entertainment venues do not include the provision of a sexual service involving physical contact; they are about the provision of an emotional service, and only limited (and non-sexual) touching is permitted. The CMC was informed on a number of occasions that these 'dating' services were strictly about providing company:

When we provide the service to a customer there is no sex, you keep your clothes on and it is fun to get out. Some guys I feel sorry for them, they have a shit-load of money but have no time to have a relationship. (Adult entertainer)

The CMC was told that venues that do not offer this type of service may run the risk of losing dancers to the clubs that do offer the service, or may find their dancers organising private 'dating' services, a potentially risky business for both the club (at risk of breaching the prostitution law) and the dancer (for safety reasons).

When we stopped out-bookings we lost girls and regulars. We have lost girls to the other clubs because of it, now they come here with their customers for their out-bookings. Girls leave because regulars are their wage, regulars spend big money. If they do not leave they organise private bookings, which is unsafe. (Owner/manager)

These 'dating' services appear popular with strip-club regulars, perhaps because they help in the simulation of intimacy between dancer and customer. As already noted, getting and maintaining regular customers requires a dancer to develop an illusion of intimacy with the client. To succeed, however, the dancer's emotional performance must appear authentic to the customer (Frank 1998; Frank 2002). Arguably, such 'dating' services are popular because they give the simulated relationship a more authentic feel; the customer can take the dancer out to dinner, for a drink and a dance, just like 'real' couples do.

In early 2004, one of Brisbane's live adult entertainment venues was charged by the LLD with conducting a business other than that authorised under section 152 of the Liquor Act because an outcall 'dating' service was being provided from the venue. After nearly \$10 000 was spent on legal fees to fight the charge, a guilty plea was eventually entered on 7 April 2004 in the Brisbane Magistrate's Court. Although a conviction was not recorded, the venue was ordered to pay investigation, court and professional costs and fined \$950. The LLD told the CMC that the successful prosecution of this venue meant that other AEP-regulated establishments were no longer able (at least openly) to provide outcall services of any kind.

Before the above court outcome, 15 of the 24 AEP-controlled venues consulted during the review had attached outcall 'dating' services. After the court outcome, it is clear that some venues continued providing outcalls, either quite openly by promotion/marketing of outcalls, or more discreetly, with only regular customers informed about the outcall 'dating' service provided.

---

<sup>5</sup> Information extracted from protocol documents supplied to the review by venues, supplemented with information gathered during the interview process.

## **Charges for live adult entertainment**

Of those AEP-controlled venues consulted during the review, the entry fee was \$12.50 on average. The minimum charge was \$10 and the maximum \$22.

Patrons were charged for private/lap dances in all regulated venues either directly by the venue management, by the dancers, or by both the venue (a seating fee) and the dancers (a performance fee). The average charge for a one-hour lap dance involving one dancer and one client was \$234.50; the minimum charge was \$135 per hour and the maximum was \$400 per hour. Many customers will, however, purchase shorter lap dances, usually of 15 minutes' duration, for around \$50 to \$70.

## **Customer numbers**

Two of the venues consulted did not provide the CMC with customer numbers. One venue had only recently opened, so figures were unavailable, while the second provided only minimal live adult entertainment on request, for private shows held in a function room.

For the others, the average number of customers reported per week was 514, with a minimum of 60 customers reported and a maximum of 1800.

## **The entertainers**

Forty-two dancers from eight of Queensland's regulated live adult entertainment venues were interviewed during the course of the review.

### ***Demographic and background information***

The average age of the interviewed dancers was 23.5 years, with ages ranging from 18 to 36 years. The majority of dancers (57%) were aged 20–25 years. Most identified themselves as single (81%) and as having no dependent children (83%). Eight dancers reported being either married or living with their partners and seven dancers had dependent children. Nearly 60% of the entertainers interviewed had completed their senior school years and just over 30% pursued tertiary-level study.

Only one dancer identified herself as Indigenous. The majority of dancers were born in Australia (81%).

### ***Length of time in the industry***

Among those interviewed, the average age for starting work as a dancer in the live adult entertainment industry was 20.5 years. The youngest starting age for any interviewee was 16 years and the oldest starting age was 34. Half the dancers interviewed (50%) had started working as adult entertainers between the ages of 18 and 19 years.

The average length of time for which the dancers interviewed had worked in the live adult entertainment industry was 29 months. The longest time any of them had worked in the industry was 10 years and the shortest was one month.

### ***Income***

On average the dancers interviewed in the regulated live adult entertainment sector took home approximately \$280 per shift. The minimum income reported was \$150 per shift and the maximum was \$500.

Dancers reported working between two and seven shifts per week, with four shifts of seven hours (average) per week being the norm. Thus, on average, the dancers interviewed earned \$1120 for a 28-hour week (taxation arrangements

vary depending on income level). Informal discussions with dancers and regulated venue owners/managers suggest that there is a perhaps surprisingly high level of compliance with taxation requirements in contrast with the 'cash-in-hand' economy that operated before the live adult entertainment industry was regulated. This level of formalisation has been encouraged by a significant level of scrutiny of the regulated industry by the ATO, which in fact undertook a 'sweep' of regulated venues during the course of the CMC review.

### ***Reasons for working in the live adult entertainment industry***

In Queensland, a woman's average weekly income for full-time work, 40.8 hours per week, is \$804.50 gross (Australian Bureau of Statistics 2004). This makes working as an adult entertainer a financially attractive option and it is therefore not surprising that the ability to earn 'good money' was the primary reason offered to the review for working as a dancer in the regulated sector of the industry.

I have no other skills, I need to work as a dancer to earn money so I can pay to reskill, go to university. (Adult entertainer)

To get ahead, I want to buy a home, set up for having a family. The money is good. (Adult entertainer)

The money is good, provides good opportunities for the future like investing in property. (Adult entertainer)

Lifestyle/enjoyment was the second most frequently advanced reason for working as an adult entertainer in this sector of the industry:

Enjoy it, it is satisfying, you get to meet interesting people. (Adult entertainer)

It is a good lifestyle, you get to socialise and party all the time. (Adult entertainer)

I love to perform on stage; I love attention, teasing men. (Adult entertainer)

Finally, a few dancers highlighted flexible working hours, having control over their work, possessing no other marketable work skills, and the idea of striptease as an art form as reasons for choosing this line of work.

## **LIVE ADULT ENTERTAINMENT IN THE UNREGULATED (NON-AEP-CONTROLLED) SECTOR**

In addition to Queensland's regulated (AEP-controlled) live adult entertainment industry, there is a substantial unregulated (non-AEP-controlled) industry.

Of critical importance in the context of this review is the fact that, in comparison with regulated AEP-controlled venues, the unregulated sector of the industry operates with fewer restrictions in terms of allowable behaviour on the part of both performers and customers. There is no assessment of the venue, locale or business owner/staff suitability to supply live adult entertainment, there are no requirements for these types of businesses to be well managed, and there are few advertising/marketing restrictions. One of the most serious consequences of this regulatory vacuum is that there are few limitations on sexual performance by minors, especially 16- and 17-year-olds. (This problem is discussed in detail in Chapter 3.)

At present, sites of unregulated live adult entertainment include:

- venues where liquor is not sold or supplied
- venues where liquor is supplied but the entertainment does not fit with the LLD operational definition of live adult entertainment — that is, the provision of entertainment where the genitalia are not exposed and the dancer does not touch the customer in a sexualised way
- outcall booking services.

## Venues where liquor is not sold or supplied

Investigations undertaken during the review suggest that there are currently four venues where liquor is not sold or supplied but where live adult entertainment is being provided on a regular basis (at least six days per week). The type of live adult entertainment provided in this arena falls into two categories: peep shows and adult cafés. At present, one peep show and three adult cafés are operating. The CMC was told, however, that a fourth adult café will be opening in Brisbane soon. As far as could be ascertained, all unregulated venues of this type are currently located in the Brisbane and Gold Coast areas.

Compared with AEP-controlled venues, adult cafés and peep shows provide live adult entertainment in a more private setting. There are no freely accessible public areas with live adult entertainment taking place. This means that you cannot walk into these types of venues and see entertainers performing 'out in the open', as you can in the main bar area of a regulated club. In the adult cafés, customers choose a dancer, are taken to a private room by this dancer and are then given an exclusive performance. In peep shows, dancers perform:

behind a glass screen in a private booth situation with one person at a time within the booth, which is closed to outside viewing. The customer enters the booth, closes the door and places a token in a slot machine; this activates a timed screen which opens and permits viewing of the strip dancers for one and one half minutes, then the screen automatically closes. (Review submission)

The LLD has no compliance function in live adult entertainment provided in venues where liquor is not sold or supplied. Instead, policing this sector of the live adult entertainment industry falls to the QPS. As long as the performances do not breach section 229E (Meaning of prostitution), section 228 (Obscene publications and exhibitions) and/or section 227 (Indecent acts) of the Criminal Code the entertainment is lawful. Establishing whether or not such a breach has occurred is not necessarily straightforward.

The Criminal Code (s. 229E) defines prostitution as sexual intercourse, masturbation, oral sex and/or the use of one person by another for his or her sexual satisfaction involving physical contact. The latter act can occur under an AEP as a legislative exemption exists in this case. Operationally, outside the AEP system, however, there is a risk that any physical contact between dancers and patrons could be construed as sexually satisfying and thus prostitution.

Section 228 (Obscene publications and exhibitions) and section 227 (Indecent Acts) of the Criminal Code also restrict performances. The effect of both these sections turns on the meaning of 'indecenty'. Indecency is, however, a matter of context and circumstance. In judicial terms, 'indecent' was held in *R v. Bryant* (1984) 2 Qd R 545 to mean 'lewd or prurient and an offence against morality', but circumstances will always condition whether an act meets those criteria and is therefore indecent.

In addition, section 227 has two components. The first of these, in section 227(1)(a), makes unlawful an indecent act in a place to which the public is permitted to have access. As long as there is limited access, as is the case in adult cafés and peep shows, an act cannot be indecent because it has not occurred in a place to which the public is permitted to have access. The second, in section 227(1)(b), makes an indecent act in any place unlawful if it is made with an intent to insult or offend any person. This means that entertainment in private venues like adult cafés and peep shows will not be indecent unless an intent to offend someone present can be proved. The consequences of these two provisions appear to be that there is judicial reluctance (*R v. Marchant* [2001] QDC 325 at para 21) to criminalise unregulated live adult entertainment in venues of this type

because they are not 'public' within the meaning of the Act. Patrons consent to the entertainment provided so there can be neither offence nor insult.

### **Venues where liquor is supplied but the entertainment does not fit with operational definitions**

Venues where liquor is sold and/or supplied may also provide live adult entertainment without an AEP if the entertainment is not considered 'sexually explicit'. Premises with Liquor Licences/Permits offering semi-nude bar staff, waitresses or striptease will not require an AEP as long as the genitalia remain covered and the 'no sexual touching' rule is adhered to. Given the ambiguous nature of the sexual touching prohibition, however, it may be difficult at times to assert with certainty whether live adult entertainment is sexually explicit enough to require an AEP or whether it may be performed without one. Obviously, the type of entertainment provided should also not breach section 229E (Meaning of prostitution), section 228 (Obscene publications and exhibitions) and/or section 227 (Indecent acts) of the Criminal Code or criminal charges may be brought.

It appears that the majority of licensed venues providing adult entertainment without an AEP observe venue-based protocols against touching. This 'no touching' convention is probably not required by law, since 'non-sexual' touching would theoretically be permissible (not sexually explicit, and therefore allowable without an AEP). However, in the uncertain legislative environment whereby it is unclear at what point touching becomes sexual, these venues cannot navigate with certainty the grey area between permissible touching and impermissible touching, hence the voluntary prohibition against touching.

In 2004, the LLD estimated that there were around 52 non-AEP-controlled venues of this nature supplying adult entertainment (not considered sexually explicit by the LLD) throughout Queensland (consultation with the LLD, email dated 5 October 2004).<sup>6</sup> The live adult entertainment in this case is being provided in venues with Liquor Licences/permits, meaning that the LLD has an obligation to assess compliance with the Liquor Act. If the performances breach the LLD's operational definition of sexually explicit live adult entertainment, then charges can be laid for supplying live adult entertainment without an AEP. The maximum penalty for supplying live adult entertainment without an AEP is currently 200 penalty units, or \$15 000 (200 penalty units × \$75 = \$15 000).

### **Outcall bookings**

Live adult entertainment may also be obtained through outcall booking services, either operating from AEP-controlled venues or operating as stand-alone specialist booking agencies. A search of the Yellow Pages Directory and the Internet revealed at least 39 stand-alone (not connected to AEP venues) outcall operations in areas throughout Queensland, including Brisbane, the Gold Coast, the Sunshine Coast, Toowoomba, Mackay, Townsville, Cairns, Rockhampton, Gladstone and Mount Isa.

Outcall service providers supply striptease dancers and nude or semi-nude waiters/waitresses, often (but not always) in contexts to which the public are not permitted access. Customers seeking these services may order them over the phone or the Internet. The LLD has no compliance role in the type of entertainment provided by outcall booking service providers unless the performances take place in conjunction with the sale/supply of alcohol or the outcalls are being provided through an AEP-controlled venue (as noted previously, section 152 of the Liquor

---

<sup>6</sup> The figure of 52 is, however, considered a conservative estimate by the CMC.

Act prohibits conducting a business other than that authorised). This means that the performances given during outcalls are only restricted insofar as they are not illegal prostitution or criminally indecent.

## KEY FEATURES OF NON-AEP-CONTROLLED ADULT ENTERTAINMENT

### **The business owners/managers**

It was difficult to access the owners/managers of unregulated live adult entertainment businesses; many were nervous about talking to the CMC, given that at the time of the review PETF had raided an unregulated venue and an agency show and laid prostitution charges. In addition, the ATO was in the process of 'doing a sweep' of live adult entertainment business throughout Queensland.

Nevertheless, interviews were conducted with the owners/managers of nine unregulated live adult entertainment businesses, including five unregulated venues and four outcall booking agencies. Eight unregulated venues were visited and a striptease event that had been arranged through an outcall booking agency was attended.

### **Time in the industry and as owner of the current business**

Like those in the AEP-controlled industry, live adult entertainment business owners/managers in the unregulated sector had substantial experience working in the industry: 12 years on average, with an average of four years managing their current businesses.

### **Number of entertainers 'on the books'**

As was the case in the regulated sector, adult entertainers in unregulated areas are considered contractors rather than employees. In the unregulated venues where owners/managers were interviewed, the CMC was told that every dancer was contracted directly to the venue. On average, there were 12 dancers on the books. The dancers who worked for the outcall booking agencies were also contractors. On average, there were 56 dancers on the books of the outcall agencies spoken to. However, there appears to be a core group of 'agency girls' who are 'on the books' of multiple agencies. The CMC was told that it was fairly unusual for dancers to work for only one agency.

### **Types of entertainment provided**

The type of entertainment supplied by the unregulated sector of the live adult entertainment industry is more varied than that supplied by the regulated sector. Depending on the type of business the live adult entertainment is being supplied from, the following acts/services may be purchased:

- semi-nude or nude bar staff and waitresses/waiters
- stage/pole/bed dancing
- private/lap dancing
- massage.

### ***Semi-nude or nude bar staff and waitresses/waiters***

Semi-nude bar staff/waitresses/waiters feature mainly in venues where liquor is sold/supplied. In these contexts, female entertainers will serve drinks and food, and often sell raffle tickets, dressed in lingerie or bikinis, with breasts exposed or covered. Semi-nude bar staff and waitresses are usually supplied to the venues through a live adult entertainment outcall agency. Premises with Liquor Licences/

permits are free to provide this type of live adult entertainment without an AEP as the genitalia remain covered and there is no physical contact of a sexual nature between patrons and entertainers. Outside venues with Liquor Licences, semi-nude or nude bar staff/waiters/waitresses can be found working at private functions ordered through outcall adult entertainment agencies for private functions such as bucks' and hens' nights.

### ***Stage/pole/bed dancing***

As with regulated venues, semi-nude/nude stage/pole dancing features in the unregulated sector of the adult industry. In venues where liquor is sold/supplied but there is no AEP, dancers keep their G-strings on (semi-nude) while dancing and there is no audience participation. As already noted, this is perfectly legitimate because the type of entertainment being provided is not considered sexually explicit enough to warrant an AEP.

Adult cafés, peep shows and outcall agencies also offer stage/pole dance performances. These sectors of the industry are not covered by the Liquor Act. This means they are not required to adhere to the Adult Entertainment Code and can therefore offer stage/pole dances that are more sexually explicit than those seen in AEP-controlled venues. In addition to semi-nude or full-nude striptease, it is common for performances to involve masturbation, insertion and/or group acts ('girl on girl' only). Dancers may masturbate and insert objects into themselves or other dancers.

In the case of agency shows, dancer-controlled audience participation during stage/pole dancing routines was occurring when this review began. At this time, dancers would often select audience members to accompany and assist them on the stage. For example, dancers might spray whipped cream over their breasts and then rub their breasts in audience members' faces. The latter form of audience participation not uncommonly derives from audience members asking a dancer to single out a friend or family member to experience this embellishment to the performance, the objective being humorous embarrassment rather than anything particularly sexual in character.

At AEP-controlled venues, limited sexualised physical contact is authorised. Contact in the unregulated sector is more problematic, since it is regulated by the definition of prostitution in the Criminal Code, which proscribes the use of one person by another for their sexual satisfaction *if physical contact is involved*. This is a straightforward reading of section 229E(1)(d) of the Code, and it is supported by comments from O'Brien DCJ in *The Queen v. Julia Sage* (Indictment No. 1231 of 2003 in the District Court of Queensland, 17 May 2004). In response to this judicial decision, PETF 'raided' a regularly held agency show in June 2004, charging the dancers and agency owner with prostitution offences. A number of agencies have since told the CMC that audience contact has been stopped.

In the adult cafés and peep shows, audience participation is not permitted during stage/pole performances (in some cases actually performed on a bed) but customers may masturbate themselves while watching the show. In the adult cafés, masturbating customers must either sit on a chair or stand in a shower situated away from the dancer. At peep shows, customers typically masturbate within their private booths while watching the show. In some adult cafés (those without showers) dancers also provide a post-ejaculation clean-up service.

### ***Private/lap dancing***

In venues where liquor is sold/supplied but there is no AEP, dancers perform private dances away from the main bar area — G-strings stay on and there is no audience participation.

All the dancing that occurs in the adult cafés is performed for an exclusive audience and is therefore a private dance. Lap-dance performances similar to those in venues with AEPs take place in adult cafés. There is no touching between the legs but anywhere else on the body is permitted. In some adult cafés, patrons must remain fully clothed during the performances. In others, however, it was reported that entertainers and customers are both naked during performances. Unlike the AEP-controlled venues, where customers can choose to watch performances in the main bar area and not purchase a private/lap dance, the patrons of adult cafés are there for the private performances:

The guys come here [an adult café] to get a dance [private/lap], you don't have to talk to them for hours and then they just say no to a lap dance like in the regulated venues. (Adult entertainer)

Psychological as well as physical intimacy is also an important feature of the private/lap dances performed in the unregulated venues. At peep shows, for example, customers may request a private performance from a particular dancer in a special booth. A glass screen separates the customer in this special booth from the entertainer, who performs on a small stage behind a screen. To satisfy the customer's desire for intimacy (or at least the simulation thereof), communication during dances is made possible by telephone intercom connecting the customer in booths with dancers behind the screens:

The customer can communicate via a telephone intercom with the strip dancer — this provides a helpful remedial social therapy for those extremely shy and introverted people to develop confidence with their communicative skills in a safe, unthreatening environment. (Review submission)

Private/lap dancing is not provided to outcall agency customers. The review was told that many agencies have a 'minimum audience numbers' policy and will not under any circumstances perform for one person. In addition, many of the agency dancers choose to work in this sector of the industry because they do not want to perform private/lap dances — they do not like the intimacy inherent in these performances:

I work for an agency because it means I can just arrive somewhere, do my show and leave without having to talk to any of the men. (Adult entertainer)

### **Massage**

In addition to stage/pole/bed shows and the private/lap dance, some adult cafés also offer a massage service to customers. Dancers massage the customer while wearing a G-string but the customer must remain semi-clothed (i.e. underwear stays on).

### **Charges for live adult entertainment**

Entry fees of between \$5 and \$10 on average were charged by unregulated venues where alcohol was sold/supplied. The other venue types (adult cafés, peep shows) did not charge entry fees and neither did the owner/managers of live adult entertainment agencies when supplying dancers to functions or particular venues.

In all the unregulated venues considered during the review, patrons were charged for private/lap dances directly by the venue management, by the dancers, or by both the venue (room fee, seating fee) and the dancers (performance fee). The average total maximum charge for a one-hour private or lap dance involving one dancer and one customer was \$196; the minimum charge was \$180 per hour and the maximum \$220 per hour. Many customers will, however, purchase shorter lap dances, usually of 15 minutes' duration, for around \$40 to \$70.

The following prices represent typical outcall agency charges for certain types of adult entertainment:

- female lingerie and topless waitresses — \$50 to \$65 per hour
- male topless waiters — \$60 to \$65 per hour
- female nude waitresses — \$110 to \$200 per hour
- female striptease down to the G-string — \$150 (average)
- male striptease down to the G-string — \$180 (average)
- female full-nude striptease — \$160 (average)
- male full-nude striptease — \$190 (average)
- female open-leg striptease — \$180 (average)
- female striptease with natural masturbation — \$230 (average)
- female striptease with insertion — \$300 (average)
- female group striptease — \$480 to \$990, depending on dancer numbers and the degree of contact between them.

### **Customer numbers**

The unregulated venues consulted who provided figures to the review reported having between 20 and 400 customers through their doors in an average week.

For agencies, it was common to have regular, usually weekly, topless/lingerie waitressing events scheduled at licensed venues. These regular waitressing jobs represented the bulk of agency business; agencies reported that on average they were only booking one to five striptease shows per week.

### **The entertainers**

As was the case with the business owners/managers, it was difficult to access dancers in the unregulated sector of the industry; many were nervous about talking to the CMC, given that at the time of the review the PETF had ‘raided’ an unregulated venue and an agency show and had charged dancers with prostitution-related offences. In addition, the ATO was in the process of ‘doing a sweep’ of the live adult entertainment business throughout Queensland.

Eleven dancers from Queensland’s unregulated live adult entertainment sector were interviewed for the review.

### ***Demographic and background information***

The average age of the dancers interviewed in the unregulated sector of the industry was 25.7 years, with ages ranging from 18 to 34 years.

Nearly half the dancers identified themselves as single or married/de facto and two had dependent children.

The majority (73%) of entertainers interviewed had completed their senior school years.

None of the dancers in this sector identified themselves as Indigenous. Most of the dancers were born in Australia (82%).

### ***Length of time in the industry***

Among those interviewed, the average age for starting work as a dancer was 21 years. The youngest starting age of any interviewee was 16 years ( $n = 1$ ) and the

oldest starting age was 29 years ( $n = 1$ ). The average amount of time this group of dancers had worked in the live adult entertainment industry was 43.6 months.

### ***Income***

On average, the interviewed dancers working in unregulated venues 'took home' \$225 per shift. The minimum income reported per shift was \$200 and the maximum \$250. Working 4.5 shifts of 7.5 hours each week was the norm. Thus, on average, these dancers working in Queensland's unregulated venues earned \$1012 for a 33.7-hour week.

On average, the agency dancers interviewed earned \$650 per week, 'taking home' between \$150 (for one show) and \$1500 (a few hours' waitressing plus eight shows) per week. Agency entertainers worked fewer hours for more money than dancers in either the regulated or the unregulated venues. Working 4 to 14 hours per week netted the agency dancers between \$500 and \$1500.

### ***Reasons for working in the live adult entertainment industry***

For those dancing in the unregulated sector of the industry, the ability to earn good money was the primary reason for working as an adult entertainer (91%). Once again, this is hardly surprising, given that a Queensland woman's average weekly income for 40.8 hours is \$804.50 (Australian Bureau of Statistics 2004). After money, lifestyle/enjoyment (64%) was the second most frequent reason given, followed by flexible work hours (18%).

It is the best job in the world, it is fun, social, and flexible, I love dancing and you earn good money if you manage it well. (Adult entertainer)

I started doing it because I needed the money but once I started I found that I liked it, I am an active person, I like to keep active, I get bored sitting still, I can still have a smoke and a drink at work. (Adult entertainer)

## **CONCLUSION**

In considering the information provided in this chapter, two key points emerge. First, and importantly, the regulated and unregulated sectors of the adult entertainment industry are in many ways very similar. Secondly, however, it is the unregulated sector that provides the most sexually audacious forms of entertainment. Taken together, these two points signal the need to consider the merits of a more uniform regulatory regime that encompasses all providers of sexually explicit adult entertainment in Queensland.

## EXAMINING THE REVIEW OBJECTIVES

One of the key objectives of this review is to consider options for improving the regulation of live adult entertainment in Queensland. To achieve this, issues pertinent to the efficacy of the current regulatory framework are addressed in both this and the following chapter.

This chapter assesses whether the intentions of the present live adult entertainment regime have been met:

- to distinguish legitimate live adult entertainment from prostitution, allowing both to be regulated separately
- to keep organised crime, illicit drugs and corruption out of the live adult entertainment industry
- to eliminate opportunities for the exploitation of minors in the live adult entertainment industry, and
- to reduce negative impacts of the live adult entertainment industry on local communities.

### REGULATORY OBJECTIVE 1:

#### **Distinguishing live adult entertainment from prostitution, allowing both to be regulated separately**

As noted in Chapter 1, live adult entertainment is about the fantasy of sex but prostitution is concerned with the reality. This means that, although both are part of the wider live sex industry, adult entertainment and prostitution occupy different positions on the continuum of services provided by that industry and are distinguishable from each other in important ways.

Practically, however, being in different places on the live sex industry continuum does not preclude involvement by individuals or businesses in both sectors (live adult entertainment and prostitution). If the majority of adult entertainers were also prostitutes and most live adult entertainment business owners/managers also provided prostitution services, the line between the two sectors would be blurred, a situation that the government did not want to occur when it introduced the AEP system in 2000.

The goal of keeping live adult entertainment and prostitution separate in this practical sense has, for the most part, been achieved. The CMC found that only a small proportion of dancers engaged in or had ever engaged in prostitution, and only a small proportion of live adult entertainment business owners/managers were involved in the provision of prostitution.

During the interviews for this review, dancers and live adult entertainment business owners/managers were asked if, in their opinion, prostitution occurred within either the regulated or the unregulated sector of the live adult entertainment industry. Although the overwhelming answer to this question was yes (every dancer

replied yes to this question and only four business owners/managers said no), the consensus in the industry itself was that:

- prostitution in the live adult entertainment industry was the exception rather than the rule
- when prostitution took place it was most likely the result of a 'private' arrangement between dancers and their clients
- when prostitution took place it generally happened outside the context of the live adult entertainment — that is, dancers met customers after work
- when prostitution took place the live adult entertainment business owners and management staff usually had little or no knowledge of it.

It might be observed here that such an industry 'consensus' is no more than the advancement of a self-serving perspective aimed at casting a positive light on the industry. Although the CMC accepts that the industry is clearly putting a 'positive spin' on the issue, it should be noted that:

- the PETF reported to the CMC that since 2000, when the current regulatory system was introduced, few dancers have been charged with prostitution and it is the PETF's general opinion that dancers only rarely engage in prostitution
- the LLD did not voice concern about dancers in this regard
- the issue of prostitution was not raised in any submission to this review.

It is also relevant to note that, of the dancers interviewed by the CMC, none admitted to currently working as a prostitute and only one stated she had ever been employed as a prostitute. These figures are supported by a survey conducted for the CMC's report *Regulating prostitution: an evaluation of the Prostitution Act 1999 (Qld)*, which found that only 9 per cent of those prostitutes surveyed had ever worked as adult entertainers, and at the time of the survey none reported working in the live adult entertainment industry. These figures are especially persuasive, inasmuch as there would seem to be little incentive for a prostitute to deny working as an adult entertainer. In addition, only a small number of live adult entertainment business owners/managers appear to have any active involvement in prostitution, either directly through their live adult entertainment business, or indirectly through business interests in both the live adult entertainment and prostitution sectors.

Notwithstanding these positive figures and industry perspectives, there appear to be six 'problematic' live adult entertainment venues where prostitution may take place as part of everyday business, with the knowledge, consent and/or encouragement of owners and management. This is a relatively small number when it is considered that at present there are at least 81 live adult entertainment venues operating throughout Queensland.

Importantly, five of these six problematic venues operate within the unregulated sector of the industry. Three of these venues are widely considered by those in the industry, and in one case by the QPS, to be illegal brothels as well as live adult entertainment venues. A number of dancers, live adult entertainment business owners, managers and other staff made it clear that in at least two of these sites the owners/management are aware of and encourage acts of prostitution on their premises.

The CMC was told that, in one unregulated venue, patrons may purchase oral sex for \$10 in the lap-dance room and engage in sexual intercourse with dancers in the toilets for a higher fee. In the second and third unregulated venues, dancers reportedly provide customers with 'hand relief', oral sex and sexual intercourse.

The fourth and fifth unregulated venues (both adult cafés) that have been highlighted as problematic because they occupy a legislative grey area where uncertainty exists regarding what behaviours, other than masturbation, oral sex and sexual intercourse, actually constitute prostitution (see Chapter 5 for further discussion of this issue). To date, the courts have ruled that the types of behaviours occurring in these venues are not prostitution, and it is difficult to establish indecency where audience members consent to the entertainment and are not offended, as long as it occurs in a booth or private room.<sup>7</sup>

Interestingly, however, there are those within the live adult entertainment industry who take the view that the activities taking place in these types of unregulated venues (adult cafés) are in fact prostitution. This view is shared by the QPS, who have initiated an appeal against a Magistrate's Court ruling to the contrary (12 July 2004, Brisbane Magistrates Court per Ms Callaghan). This legislative 'grey area', in which the meaning of prostitution is unclear in the 'sexually satisfying' part of the section 229E definition, makes it very difficult to clearly distinguish live adult entertainment from prostitution, a situation that should be rectified (see Recommendations 1, 6 and 7 in Chapter 5).

As far as the regulated sector of the industry goes, all AEP venues except one (where there are allegations of dancers providing 'hand relief' and oral sex in the lap-dance room) appear, from the owner/management perspective, to be free of illegal prostitution. This industry claim is supported by:

- the PETF, who noted in the consultations for this review that any reports of and subsequent charges relating to prostitution within the live adult entertainment industry have (since 2000) as a general rule been confined to the unregulated sector
- the LLD, which did not report any permit suspensions as a result of prostitution operating in the regulated sector.

It is also perhaps noteworthy that there was silence surrounding the subject of overt prostitution in any submission made to this review.

In general, outcall agencies, which are unregulated and from which an entertainer goes to a usually private venue and performs a strip show, are primarily concerned with supplying live adult entertainment, not prostitution. In fact, those in the outcall sector argue that the entertainment they provide is further removed from prostitution than the entertainment in both regulated and unregulated venues, because there is minimal touching and no lap dancing, and acts are only performed for large audiences. Stage shows are the focal point of an agency dancer's performance; she is not there to advertise her 'wares' unpaid in the hope of selling a more private dance or lap dance for a fee; her performance begins and ends on stage. Not surprisingly, given that they are providing these largely non-contact type services, agency owners and dancers told the CMC that legislating against touching during agency performances would be welcomed (see Recommendation 7 in Chapter 5).

I think we should be similar to Victoria: girls who work there say they are the happiest working there, no touching when doing very sexually explicit shows (i.e. toy shows, masturbation, duo acts etc.). This no touching would be great, it means we could say no to the customers; the girls could say no, it is illegal. (Owner/manager, outcall agency)

---

7 See Chapter 2 for a description of the types of entertainment provided in adult cafes.

There are, however, a number of typical agency performances involving audience contact that do approach the legal definition of prostitution. These contacts include, for example, a dancer rubbing her breasts in an audience member's face.

Finally, there was no suggestion made to the CMC — by the industry, by the QPS or through the public submissions process — that any owner of a live adult entertainment business in any sector of the industry had discrete/separate business interests in prostitution in addition to their live adult entertainment business.

The fact that the relevant law-enforcement agency and the industry itself are of like mind in terms of adult entertainment not typically being a 'cover' or 'umbrella' for the routine provision of prostitution services will perhaps surprise some who have tended to view adult entertainment and prostitution as being mutually engaged in the provision of essentially the same sexual services. It is however clear to the CMC that adult entertainment and prostitution are not the same, and the two industries each operate in accordance with a unique ethos that militates against too ready a blurring of the lines between the two kinds of enterprise.

### **Reasons for minimal crossover between live adult entertainment and prostitution**

There are three possible reasons why few people in the live adult entertainment industry appear to be involved in illegal prostitution:

- the regulatory system
- industry culture
- venue/agency-specific policies.

#### ***The regulatory system***

It would seem that the current regulatory system is at least partially responsible for preventing illegal prostitution from occurring in AEP-controlled venues.

The majority of reports, from both the regulatory authorities and the industry, relating to overt on-site illegal prostitution were for the most part linked to the unregulated sector. The evidence therefore suggests that the existing controls on the regulated live adult entertainment industry — such as probity checks, other inquiries, legislative requirements for sound management/supervision, and regular compliance-enforcement activity, which includes the threat of losing one's AEP — are proving to be reasonably effective in minimising the occurrence of illegal prostitution.

In addition, both the Prostitution Act and the Liquor Act prohibit persons from holding both a brothel licence and an AEP. During the probity checking for AEPs, inquiries are made to the PLA to ensure that applicants do not have interests in a legal brothel/brothels and s. 8 of the Prostitution Act states that a person is ineligible to apply for a brothel licence if the person holds a licence or permit under the Liquor Act, which includes an AEP. Furthermore, AEP applications are subject to probity checks and vetting to ensure that licensees/permittees, nominees and controllers do not have a criminal history that includes offences against the Prostitution Act, and that they do not have criminal associates who have been convicted of offences under the Prostitution Act.

In the unregulated live adult entertainment sector, in contrast, there are no specific limitations on who may operate a live adult entertainment business: anyone with or without connections to the prostitution industry may run an unregulated venue. This issue could be rectified by regulation (see Recommendations 12, 15 and 16 in Chapter 5).

In addition, within the (smaller) regulated sector it is a requirement that:

- AEP-controlled venues be soundly managed through the production of and adherence to a management plan
- adequate supervision be provided in AEP-controlled venues at all times.

Action can be taken against AEP-controlled venues if the management plan is breached or the supervision is inadequate. The CMC notes that the entertainment in AEP-controlled venues is supervised. Controllers, for example, were always in the lap-dance room during CMC visits and there was only one report (from dancers) of a venue failing to provide supervision in the lap-dance area.

In the unregulated sector, however, supervision is at best minimal and at worst nonexistent. Dancers' performances in unregulated venues are generally unsupervised and there are often no security personnel. Similarly, agency dancers are not usually supplied with controllers/security. This creates an environment in which the potential for prostitution is increased. The issue of supervision within the unregulated sector is one that needs to be addressed (see Recommendations 17, 18 and 19 in Chapter 5).

It appears to the CMC that a powerful incentive to comply with regulations is the threat of losing one's AEP. In general, 71 per cent of owners/ management interviewed told the CMC that the LLD's use of warnings, breaches, suspensions and cancellations is an effective way to regulate adult entertainment. The threat of losing one's AEP does appear to the CMC to act as a powerful deterrent against certain behaviours. It is simply not in the business interests of owners/management of AEP-controlled venues to encourage or allow illegal prostitution to occur, because their AEPs would be jeopardised. Without an AEP, business would suffer and they might personally acquire a criminal record, with prostitution charges excluding them from obtaining an AEP in the future.

Policing the unregulated live adult entertainment sector is either a QPS (usually PETF) or LLD responsibility. Unlicensed venues and outcall agencies may be policed by the LLD if there is a suspicion that alcohol is being supplied without a licence/permit, or that live adult entertainment is being supplied without an AEP.

The LLD also polices licensed premises that provide what they define as non-sexually-explicit adult entertainment not requiring an AEP. However, the LLD's compliance checks in this area are less frequent than those undertaken in AEP-controlled venues. During its monthly AEP 'run', the LLD runs compliance checks on these lower-level live adult entertainment premises when the venue licensee/ permittee has been denied an AEP or had the AEP suspended or cancelled. However, according to consultation with the LLD for this review, in cases where this type of live adult entertainment is being supplied in venues where AEPs have never been sought, compliance checks will be incidental, occurring in the course of a general Liquor Licence/permit inspection or as a result of a complaint. How often general Liquor Licence/permit inspections are conducted depends on LLD priorities, with some licensees/permittees reportedly being checked only once every couple of years. It is therefore plausible that, compared with the regulated sector, less frequent policing of this sector may increase the opportunities for prostitution. If the government wishes to ensure the continuing separation of live adult entertainment from prostitution, consideration of the adequacy of current policing of all industry areas is needed (see Recommendation 8 in Chapter 5).

In some cases, the consequences of engaging in prostitution in the unregulated live adult entertainment sector may also be less serious than for the regulated sector. For example, those supplying live adult entertainment from unlicensed venues or through agencies may be criminally sanctioned for prostitution-related

offences but will not be later precluded from owning/managing these types of live adult entertainment businesses, since there is no current policy requirement for operating an unlicensed venue. Reduced consequences equal lower risks for operators and could potentially increase the chance of prostitution taking place in the unregulated live adult entertainment sector, a situation that needs rectifying (see Recommendation 1).

Importantly, the value of a regulatory regime for distinguishing adult entertainment from prostitution was readily acknowledged by those interviewed. The majority of interviewees, from both the regulated and the unregulated sector of the live adult entertainment industry, volunteered the view that regulation is an important deterrent to prostitution. All but one dancer told the CMC that live adult entertainment should be regulated and 55 per cent of interviewed dancers believed that regulation was important for maintaining the line between live adult entertainment and prostitution:

[We need regulation] so people know that we are not a bunch of whores and prostitutes; we are nothing like that, we need the rules to keep it that way. (Adult entertainer).

Things will get out of hand if there are no regulations/laws; the industry already has a bad name, if it was unregulated it would make it worse — we already get compared with hookers. (Adult entertainer)

Similarly, every live adult entertainment business owner told the CMC that regulation was vital, with 45 per cent stating it was needed to separate live adult entertainment from prostitution:

We need regulation because everyone needs to know their boundaries; adult entertainment needs to be regulated to keep everyone in line ... if there was no regulation there would be prostitution going on, the bad operators would spoil it; it needs to be controlled ... I don't want this place to be a Kings Cross. (Owner/manager)

There are a lot of dodgy people out there, dodgy people can control venues — regulation is needed to keep these dodgy people out ... it needs to be kept clean, if not it could lead to prostitution if not regulated. (Owner/manager)

Critically, with respect to the points being advanced in this report, both adult entertainers and business owners/managers felt that all sectors of the industry should be regulated to ensure that all live adult entertainment remained 'above board' (see Recommendation 1). Similarly, in its submission to the review, the QPS noted:

The *Liquor Act 1992* specifically addresses licensed premises (Liquor Licence) involved in live adult entertainment. There is currently no legislation regulating persons establishing and managing business involving 'live adult entertainment' and 'acts of an explicit sexual nature'. As a result, persons operating unlicensed premises are not the subject of probity investigations as currently required by licensed premise operators. The QPS submits standardised probity checks as currently identified in the *Liquor Act* and *Prostitution Act 1999* be introduced to vet persons involved or intending to be involved in the industry.

### ***Industry culture***

While regulation may help delineate live adult entertainment from prostitution, it should be remembered that, even within the unregulated sector of the industry, prostitution is the exception rather than the rule. Why this is so can at least in part be explained by the culture of Queensland's live adult entertainment industry.

As noted in Chapter 1, to differing degrees, live adult entertainment is about the fantasy of sex while prostitution is the reality.

Adult entertainment is about selling a fantasy, prostitution is about selling the reality. Strippers are not sex workers. (Owner/manager)

While the fantasy–reality distinction may be obvious to some, the prevailing public stereotype is that prostitution and live adult entertainment are in important respects one and the same. The very clear impression given during the review, however, was that Queensland’s live adult entertainment industry wishes to differentiate itself from this stereotype and be recognised as a provider of sexually orientated entertainment rather than a provider of prostitution.

Adult entertainment needs some separation from prostitution; entertainers are not prostitutes, we are entertaining, not selling sex. (Adult entertainer)

The adult entertainers spoken to were especially sensitive to, and often offended by, the suggestion that dancing is a form of prostitution, or that they provide customers with ‘extras’. Dancers frequently commented to the CMC that they were ‘sick to death’ of customers, women (particularly customers’ wives and partners) and the public thinking that what they did was prostitution.

Entertainers reported that customers constantly solicited them for sex. For this review, dancers were asked if, in their role as adult entertainers, customers had ever offered to pay them money for a sexual service and, if so, how often this occurred. Every dancer interviewed replied yes to this question, stating that they were asked for sex ‘lots’, ‘all the time’, ‘every night’, ‘constantly’, ‘regularly’, ‘hundreds of times’, ‘on a weekly basis’, ‘every shift’. Many dancers are offended by these unrelenting solicitations for sex and the general wish was for it to be stopped. The risk associated with the constant solicitation is obviously that of pushing dancers ‘over the line’.

The desire on the part of business owners/managers and dancers for live adult entertainment to be accepted as different from prostitution has led to an industry environment that is, perhaps surprisingly, intolerant of prostitution occurring within it. The dancers are by-and-large angered by any entertainer engaging in prostitution or any live adult entertainment business owner allowing prostitution to take place. Such activity, it is argued, gives dancers a bad name, perpetuates the myth that entertainers are prostitutes, increases the pressure placed on dancers by customers for sex, and may lose them customers — to those dancers who are willing to go ‘a bit further’.

Dancers who do prostitution give us a bad name — dancers will never be classy because of that. (Adult entertainer)

Some girls will have sex with customers; it gives us a bad name, clubs get a bad reputation, people think you are hookers, everyone treats you like you are a hooker, it makes it hard for us. (Adult entertainer)

The result, as the CMC was told on a number of occasions, is that dancers will socially ostracise any work colleague involved in prostitution and report such behaviour to owners and/or management, who then have a significant financial incentive in responding quickly and effectively to the threat to their businesses interests posed by such activities.

### ***Venue/agency-specific policies***

Reports of prostitution made to venue owners/managers appear to be treated seriously by them. If prostitution is suspected, dancers are reportedly taken ‘off the books’ immediately, being told not to return to work or not offered future work. This business-specific policy reflects a wider set of measures developed by individual business owners/managers to prevent prostitution from occurring. The following measures are also common throughout the live adult entertainment industry, although perhaps more so in the regulated sector, where the costs of having a dancer engage in prostitution are potentially higher for businesses:

- a refusal to offer ex-prostitutes or current prostitutes live adult entertainment work as a dancer
- a policy stipulating that dancers may not meet, exchange phone numbers or make any other type of contact with customers outside work
- policies stipulating that dancers may not leave the club before the end of their shift
- provision of information and/or training to dancers on what constitutes prostitution
- a requirement that dancers sign a contract stating that they understand the meaning of prostitution and will not engage in this activity.

Despite these management controls, there is some concern in the industry that, when the formal/regulatory, informal/cultural and semi-formal controls of specific employment policies fail and dancers 'cross the line', business owners/managers can be held responsible and charged with prostitution offences even if they had no knowledge of, or control over, the situation.

There are, at present, no individual repercussions through the AEP system for dancers who engage in prostitution, although they may be subject to criminal prosecution if the evidence is compelling enough. Finding work as a dancer elsewhere was not seen to be a problem if a dancer had been caught engaging in prostitution, since there are no probity requirements for dancers.

This is a problem for me [potential prostitution] because they [the dancers] are out there representing my company; I don't know what I can do, I am worried that I will be held liable for their actions. I tell the customers that we are not an escort agency but I have no control over the girls once they are out. (Owner/manager)

In addition, live adult entertainment business owners/managers reported frustration that when hiring a new dancer they could not find out whether she had ever 'crossed the line' while dancing. The CMC was told that, on those rare occasions when a dancer's engagement in prostitution was discovered and she was 'taken off the books' as a result, she would almost immediately find work as an adult entertainer elsewhere. This potentially places live adult entertainment business owners/managers, their businesses and the reputation of the live adult entertainment industry at risk, while also increasing the likelihood of some dancers engaging in prostitution because there are few repercussions for dancers who choose to 'go down this road'.

## REGULATORY OBJECTIVE 2:

### **Keeping the live adult entertainment industry free of organised crime, illicit drugs and corruption**

Live sex industry businesses (prostitution and adult entertainment) are widely regarded as prone to illegal activity such as drug use/dealing, organised crime and corruption (Bernard et al. 2003, p. 2). It was alleged to the CMC that:

- some dancers, their customers, management and business owners used illicit drugs
- some organised crime and illicit drug dealing takes place through a small number of live adult entertainment businesses
- there is isolated misconduct/corruption by a small number of government officials.

Although these allegations of drug use/dealing, organised crime and misconduct/corruption were infrequent, any degree of official misconduct/corruption,

organised crime and illicit drug use/dealing, no matter how sporadic, is serious. Significantly, there is disquiet within the industry itself about the potential for any encroachment of these types of activities. It was the general opinion of those spoken to in the industry that, while official misconduct/corruption, organised crime and illicit drug dealing is currently rare, such activities could become more widespread because some sectors of the industry are currently unregulated.

Yes, we need regulation ... the industry [unregulated sector] is a big mess at the moment ... all you need is a mobile phone and you can operate an agency, the ones you see advertised only represent a small proportion of agencies out there ... the way things are at the moment, with all the unregulated companies, there is a potential for the heavies to move in and take control over the industry. (Owner/manager)

This fear by the industry (both regulated and unregulated sectors) was shared by the QPS, who in their submission to the CMC expressed concern about the possible entry of criminals and their associates into the unregulated sector of the industry. It was, however, the general opinion of the regulatory authorities consulted that, although the adult entertainment industry is not completely 'clean', at present criminal activity tends to be the exception rather than the rule.

### **Illicit drug use/dealing**

Dancers and live adult entertainment business owners/managers were asked whether they believed there was any illicit drug use and/or dealing in any sectors of the live adult entertainment industry. Just over 70 per cent of business owners/managers and just over 90 per cent of dancers conceded that there was some degree of drug use and/or dealing within some sectors of the industry. However, the majority of these instances were seen to involve recreational drug use rather than dependence, abuse, addiction or large-scale drug dealing. This perspective is consistent with CMC intelligence as well as information provided by local (operational) QPS officers, who informed the CMC that they were more likely to find illicit drug use/dealing in mainstream nightclubs than in live adult entertainment venues.

#### ***Dancers' drug use***

There were only a few reports of drug dependence, abuse and addiction among dancers. The general feeling within the industry was that excessive and problematic drug use amongst dancers occurred only in the minority and was linked to 'dodgy' business owners/managers who allegedly nurtured, encouraged and supported this behaviour.

More typically, however, drugs were discussed in the context of dancers' recreational use. It was argued that dancers' drug use levels and patterns were little different from those of the general population. As with the general population, marijuana, ecstasy and speed appeared to be dancers' illicit drugs of choice (although crack cocaine was mentioned as a problem in one of the venues widely alleged to be associated with drug dealing).

#### ***Drug use/dealing by owners/managers***

Five live adult entertainment venues were nominated by entertainers, owners/managers and the regulatory authorities as being well known for selling/supplying illicit drugs to dancers. Two of these venues currently have an AEP.<sup>8</sup>

---

8 At the time of going to print, charges were laid against one unregulated venue, following CMC investigations into organised criminal networks involving the manufacturing and trafficking of amphetamines.

There were also a small number of reports (from within the industry and from law enforcement agencies) of owners/managers suspected of being involved in drug use. In all cases, these owners/managers were also responsible for the live adult entertainment venues allegedly associated with drug dealing.

### ***Customers' drug use/dealing***

Drug use among customers was described as rife by industry representatives and often posed problems for the entertainers, who found drug-affected clientele unpredictable and difficult to deal with, and offers by clients to pay them in drugs offensive.

### **Reasons for minimal drug use/dealing**

It seems to the CMC that the link between those working in live adult entertainment and illicit drug use/dealing is at present kept to a reasonably low level because of factors such as the regulatory system and venue-specific or agency-specific policies.

### ***The regulatory system***

The current regulation, which includes a system of probity checks, compliance checks and the threat of losing one's AEP and subsequent livelihood for non-compliance, appears to play a significant part in keeping illicit drugs at bay. This again lends credence to the idea of extending the current regulatory framework to include the currently unregulated sectors of the live adult entertainment industry.

### ***Venue/agency-specific policies***

To protect the integrity and professionalism of their live adult entertainment businesses, the majority of owners/managers have low- or zero-tolerance drug policies and these are actively policed. Indeed, the 'real drug problems' only appear to set in when a culture of drug use is supported by owners/management.

It used to be bad for drugs here [an adult entertainment venue] but the new management/owner cleaned it up. (Adult entertainer)

As is the case in most other industries, live adult entertainment business owners/managers are quick to profess an intolerance of illicit drugs at work. All but one of the live adult entertainment businesses (unregulated) that were consulted claimed to have a policy against entertainers being in possession of, using or being affected by drugs at work. The CMC was told that dancers involved in overt drug activities while 'on the job' were given one warning before being dismissed for a second offence, or were dismissed immediately. Similarly, while a 'blind eye' may have been turned to recreational drug use outside work hours, if this use got out of hand and started to impact on a dancer's ability to perform, the usual policy asserted by the industry representatives was to either issue the entertainer with a warning or dismiss her immediately.

To ensure dancers remained drug free, live adult entertainment venue owners/managers also reported performing locker and bag searches.<sup>9</sup> As well, business owners/management espoused a general intolerance towards customers found dealing drugs to either the dancers or other customers. Drug-dealing customers were usually removed from the venues and barred from returning. In the CMC's view, however, venue owners/managers should go further and report drug dealing by customers to the QPS.

---

<sup>9</sup> These measures are not, however, practical in the case of outcall agencies, as the only pre-performance contact between dancers and agency owners is over the telephone. The agency owner will receive a booking, phone the dancer and tell her where to go, and then the entertainer will usually find her own way there.

I barred a guy for selling drugs in my clubs; I barred him for six months. It comes down to the owners/managers sticking by the rules. In our clubs, if people are doing drugs in the toilet they are out. (Owner/manager)

We caught one guy dealing drugs in the club and banned him. We tell everyone not to bring it to work but you can't stop it unless you see it. If you see any transactions between girls and customers they are gone. (Owner/manager)

## Organised crime

Organised crime is a term used to describe circumstances where serious criminal offences are committed by two or more people and there is some substantial planning and organisation involved in the activity in order to make money (see the definition of 'organised crime' in Schedule 2 of the *Crime and Misconduct Act 2001*). During the interviews, dancers and live adult entertainment business owners/managers were asked if they believed there was organised crime in any sectors of the live adult entertainment industry. Just over 50 per cent of business owners/management and 68 per cent of dancers replied yes to this question. However, the consensus was that live adult entertainment had only a peripheral connection with organised criminals, that it took place in a small number of venues and that it generally involved drug dealing and/or prostitution.

Intelligence indicates that some AEP holders appear to have associates, friends and family members with a history of involvement in organised crime. Also, there is intelligence that criminal activity generally involving the sale of drugs or prostitution appears to be taking place in a small number of live adult entertainment venues and that a small number of those involved in the operation of adult entertainment venues were also involved in organised criminal activity unrelated to the venue.

Although illegal prostitution and drug dealing within the adult entertainment industry are not considered significant problems at present by law-enforcement/regulatory agencies, there is degree of concern that this could change in the future. This is because a large proportion of the industry is unregulated and could provide an opening for organised criminal activity. The QPS, for example, in their submission to the CMC voiced concerns in this regard.

## Official misconduct/corruption

Official misconduct (defined under s. 15 of the *Crime and Misconduct Act*) includes any corrupt or serious misconduct relating to the performance of a public sector official's duties that:

- is dishonest or lacking impartiality, or
- involves a breach of trust, or
- is a misuse of officially obtained information.

Furthermore it must be serious enough to amount to:

- a criminal offence, or
- justify dismissal.

Official misconduct also includes conduct by anyone who seeks to corrupt a public officer.

The CMC researchers received only a few claims which may have amounted to corruption or official misconduct from those spoken to in the live adult entertainment industry. These claims involved both QPS and LLD officers. Largely, these claims were based on perceptions that were held rather than upon any

direct evidence. During the interviews, live adult entertainment business owners/managers and entertainers were asked whether they believed there was any corruption in any sector of the live adult entertainment industry. In total, 24 per cent of live adult entertainment business owners/managers and 32 per cent of adult entertainers replied yes to this question. More specifically, the comments made related to:

- QPS and LLD officers allegedly receiving payments from live adult entertainment business owners/managers to ‘turn a blind eye’ to certain activities
- QPS and LLD officers allegedly misusing/abusing their authority.

Ten individuals told the CMC researchers that they suspected payments were being made to LLD and QPS officers because of what they perceived to be inconsistent policing practices. First, as already noted, there are a small number of live adult entertainment venues operating that are widely suspected in the industry of illegal activities. Second, it was claimed that some AEP venues are allowed to do things that others are not — such as advertising in ways that other venues have been ‘pinched’ for, or running outcall services from the premises when others have been prosecuted for doing so. Both types of inconsistencies, we were told, provoked a suspicion that corruption was taking place, with the LLD and the QPS being ‘paid off’ to ‘turn a blind eye’.

While these circumstances may be suggestive of official misconduct, it is critical to recognise that they are also consistent with unclear legislation, police resourcing priorities and poor communication between the regulators and regulated, rather than any actual official misconduct (these issues are discussed thoroughly in Chapter 4). Whatever the cause of these industry perceptions, they are of concern and need to be addressed.

With regard to the second point, researchers received nine claims about QPS officers and four about LLD officers misusing/abusing their authority. Of particular note were claims of aggressive tactics, using their position to obtain free drinks and antisocial or unruly behaviour.

In some sectors of the live adult entertainment industry there is a perception that the QPS and the LLD too readily demonstrate an attitude of disrespect towards those in the industry. When it comes to compliance enforcement, most owners/managers in the regulated industry, for example, asserted that both the QPS and the LLD had a tendency to treat them like criminals or potential criminals rather than legitimate businesspeople. It was apparent to officers of the CMC that the relationship between LLD Compliance Officers and QPS officers differed between regional areas. In some areas, there appeared to be little if any working relationship between the QPS and the LLD, but in others LLD compliance checks were conducted in concert with the QPS. The claims of lack of respect towards business operators and dancers were more common in sites where compliance checks are a joint enterprise between the QPS and the LLD.

In accessing these claims by industry representatives, it should be recognised that the industry has a vested interest in ‘putting on the best face possible’ and being critical of regulatory authorities with the capacity to negatively impact on its operations. Furthermore, the conduct of some industry figures appears to have been directed towards testing the limits of what is legally permitted. Other than the claims made by those spoken to in the live adult entertainment industry, the CMC has received few complaints alleging corruption, none of which was substantiated or confirmed.

Whatever the basis of these perceptions of misconduct/corruption and inconsistencies in policing practice (reported in Chapter 4), the resulting distrust that has developed between the live adult entertainment industry and the current regulatory bodies (the LLD and the QPS) has contributed to a sense in parts of the industry that compliance and policing practices are not necessarily directed towards the aims of the legislation that police/compliance officers are charged with enforcing. Indeed, a view expressed by some was that a lack of clarity in the relevant legislation had led to a situation in which some individual QPS and LLD officers may have given effect to personal moral views that are unsympathetic to the industry.

### **REGULATORY OBJECTIVE 3:**

#### **Eliminating the opportunities for the exploitation of minors in the live adult entertainment industry**

As noted in Chapter 2, persons aged less than 18 years are not permitted to work in the regulated sector of the live adult entertainment industry. Section 155AA of the Liquor Act states that the licensee, the permittee or the licensee's or permittee's nominee or controller, if any, must ensure that a minor is not in an approved area when live adult entertainment is being provided. To remove any doubt, it is specifically declared that a minor (a person aged less than 18 years, s. 36 of the *Acts Interpretation Act 1954*) cannot be in an approved live adult entertainment area in the capacity of a performer. In addition, live adult entertainment venues must, at all times when live adult entertainment is being provided, display a sign in every entrance area stating that live adult entertainment is being provided in the area (s. 143A, Liquor Act). It is also a legislative requirement that the entertainment provided in AEP-controlled venues is supervised at all times (s. 149B) to ensure among other things that minors are not in the venue.

During the formal interviews for this review, live adult entertainment business owners/managers and dancers were asked if, in their opinion, minors worked in the regulated sector of the live adult entertainment industry. Nearly 50 per cent of live adult entertainment business owners/managers and 70 per cent of dancers replied yes to this question. However, interviewees were quick to assert that this only happened occasionally, never seemed to involve anyone under the age of 16 and generally happened without the knowledge of the live adult entertainment business owners/management, who simply had too much to lose if minors were discovered at their venues. These perhaps predictable industry assertions were confirmed during the broader consultation process, with the LLD similarly reporting that few, if any, minors worked in AEP-controlled venues. LLD Compliance Officers check the ages of entertainers and to date have found no evidence of under-age dancers in these venues. Once again, the CMC was told by the LLD that licensees/permittees simply had too much at stake to risk contracting an under-age entertainer. The presence of a minor in a live adult entertainment area would constitute an offence against the Liquor Act and could result in cancellation of the AEP.

Every owner/manager of an AEP-controlled venue had a policy requiring dancers to produce photo identification (such as a driver licence or over-18 card) as proof of age before being permitted to entertain. However, it would seem that some under-age 'girls' have slipped through this safeguard with false identification. If it was discovered that a dancer had produced false identification and was aged less than 18 years, her contract to work at the venue was reportedly terminated immediately.

Reports of minors working as dancers outside the regulated environment were higher than for the regulated sector; 76 per cent of live adult entertainment

business owners/managers and 89 per cent of dancers told the CMC that minors were (in their opinion) working in the unregulated live adult entertainment sector. Once again, however, there were no reports of minors under the age of 16 working as adult entertainers; in all cases, reports related to girls aged between 16 and 17 years.

Why there should be more reports of minors working as dancers outside the regulated environment, and no reports of minors under the age of 16 performing, relates directly to the legislative restrictions, and lack thereof, on live adult entertainment outside the AEP system.

In the regulated sector, section 155AA of the Liquor Act contains a strict prohibition against the presence of minors in 'approved areas' where live adult entertainment (as defined in the Adult Entertainment Code) occurs. This means that minors are prohibited from working as adult entertainers in AEP-controlled venues. Outside the AEP system, however, there are very few legal protections to prevent minors from working in the unregulated sector of the non-AEP-controlled adult entertainment industry.

In relation to non-sexually-explicit unregulated live adult entertainment in venues with a Liquor Licence/permit (not controlled by an AEP), the Liquor Act contains a general prohibition on the presence of minors. However, the Liquor Act also creates a category of 'exempt minors' in section 155(4), which means that minors may be employed in a licensed venue and that, if a licensed venue offers live adult entertainment not requiring an AEP, minors may be present as employees (potentially adult entertainers) in areas where live adult entertainment is occurring.

Although the Criminal Code (s. 210) does prohibit children under 16 years of age performing adult entertainment, this section relies on a standard of indecency which, as noted previously, is a matter of context and circumstance and thus not an ironclad safeguard. Similarly, minors aged 16 and 17 years are offered some protection under section 227 of the Criminal Code, which makes it unlawful for anyone (including a minor) to perform indecently in a 'public venue', and section 228(1)(c), which makes it unlawful for anyone to hire minors of this age to perform in an indecent manner. However, once again, the ambiguous status of any indecency test means that both sections offer only limited protection to minors aged 16 to 17 years.

Section 227 offers protection only where an intent to insult or offend can be established. In the typical outcall situation, entertainers perform in contexts to which the public are not permitted access. This means that in outcall situations a performance can only be indecent if the basic requirement is met that there be intent to insult or offend. Performances in adult entertainment venues where alcohol is not sold/supplied, such as peep shows and adult cafés, are similarly affected by this provision as performances generally occur in private cubicles/booths/rooms (to which the public are not permitted access). Once again, intent to offend will be required in order to trigger the 'indecency' section. Non-public performances are therefore seldom indecent, and minors over 15 may participate in them with few restrictions. Minors under 16, however, are likely to be protected by s. 210 of the Criminal Code, which criminalises the indecent treatment of children under 16. Also, s. 217 of the Criminal Code does criminalise the procurement of a young person for carnal knowledge, so that a person recruiting a minor to perform sexual acts with another performer (for example, in duo/group acts) might face criminal consequences.

To summarise, this means that there are very narrow protections offered to minors over 15 in Queensland's unregulated live adult entertainment industry. In practice,

therefore, 16- and 17-year-olds can lawfully be hired to perform in the following contexts:

- in unregulated live adult entertainment venues with Liquor Licences/Permits but not controlled by an AEP, including semi-nude striptease performances and waitress services
- for unregulated live adult entertainment businesses without Liquor Licences/Permits in contexts to which the public are not permitted access, including semi-nude/full-nude striptease, self-masturbation acts (including insertion performances while customers masturbate) and lap dances.

It should be emphasised that, although 16- and 17-year-olds may be able to lawfully work in the unregulated sector, in reality this appears to happen only very occasionally. While those in the live adult entertainment industry conceded that dancers aged 16 and 17 years of age do at times work in the unregulated sector, they were also quick to claim that only a small number of girls are involved. Importantly with respect to this claim, the PETF reported only isolated instances of minors working in the unregulated sector, a fact that would seem to support the industry argument that minors are only rarely involved in the provision of adult entertainment services.

Nevertheless, allowing those aged less than 18 years to work in any sector of the live sex industry has implications for Australia's standing in the international legal community. Children enjoy a number of protections under the International Convention on the Rights of the Child of 20 November 1989 (CROC), to which Australia is a party,<sup>10</sup> and the Worst Forms of Child Labour Convention (ILO Convention 182). Australia has both signed and ratified CROC, and states such as Queensland have obligations to the Commonwealth Government to assist it in making domestic Australian legislation fully compliant with obligations under any convention that it has ratified. Queensland's obligations in this regard are contained in its obligations to the Commonwealth, rather than to the international community. Australia has not yet signed ILO Convention 182.

In relation to CROC, these protections include the right to protection against economic exploitation (including the right to appropriate conditions of employment) and, most importantly, the right to protection from all forms of sexual exploitation, notably the exploitative use of children in pornographic performances [Article 34(c)].

In relation to ILO Convention 182 to which Australia is not yet a signatory because there is not yet domestic compliance with its obligations, there is a positive obligation to criminalise (see Article 7 of ILO Convention 182) conduct such as procuring pornographic performances [see Articles 3(b) and (d) of ILO Convention 182]. The recommendations in relation to minors in the live adult entertainment industry found in Chapter 5 of this report reflect these broad obligations (see Recommendations 1, 3, 4, 5, 6, 8 and 9).

---

<sup>10</sup> This convention was ratified in December 1990. Ratification places obligations on a state party such as Australia to ensure that its domestic legislation is consistent with the instrument. Queensland has a corresponding obligation to the Commonwealth Government to make sure that state legislation is consistent. While the CROC has never been formally enacted by legislation in Australia, it is a declared instrument under the *Human Rights and Equal Opportunity Commission Act 1986* (Cwlth), and has a normative status that provides a benchmark for policymakers, lawyers, families and non-government organisations with an interest in the wellbeing of children. This normative status is the basis on which it is invoked in the context of minors working in the adult entertainment industry in Queensland; it is relevant, for instance, in measuring contemporary community standards.

In the CMC's view, regulatory change is needed to eliminate any opportunities for the exploitation of minors in the live adult entertainment industry by ensuring that no-one aged less than 18 years can legally work as an adult entertainer.

The QPS supports this suggestion and submitted the following in its written response to the CMC:

The introduction of standardised controls and regulation across regulated and unregulated aspects of the industry will address concerns relating to the exploitation of minors.

## **REGULATORY OBJECTIVE 4:**

### **Reducing negative impacts of the live adult entertainment industry on local communities**

The government is concerned that live adult entertainment could negatively impact on the community. Safeguards have therefore been included in the current regulatory framework to minimise any impacts on community amenity — for example, restrictions on advertising, on marketing strategies such as touting/spruiking and on venue location, and the provision for community objections to be lodged against AEP applications. The unregulated sector of the industry is not currently subject to such restrictions, a situation that could adversely affect the community (see Recommendations 9, 10, 20 and 21 in Chapter 5).

The CMC received one submission from a state MP expressing concern about touting for live adult entertainment in his community. The concern was that an AEP-controlled venue was using a third-party company to provide advertising to sidestep the law against touting (see s. 30 of the Liquor Regulation 2002). More specifically, the touting was for an outcall service operating in conjunction with the AEP-controlled venue. As outcall services are currently unregulated, they are not subject to the same advertising/marketing restrictions as regulated venues and may tout with few restrictions. While only one report expressing concern was received, the CMC is of the opinion that the potential for community amenity to be affected by unrestricted spruiking/touting from the currently unregulated sector is significant enough to warrant change to ensure this does not get out of hand in the future. (See Recommendation 21 in Chapter 5.)

In certain locations a degree of moral disquiet about the adult entertainment industry also appears to be felt. For example, the CMC received some public submissions from parts of regional Queensland where the live adult entertainment industry has affronted the sensibilities of some individuals. While it is important to take account of these complaints, they are not necessarily indicative of widespread negativity towards the adult entertainment industry.

It is noteworthy that:

- QPS officers in Brisbane, on the Gold Coast and even in regional Queensland told the CMC they received few, if any, substantial complaints from the community about live adult entertainment (regulated or unregulated) and that, in their opinion, live adult entertainment had little impact on community amenity
- LLD figures show that there have been few public objections to AEP applications — since 2000, only six applications for AEPs have attracted objections, and of these only one application was refused because of objections to a lessening of the amenity of the locality (LLD letter to the CMC, received 30 September 2004)
- live adult entertainment business owners/managers in all sectors reported receiving few direct complaints about their venue/business from the local

community; only three of the 33 business owners/managers spoken to reported receiving such complaints.

The CMC is ultimately drawn to the view that the adverse impact of live adult entertainment on Queenslanders is minimal and may only be a matter of any real consequence to a minority of the population.

The modest degree of ill will that does exist towards the industry may be outweighed by the fact that live adult entertainment fulfils a number of social needs for a significant number of people. A more general point that should not be overlooked is that, in a context where legal prostitution is widely accepted, it is difficult to argue that live adult entertainment can be less readily accommodated.

## CONCLUSION

This chapter has focused on whether the intentions of the live adult entertainment regulations have been met — to distinguish legitimate live adult entertainment from prostitution, allowing both to be regulated separately; to keep organised crime, illicit drugs and corruption out of the live adult entertainment industry; to eliminate opportunities for the exploitation of minors in the live adult entertainment industry; and to reduce negative impacts of the live adult entertainment industry on local communities.

Each of these regulatory intentions intertwines with and is similar to the more specific concerns raised at the beginning of this report — the possible entry of criminals and their associates into the industry; the possible exploitation of minors; and the possibility of negative impacts on community amenity. Each concern has been considered in this chapter and the outcomes are summarised below.

First, with regard to the possible entry of criminals and their associates into the industry, information was received that some criminals are connected to the live adult entertainment industry. More specifically, it was found that:

- a small minority of adult entertainers do at times engage in prostitution with customers
- some live adult entertainment business owners/managers appear to be directly involved in the provision of prostitution through their businesses
- some people involved in the live adult entertainment industry use illicit drugs
- illicit drug dealing appears to be taking place in a small number of adult entertainment venues
- there are some peripheral connections between the live adult entertainment industry and Queensland's historical organised crime figures
- organised crime, generally involving drug dealing or prostitution, appears to be taking place in a small number of live adult entertainment venues.

Second, with regard to the possible exploitation of minors within the live adult entertainment industry, there was no evidence suggesting children aged under 16 years work as dancers in any sectors. However, a small number of 16- to 17-year-olds appeared to have worked as adult entertainers, having 'fallen through' some legislative and regulatory 'gaps'.

The third issue relates to the possible impact of the live adult entertainment industry on the amenity of local communities. Aside from the issue of touting/spruiking by some unregulated adult entertainment businesses, it is concluded, for the most part, that adult entertainment appears to be having only a minimal adverse effect on community amenity.

## EXAMINING OTHER ISSUES RELATING TO REGULATORY EFFICACY

**Building on Chapter 3, this chapter considers other issues pertinent to the efficacy of the current regulatory framework that were highlighted during the review investigations.**

**Specifically, this chapter considers the following issues:**

- **the AEP applications and approval process**
- **problematic legislation and regulatory issues**
- **the practical application of the regulatory scheme**
- **advertising and marketing restrictions**
- **workplace health and safety issues.**

### THE AEP APPLICATION AND APPROVAL PROCESS

The process of applying for an AEP and a controller permit is almost universally considered unduly onerous and time consuming by those in the regulated live adult entertainment industry. When asked if they had experienced any problems with the AEP application process, the majority (92%) of licensees/permittees/managers replied yes.

Of particular concern were the:

- time taken to process AEP and controller approval applications
- rationale for use of controllers
- inability to make minor changes to AEPs once granted, without having to apply for a new AEP
- inability to change the nominee without triggering a cancellation of the AEP
- inability to transfer AEPs on sale of the business
- intrusive nature of the probity checks.

#### **Time taken to process AEP and controller approval applications**

Owners/managers reported delays in the AEP application process and consistently noted that this was a continuing source of distress, frustration and potential legal liability for them. The time taken to process initial annual applications, one-off applications and 'renewal' applications (required from all existing AEP holders on a yearly basis) was described as excessive.

The CMC asked the LLD to provide figures on the average amount of time it takes to issue an AEP from the date of receipt of the application and was told that:

- for an annual AEP, 68 working days (approximately) is the average
- for a one-off AEP, 36 working days (approximately) is the average.

AEPs are tied to the sale/supply of liquor, in that anyone wishing to supply live adult entertainment and alcohol must be granted a Liquor Licence/permit before being eligible to apply for an AEP (s. 103F of the Liquor Act). The LLD reports

that it can take up to six months for Liquor Licence/permit approval; add this to the average time it takes to get an AEP (see above) and any new live adult entertainment business owner can expect an approximate nine-month wait before an AEP is granted.

[We have had] incredible problems [with the AEP application process]. We submitted our AEP application in April 2003 and it wasn't granted until December 2003. That was how long it took them to process it; there were no problems with the application. They couldn't process my AEP until my Liquor Licence had come through — why couldn't they do both together? (Owner/manager)

In its submission to the CMC, the LLD suggests that this problem could be fixed by minor amendments to the Liquor Act enabling 'applicants to simultaneously apply for an AEP and a Liquor Licence ... allowing both applications to run together would enable advertising to be undertaken simultaneously for each application to call for public objections, minimising time and expense' (see Recommendation 6 in Chapter 5).

The CMC was told that the length of time taken by the LLD to process one-off AEPs for special functions has led to instances of people 'running the risk' and supplying live adult entertainment without a permit. The fact that the LLD received no applications for one-off permits during 2003–04 may support this.

One-off applications ... it can take 5–6 months to get an AEP for a month. This is pushing people into doing the wrong thing ... one pub in town has full nude striptease but closes the doors to the public (ticket sales only), tries to say that if it is behind closed doors it is OK ... the application process just takes too long. (Owner/manager)

The 'closed doors' approach reflects an attempt to ensure that the entertainment is not provided in a 'place to which the public is permitted to have access', and therefore does not infringe the indecency provisions in section 227 of the Criminal Code.

The annual AEP application process is identical to the initial one and thus the processing time is similar.<sup>11</sup> The CMC was told that these applications/reapplications take too long to be approved and that owners/managers were frequently not informed about the status of the reapplication until the day their previous AEPs were due to expire — a situation that potentially puts their businesses at risk.

It [the reapplication] takes too long to be approved; they [the LLD] leave it up to the day when the prior licence expires to tell you whether it has been approved or not, they give you the outcome at 7pm that night on the day the old permit runs out, then raise serious issues with us to deal with on that day. The legal costs are huge. The customers think something illegal must be going on because our permit hasn't been renewed ... we will be forced to trade without an AEP until they address the issues raised by the LLD, which can't be done in a few hours. It impacts on the club's credibility, we lose staff, it costs a lot in legals. This happens every year. (Owner/manager)

Everything was lodged with Licensing. We found out the day our permit ran out that the woman looking after our permit in Licensing had gone on leave. Either no one had taken over the case or someone had and they were inexperienced and didn't get the necessary paperwork completed. We were told that because of this we may not have been able to open and have adult entertainment. Our lawyer rang and sorted it out for us. There were five clubs affected ...

---

<sup>11</sup> Section 1031 of the Liquor Act provides that an adult entertainment permit is issued for a maximum of one year and is not renewable or transferable.

I received a fax this morning from Licensing saying: the Chief Executive has granted the application for an AEP for the abovementioned premises for a period of one month to allow the division to complete the necessary criminal history checks on the parties involved. Upon receipt of the report, further consideration of the application will be made. As I have no faith in Licensing I consider this normal practice. Even after I sent them everything they needed for the application I was asked to supply the same information a second time!!! I keep a photocopy of everything I send them as I know how useless they are. I picked up the photocopy of the form they were requesting a second time and showed it to our lawyer, proving it was given the first time. He was as dumbfounded as me. It's just so frustrating! (Owner/manager)

The LLD told the CMC that the 'delays are caused by the high level of probity investigation required under the provisions of the Liquor Act' and 'a significant proportion of the time taken by the LLD to process an AEP application is spent awaiting advice from PETF on outcomes of their investigations ... further, applicants in many cases fail to disclose accurate information concerning their family and business associates' (LLD letter to the CMC, received 30 September 2004). The CMC was also told that LLD officers kept licensees/permittees regularly appraised of the status of their application.

Taking into consideration processing time, the stress caused to licensees/permittees by delays and the administrative burden imposed on the LLD by the compulsory one-year permit maximum and accompanying probity requirements, it has been suggested by those in the live adult entertainment industry that AEPs be granted for longer periods of time, with a payment of annual fees. This would have the effect of reducing everyone's workload and costs, while providing a more stable commercial environment for licensees/permittees. Substantial changes in the business, such as a sale of the business, should still require the submission of a new application (see Recommendations 25 and 26 in Chapter 5).

### **Rationale for use of controllers**

As was the case with the AEP application processes, owners/managers also complained about the amount of time the LLD takes to process an application for controller approval. The LLD informed the CMC that initial controller approval is processed as part of the applications for AEPs, thus taking 68 working days in the case of an annual permit and 36 working days in the case of one-off permits. Changing controllers after the initial AEP has been granted takes approximately 65 working days. Delays were noted to be caused by the 'high level of probity checking required under the provisions of the Liquor Act (the majority of time awaiting PETF advice) and the applicant's failure to provide certified and acceptable identity documents' (LLD letter to the CMC, received 30 September 2004).

The legislation at present requires live adult entertainment in AEP-controlled venues to be supervised by the licensee/permittee, nominee or controller at all times, in all rooms and/or areas where the live adult entertainment is being conducted (see Chapter 2). As licensees/permittees and nominees are usually busy with more general business activities, controllers are providing the bulk of supervision. However, it was reported that controllers are a transient group and there is a high turnover of staff in these roles.

Unfortunately, the length of time taken to approve new controllers means that the LLD is unable to meet the demands of the licensees/permittees; by the time controller applications have been approved the potential controllers have often 'moved on'. Licensees/permittees have tried to compensate for this by submitting approval applications for a large number of people in the hope that some might still be available when the approval 'comes down' from the LLD, but, at \$111 per

application, applying for controller approval can become expensive. In addition, licensees/permittees feel forced into using people not yet approved, which occurs with the knowledge and tacit consent of the LLD (ALVA submission).

The controller part is the worst: 98 per cent of our girls are backpackers, they have left by the time the LLD has approved the application, we don't get them approved before they go. Last time it took four months to get the application approved. (Owner/manager)

The controller application process takes too long, they have left before the application has gone through. The LLD now tell us that as long as we have the application in we will be fine using controllers on the application. (Owner/manager)

The LLD told the CMC that 'the use of controllers is an unnecessary administrative burden on the resources of the LLD', and in support of the owners/managers' comments they continued by saying: 'Licensees have had hundreds of controllers appointed given the transitory nature of the industry, some of whom have not been formally approved before ceasing employment as a result of the time taken for appropriate checking' (LLD review submission).

In its submission to the CMC, the LLD suggests the following measures to alleviate the controller problem:

- prohibiting contact between customers and live adult entertainers by requiring live adult entertainers to be provided on a stage or at a specified distance from a patron, making controllers unnecessary; or
- removing the requirement for controllers, making the licensee/nominee solely responsible for the entertainment provided.

The first proposition as to contact is inconsistent with well-established industry practice in some areas. In particular, physical contact has become an integral part of the lap dance. Patrons who frequent lap-dance venues seek physical intimacy and the bulk of dancers' income in these settings is derived from this contact. The CMC believes that to stop physical contact altogether at this point would change the face of some industry sectors, put some types of dancers out of work (or at least substantially reduce their income) and/or push the industry underground, as customers would still demand services involving physical contact and some dancers would still be prepared to supply it because it is lucrative.

The majority of lap dancers spoken to during the review were happy with the touching and chose to work in lap-dance venues because this was the type of entertainment they wanted to provide. They felt, for example, unsuited to agency work because they did not want to masturbate and/or insert objects into themselves in front of a large audience, and/or they could not dance that well, and/or they found more conventional forms of dancing too physically taxing.

Regarding the second LLD proposition relating to controllers, the dancers interviewed in the AEP-controlled venues were adamant that controllers were essential — 81 per cent argued that the controller system was an effective way to ensure their safety. The CMC shares this view and consequently does not support the LLD's suggestion to remove the requirement for controllers and make licensees/nominees solely responsible for the entertainment provided. The most likely result of this proposal would be that supervision levels would decrease and dancer safety would thereby be compromised.

Controllers make us feel safe ... when a controller comes over the guys listen, it is good to have her [the controller] backing you up, e.g. when you say no, you can't do that. (Adult entertainer)

Yes, they [controllers] make us feel safe; they back us up straight away. Our controller is always here ... we wouldn't like to see controllers go, we need the backup, and we need the physical presence. (Adult entertainer)

Nevertheless, the CMC is persuaded that the current controller approval process does not work effectively because of the length of the application process and the high turnover of controllers. Modifications of the process are therefore needed. Licensees/permittees/managers and ALVA all suggested a licensing system that would allow controllers to move between venues, and a consequent conversion of the current requirement that applications be lodged for each individual venue to a registration process that keeps the LLD apprised of the location of controllers (ALVA submission).

The QPS also suggested in their submission to the CMC that:

Current controller permits as defined under the *Liquor Act 1992* be issued for a 12 month period to the applicant. This will enable an authorised controller to move from business to business ... probity investigations conducted by PETF in relation to controllers will be significantly reduced as a result of this process being implemented.

This issue is addressed in Recommendation 17 in Chapter 5.

### **Making minor changes to current AEPs**

The Liquor Act does not provide a process for variations to be made to an AEP once issued. If a permit holder wishes to vary, even in a minor way, the conditions of the permit (including the management plan, which is made by way of licensing condition — section 107D(1)(d) of the Liquor Act, and r. 28 of the Liquor Regulation 2002), a fresh application must be lodged for a new AEP (LLD review submission).

One licensee told the CMC, for example, that in the original management plan it was stated that a rope was to be placed around the stage. As will be recalled from Chapter 2, management plans must provide for how the stage area will be separated from the audience. The licensee, who was new to the live adult entertainment business, thought a rope was the best way of achieving this but was to later learn that this was unusual practice; no-one else in the industry did it. However, there was no way out of this; the rope could not legally be removed under the current AEP because the management plan could not be amended, and the length of time required to have a new AEP approved would have compromised the licensee's business. The licensee did in fact remove the rope and it was claimed that, as a result, the LLD issued a fine for failing to adhere to the management plan.

As noted by the LLD, many minor changes to existing AEPs, like the rope scenario described above, do not have 'a significant community impact and a fresh application for a new permit is unwarranted. Enabling minor variations to an annual permit would resolve this problem' (LLD review submission). This issue is addressed in Recommendations 22 and 23 in Chapter 5.

### **Changing the nominee**

As noted above, changes to an AEP are not permitted. This means that if a licensee/permittee wishes to replace a nominee, the current AEP will be cancelled and a new application must be submitted. As noted in the submission from the Adult Licensed Venues Association (ALVA), 'in most cases the nominee for the AEP premises is a hired manager and subject to change at short notice. Requiring the licensee/permittee to bear the cost and inconvenience of an application for a subsequent permit is harsh.' In addition, the time it takes to be granted a new AEP is such that licensees/permittees may be 'held to ransom' by nominees threatening to leave and will go to 'unreasonable lengths to retain nominees at the premises during the processing period' (ALVA submission):

The Nominee here stuffed me around, I had to close down, needed to apply for a new AEP and it took three to four months and that was quick! I was held to ransom by the Nominee, maybe there should be two Nominees, e.g. what if the Nominee gets run over? That is 60 girls out of a job! I have been held to ransom ... I had to pay the nominee \$1000 a week to stay until the application went through; she kept threatening to walk. (Owner/manager)

The LLD notes in its submission to the CMC that the legislative requirement to cancel AEPs when nominees change is both costly and an administrative burden, because a new AEP application must be processed. It therefore suggests that 'provisions to change the nominee for the permit without cancellation would reduce costs and administration' (LLD submission). Similarly, ALVA suggests that the provisions for the cancellation of an AEP on change of nominee be deleted (see Recommendations 22 and 23 in Chapter 5).

### **Transfer of AEPs on sale of the business**

AEPs are not transferable,<sup>12</sup> and they are contingent on a current Liquor Licence. Where the sale occurs of a business to which an AEP and a Liquor Licence attach, the sale triggers a cancellation of both. While a Liquor Licence may be applied for before settlement of sale, no application can be made for an AEP until the Liquor Licence is approved. A person who purchases a live adult entertainment business may therefore find themselves in a position where they have a Liquor Licence, but await approval of an AEP for some months.

It's a problem if you want to sell the club — you need to reapply but it could take up to 12 months to get an AEP ... you can't sell the business as a going concern. (Owner/manager)

Selling AE business is also a problem: you can't get the AEP transferred in time, have to wait three to four months for the AEP, they might not even get one, they want to buy an adult entertainment venue. (Owner/manager)

This issue is addressed in Recommendation 24 in Chapter 5.

### **Intrusive probity checks**

While the owners/managers interviewed understood the reasons behind probity checking and, indeed, many supported the extension of probity checks to the unregulated live adult entertainment areas (see Chapter 3), some took offence at the annual probity checks required for AEP renewal:

You have to reapply every year, have to be interviewed by the police every year; when I reapplied I was asked how I got the money, if I had ever worked as a prostitute; I found this offensive, I already had an AEP, this was just for a renewal ... it was heavy handed. (Owner/manager).

The probity check is intended to ensure that the live adult entertainment business remains free from any connection with prostitution, illicit drug use/dealing, organised crime and corruption. The concerns of Parliament in relation to these derive from the association in past decades between the QPS, the live sex industry and criminal activities in Queensland (as revealed by the 1989 Fitzgerald Inquiry).

There is in some minds a ready assumption that the sale of sex and sexualised entertainment go hand in hand with organised crime, and with drug trafficking in particular. This assumption is modestly supported in the present context by some evidence suggesting that a minority of live adult entertainment businesses may be involved in prostitution, illicit drug use/dealing and organised crime. However, given that this involvement appears, according to the regulatory authorities, to be at a non-problematic level, it is unhelpful to uncritically assume that the live

---

12 Section 103I of the Act.

adult entertainment industry (regulated and unregulated) now tends toward an association with crime. The probity requirements in the legislation are without question onerous, enclosing in their purview applicants, nominees and controllers, as well as their associates.

## PROBLEMATIC LEGISLATIVE AND REGULATORY ISSUES

It will be recalled that adult entertainment in Queensland is governed by the Liquor Act and the Criminal Code.

Regulated live adult entertainment in Queensland occurs in conjunction with the sale/supply of alcohol and is regulated under the Liquor Act. Liquor licensees and permittees wishing to supply live adult entertainment must hold a current AEP which enables adult entertainers to perform acts of 'an explicit sexual nature'.

In addition to the regulated live adult entertainment supplied through the AEP system, live adult entertainment also takes place in venues where liquor is sold/supplied, in venues where liquor is not sold or supplied, and through outcall services. In the first instance, the performances are governed by the Liquor Act and must not be 'sexually explicit'. In the latter two cases, the entertainment is only controlled in so far as it does not breach section 229E (Meaning of prostitution) section 227 (Indecent acts) and section 228 (Obscene publications and exhibitions) of the Criminal Code.

However, what constitutes sexually explicit entertainment and indecency is not always clear, and this lack of clarity is a continuing source of frustration and concern both for those working in the live adult entertainment industry and those regulating it. When live adult entertainment business owners/managers were asked if they knew what kind of live adult entertainment they could lawfully provide, the usual answer given was 'yes and no'. These ambiguities appear to have also given rise to inconsistencies in enforcement practice.

### Regulated sector

In the regulated sector of the industry this confusion was generally limited to the definition of 'acts of an explicit sexual nature'. The QPS, for example, noted in their submission to the CMC that:

Current *Liquor Act 1992* legislation does not specifically identify what is considered to be; 'live adult entertainment' and 'acts of an explicit sexual nature'. This has resulted in the legislation being open to interpretation by law enforcement agencies and persons involved within the industry.

Venues providing non-sexually explicit (as defined by the LLD) live adult entertainment in licensed venues for example, are unsure what their 'boundaries' are because there is uncertainty as to whether the entertainment is sexually explicit enough to require an AEP. Live adult entertainment is permissible without an AEP in venues with a Liquor Licence, as long as the entertainment does not involve acts 'of an explicit sexual nature'. However, nowhere in the legislation/regulations has 'act of an explicit sexual nature' been defined and the LLD has, in turn, provided a range of advices to venues.

The LLD verbally informed the CMC early in the research process that they had operationally defined an 'act of an explicit sexual nature' as the provision of live adult entertainment where the genitalia are exposed and/or when the adult entertainer is touching the customer in a sexual way. However, in the LLD's submission to the review it was specified that current enforcement is based on the exposure of the genitalia which includes the outer genitals, i.e. the vulva. When

again queried about the definition, the LLD produced a memo sent to all licensees/ permittees (dated 17 September 2002) stating that; 'it is considered that lap dancing and patrons touching performers would require that a licensed premises hold an Adult Entertainment Permit' and on page 1 of the AEP application form under the heading 'Do you need a permit', it states 'not all activities that might be considered adult entertainment need be conducted under a permit. However, if the anus, vulva, vagina, penis or scrotum of any performer or staff member will be visible, either deliberately or by accident, during the provision of entertainment of other activities at your venue, then you do need a permit.'

Taken together it would therefore seem that non-sexually explicit live adult entertainment excludes nudity (meaning in effect that dancers' G-strings must stay on) and sexualised touching. On the other hand, the discussion in *LLD v. Witt & Bad Girls Maroochydore* 18 September 2003 MAG20382/03(1) MM393, per Mr K O Taylor, indicates that suggestive non-contact gyration alone may amount to an act of an explicit sexual nature. The decision in this case was that the adult entertainment venue had provided sexually explicit entertainment without an AEP. It is important to note, however, that some comment was made concerning non-contact dancing; the decision was made in relation to a performance including high-level touching such as genital grinding by a G-stringed performer on the lap of a clothed patron. While statements made in the Magistrates Court are neither binding nor persuasive on decisions made by other magistrates, they are used by the LLD for assistance in enforcing the Liquor Act.

In September 2004 a manager from a licensed non-AEP controlled live adult entertainment venue reported that the LLD had informed them that they may be in breach of the Liquor Act as a result of this Magistrates Court decision:

I have spoken [via telephone] with the LLD and received no help whatsoever. The LLD informed me that only this morning did they become aware of the magistrates ruling regarding 'sexually explicit entertainment' & AEPs. According to the ruling the LLD are saying that even a person fully clothed & gyrating could be construed as being sexually provocative and therefore without an AEP illegal. There is no clear black and white ruling, however the LLD has told me it would only be a matter of time before further court action was taken against us. I informed the LLD that several clubs operate under exactly the same licence and provide exactly the same entertainment as us & that it seemed as if we were being discriminated against, obviously the LLD denied that so I requested that all clubs operating in this manner be shut down tonight, at which the LLD replied that it was not yet proved to be illegal, however on the LLD's interpretation of the magistrates ruling most likely would be at 'some' time. The LLD would not provide me with any time frame agreeing that it may be 2 days or 10 years. The LLD would not provide me with anything in writing saying I was most welcome to contact a Magistrates court for a copy of the ruling. My assumption of the conversation was that the LLD was unable to give me any clear ruling thus leaving me to interpret it from the magistrates transcript. It seems that they would once again be looking to use us as a test case, and when would that ever stop, can they keep changing the boundaries at taxpayers and small business owners expense. (Owner/manager)

## Unregulated sector

In the unregulated sector, stakeholders are unclear about what constitutes indecency and prostitution as defined by the Queensland Criminal Code.

I am very unclear about what can and can not be done... I don't know what is a legal or illegal show...the legislation is really unclear. Everyone tells you something else when you ask, no one has any idea what can and can not be done. For example, can we do toy shows, can we do natural masturbation shows, can we do duo acts? Girls don't know what the laws are and agencies don't know what the laws are. (Owner/manager)

The definition of 'indecent acts' in section 227 of the Criminal Code provides that certain acts may not be conducted in a place to which the public is permitted to have access, nor in any place where they have an intention to insult or offend. Holders of an AEP, however, are exempt from these provisions. For operators without an AEP therefore, there exist two areas of concern: first, what constitutes an 'indecent act' under the code; and, second, what constitutes a 'place to which the public are permitted to have access'. Operators holding an AEP need not be concerned expressly with these matters, as the possession of an AEP (assuming all provisions of the Liquor Act are complied with) means the indecency provisions do not apply.

If acts which may be indecent are performed in a 'place to which the public is permitted to have access' and without an AEP, the law offers no special protection and criminal charges may follow. Alternatively, if the same acts are performed in a place to which the public is not permitted access, no breach of section 227 will occur, and no criminal charges are likely to follow. Venue operators in the unregulated sector therefore, are faced with a choice: either they allow performances in public areas and hope that the acts are not deemed 'indecent'; or they allow performances in non-public areas and avoid the current operation of the Criminal Code.

With respect to the issue of what constitutes an indecent act, there exists no precise or fixed definition. In the matter of *R v. Bryant*, the Queensland Court of Criminal Appeal held that 'indecent' went beyond merely 'anything that is unbecoming or offensive to common propriety', and in fact involves an element of 'moral turpitude', acting in a 'base or shameful manner', and behaviour which is 'lewd or prurient and an offence against morality'. Similarly, in his summing-up to the jury in the matter of *R v. De Smet and Ors* [2003] QDC 044 at para 52, Forde DCJ noted that:

In order to constitute the offence [of indecency], there is in this case required an element of moral turpitude, that is depraved or shameful act involved. The accused must have acted in a base or shameful manner. The emphasise [sic] throughout falls on some bodily act of the accused that is indecent, judged by prevailing community standards.

His Honour then went on to note that it was pertinent to consider the location, circumstances and composition of the audience when making such a judgment. It is clear, therefore, that despite judicial efforts to clarify the standard of indecency, it remains a changeable and subjective matter. Thus, while at the more explicit end of the adult entertainment industry there may be little doubt that the definition of indecency is satisfied, at the more mild end venue operators may be uncertain as to how far they may go.

The question of criminal indecency then turns upon the second issue raised, whether a place where acts are performed is a 'place to which the public is permitted to have access'. In this regard, the courts appear to have interpreted this phrase so as to exclude private-use booths or cubicles. In *R v. Marchant* [2001] QDC 325 at para 21, McGill DCJ provided that:

The expression [a place to which the public is permitted to have access]... contemplates not only places to which there would be unrestricted public access, such as a public street or public park, but also places which, although under the control or in the occupation of a particular person or entity, the public are allowed to enter, either indiscriminately or on payment of a fee.

His Honour held that a cubicle (as typically featured in adult cafés and peep shows) in which indecent acts were allegedly performed would not constitute 'a place to which the public was permitted to have access' because access to the cubicle was based upon private or exclusive use. It is immaterial that the public

may consecutively apply for such use, as during each exclusive performance the place ceased to be available to the public.

Assuming that this interpretation of 'a place to which the public is permitted to have access' is universally accepted, the unregulated sector of the adult entertainment industry is largely unfettered in the nature of performance it may provide in a cubicle or private booth. Only limitations which exist in the Criminal Code regarding prostitution circumscribe the range of behaviour which can be performed in this situation.

While the offence provisions relating to prostitution under the Criminal Code are relatively well tested, there is some ambiguity with respect to the dividing line between adult entertainment involving physical contact, and prostitution.

Aside from the 'standard' list of sexual intercourse, masturbation and oral sex, section 229E(1) of the Criminal Code also states, in subsection (d), that prostitution takes place where a person provides to another person (under an arrangement of a commercial character) any activity involving the use of one person by another for his or her sexual satisfaction involving physical contact. This requirement of 'sexual satisfaction' is ambiguous and subjective and thus has the potential to cause much confusion in those areas of the adult entertainment industry which provide performances with high levels of physical contact.

Further, section 229E(1)(d) only envisages acts where there is physical contact in relation to the client. In other words, performers may touch each other in a sexual way but must not touch audience members in this manner. This means that acts between performers are at present limited only by the indecency provisions of the Criminal Code — see *R v. Julia Sage* (Indictment No. 1231 of 2003 in the District Court of Queensland 17 May 2004) per O'Brien DCJ.

The terms 'sexually explicit' (in the Adult Entertainment Code), 'sexual satisfaction', 'place to which the public is permitted to have access' and 'indecent' (in the Criminal Code) therefore remain ambiguous. To date, most of these ambiguities have rarely been the subject of extensive legal debate and, in response, the adult entertainment industry has stratified into regulated venues which provide acts exempt from criminal sanction by virtue of the AEP exemption, and unregulated venues which either flirt with the ambiguities of the indecency provisions, or simply provide performances in private-use rooms or cubicles.

## **PRACTICAL APPLICATION OF THE REGULATORY SCHEME**

As noted in Chapter 2, claims of official misconduct were made to the CMC by some dancers and live adult entertainment business owners/managers. These claims were largely based on perceptions arising from two types of apparently inconsistent policing practices. First, there are a small number of live adult entertainment venues operating that are well known in the industry to have an association with criminal activities (including illicit drug dealing and prostitution) — but despite this these venues remain open. Second, some AEP-controlled venues (it is claimed) are allowed to do things others are not, including advertising/marketing in ways that other venues have been 'pinched' for, and operating non-prostitution 'dating' services from the premises when others have been prosecuted for doing so.

In the unregulated sector of the industry, where most overt illegal activity takes place, policing is usually undertaken by the PETF or by the LLD where live adult entertainment is being supplied in conjunction with the sale/supply of alcohol without an AEP. However, policing in this sector of the industry is reported by both

the LLD and the PETF to be largely complaints-based, which may explain how some 'dodgy' operations continue to operate at least for a while.

In terms of perceptions of inconsistencies in the policing of live adult entertainment in licensed venues, it does seem to the CMC that individual LLD Compliance Officers may be following slightly different sets of rules, at least in part as a result of legislative and regulatory ambiguity, as noted earlier in this chapter. The LLD has an AEP compliance manual and a checklist for Compliance Officers to follow when inspecting venues. Despite this, an at times inconsistent approach to compliance by the LLD was still noted by many in the industry and observed by CMC researchers. Examples include:

- the monitoring and setting of lighting levels by LLD Compliance Officers in some venues but not others, although specified lux (lighting) measures have not been introduced by regulation or otherwise by condition
- audience participation during stage shows (for example, when a dancer gets an individual on stage and rubs her breasts in his face) being permitted by LLD officers in some venues but not others
- the LLD issuing verbal warnings to some owners/managers for legally permissible behaviour, including hostesses or 'door girls' sitting at the entrance to venues, and advertising on business cards and coasters inside the venue.

In considering industry claims of regulatory inconsistencies, the CMC is not inclined to the view that LLD officers are engaging in some form of misconduct. It seems more likely to the CMC that these inconsistencies relate to attitudinal differences between Compliance Officers. It may be the case that some LLD Compliance Officers have more negative attitudes towards owners/managers than others and are therefore somewhat harsher during compliance checks.

Apparent inconsistencies in practice may also be caused by a lack of effective communication between the LLD and owners/managers. Many owners/managers of AEP venues insisted that the rules often changed without their being notified. For example, as previously noted, concern was expressed to the review about the provision of outcall services from live adult entertainment venues. One venue was prosecuted for supplying an outcall 'dating' service, but many others — especially outside Queensland's south-east corner — claim to be completely unaware of this development and continue to supply these types of services.

The CMC asked the LLD what communication processes it used to ensure that the live adult entertainment industry was informed of any policy changes and/or legal decisions that could affect their business. It seems that the primary mode of communication used is the LLD Bulletin, which is posted to all liquor licensees/permittees in Queensland. The LLD did suggest that the Bulletin may not be the optimal way to 'keep licensees/permittees informed' because it is a somewhat lengthy publication with a general liquor licensing focus — the LLD thought that many in the live adult entertainment industry may not read it. However, the LLD cannot be held responsible for ensuring that the material it provides is read. If the LLD supplies the information, which it reportedly does, then licensees/permittees must ensure that they read it and keep management and other staff informed accordingly. The LLD is, however, in the process of revising its communication strategies and is planning to employ a communications officer, as well as introducing:

- electronic publications
- smaller and more up-to-date 'hard copy' publications
- an updated, more education-driven website
- a more directed and focused LLD Bulletin.

In any regulatory regime, communication is important to ensure operational consistency. The improvements proposed by the LLD to its communication strategy are commendable, but those improvements will not necessarily result in a clearer operating environment if licensees/permittees do not accept responsibility for keeping themselves informed.

The LLD also told the CMC that general advice was provided on request to those in the live adult entertainment industry. However, if more specific requests for information (especially of a legal nature) are made, licensees/permittees are told by the LLD to seek independent legal advice. This situation causes the licensees/permittees distress because the majority vigorously assert that they seek to 'do the right thing' but feel as though they cannot get a 'straight answer' from the LLD about what the 'right thing' is. This situation appears to be resulting from legislative and regulatory ambiguities. A lack of clarity in the regulations makes it difficult for the LLD to provide definitive answers regarding what is permissible and not permissible — hence their recommendation that business operators seek independent legal advice. In the CMC's view, certainty is an important aspect of any law and any regulatory framework developed within its ambit (see Recommendations 1, 2, 6 and 7 in Chapter 5).

## ADVERTISING AND MARKETING RESTRICTIONS

The primary concern raised with regard to the advertising and marketing of live adult entertainment is that within the AEP-controlled sector of the industry permissible advertising is tightly restricted (see Chapter 2). Owners/managers consider these advertising restrictions to be a problem because they make business difficult and have created an uneven playing field.

In contrast to the regulated sector (see Chapter 2), those operating within the unregulated sector of the live adult entertainment industry have few advertising/marketing restrictions. This has created inequity between the two industry sectors because entertainment that is 'adult' in nature, but which falls outside the Liquor Act and the associated Adult Entertainment Code, is not restricted by the same advertising/marketing restrictions. Premises that provide topless striptease, for example, do not require an AEP and may therefore advertise this activity subject only to usual advertising standards. Similarly, outcall agencies, adult cafés and peep shows have few advertising restrictions. The spruiking/touting for business outside the AEP-controlled sector of the industry may also, as reported in Chapter 2, take place unimpeded except by the indecency provisions of section 12(b) of the *Vagrants, Gaming and Other Offences Act 1931*.

The current advertising inequities that exist between regulated venues, and between the regulated and unregulated sectors of the live adult entertainment industry, need to be addressed to ensure that businesses operate on a level playing field while community amenity is also maintained (see Recommendation 20 in Chapter 5).

## WORKPLACE HEALTH AND SAFETY ISSUES

All the dancers interviewed identified themselves as independent contractors. While legally their status as independent contractors or employees is unclear, 96 per cent of dancers said they did not want to be considered employees.

I like being an independent contractor because I can earn more money [than I would on a salary/wages]. If I keep the customer interested he will pay me for more of my time, if I was getting a wage I wouldn't bother, if I put the effort in I want to be paid for it. (Adult entertainer)

While dancers may prefer their independent contract status, in practice employee status would give them a much better set of industrial safeguards such as those provided under the *Industrial Relations Act 1999*. For instance, a recent attempt was made by a dancer to have her *employee* status affirmed in the Industrial Relations Commission in order to rely on the unfair dismissal provisions in the Industrial Relations Act. The matter was settled before determination and the question of whether entertainers are independent contractors or employees is still undecided.<sup>13</sup>

Irrespective of whether they are independent contractors or employees, adult entertainers are covered by the *Workers Compensation and Rehabilitation Act 2003*, and the adult entertainment industry is required to comply with the *Workplace Health and Safety Act 1995*. That Act places an obligation on every person to ensure his or her workplace health and safety, and the workplace health and safety of others, regardless of whether a co-worker is an employee or an independent contractor.

The Department of Industrial Relations administers the Workplace Health and Safety Act through its Division of Workplace Health and Safety. When people fail to meet their obligations under the Act, inspectors may use a range of compliance and enforcement options to secure compliance. There appears to be a good case for workplace health and safety inspectors to audit workplace health and safety practices in the adult entertainment industry, which is discussed in the following section.

### **Verbal abuse, sexual harassment, physical and sexual assault**

Of particular concern to the CMC was the high level of reported verbal abuse and sexual harassment being directed at dancers in the workplace, alongside reports of dancers being physically and sexually assaulted 'on the job'.

During the interviews, adult entertainers from all industry sectors were asked if they had ever, in the course of working as a dancer, experienced verbal abuse, sexual harassment, physical assault or sexual assault by customers, business owners/management or other staff. Results showed that, while working as an adult entertainer:

- 96 per cent of interviewees had experienced verbal abuse
- 75 per cent of interviewees had experienced sexual harassment
- 52 per cent of interviewees had experienced physical assault
- 52 per cent of interviewees had experienced assaults of a sexualised nature; some of these assaults were serious, meeting the definition of sexual assault and rape in the Criminal Code.

The number of dancers reporting abuse and harassment was similar in all sectors of the industry (regulated and unregulated), as were assaults of a sexualised nature and less serious forms of physical assault. All of the reported serious physical assaults, however, took place in the unregulated sectors of the industry.

#### ***Verbal abuse and sexual harassment***

The dancers noted that verbal abuse and sexual harassment by customers (male and female) was a common occurrence:

We get called sluts all the time, guys tell us we promised them sex when we didn't, get called dogs, they think they have a right to you because they paid for a dance. (Adult entertainer)

---

<sup>13</sup> This dancer was represented by the Media, Entertainment and Arts Alliance. (Information by verbal consultation with MEAA representative, 18 October 2004).

I get verbally abused every night [by customers] usually because you won't go home with them. (Adult entertainer)

Furthermore, a number of performers mentioned that two specific regulated live adult entertainment business owners/managers and some agency owners/managers have a reputation for sexually harassing dancers. Dancers do not know where to go for help and feel that no-one would believe them anyway, given what they do for a living:

Some agency managers and venue owners require their girls to do them sexual favours, it needs to be stopped. They [the dancers] won't lay a complaint because no one would take us seriously; we take our clothes off, what do you expect? (Adult entertainer)

Some dancers felt that verbal abuse and sexual harassment were simply 'part of the job', to be expected and dealt with, especially when perpetrated by customers. Other dancers, however, told the CMC that this type of behaviour was inappropriate and no-one, 'not even strippers', should be expected to 'put up with it'.

Adult entertainers fall within the purview of a number of pieces of legislation that govern the issues of verbal abuse and sexual harassment in the workplace. First, sexual harassment in the live adult entertainment industry by both customers and owners/managers is prohibited under the *Anti-Discrimination Act 1991*. Sections 118–119 of this Act provide that a person must not sexually harass another person. Sexual harassment happens if a person:

- (a) subjects another person to an unsolicited act of physical intimacy; or
- (b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or
- (c) makes a remark with sexual connotations relating to the other person; or
- (d) engages in any other unwelcome conduct of a sexual nature in relation to the other person;

and the person engaging in the conduct described in paragraphs (a), (b), (c) or (d) does so —

- (e) with the intention of offending, humiliating or intimidating the other person; or
- (f) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

Section 120 very broadly enumerates circumstances relevant in determining whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct, so that a live adult entertainment setting will condition the nature of the interaction, depending on the established usages in the setting and the kind of advertising and information available about accepted practices.

In general, the *Anti-Discrimination Act* provides limited protection because of the sexualised nature of adult entertainment. For the purposes of existing workplace protections, the *Workplace Health and Safety Act* places an obligation on every person to ensure the workplace health and safety of others. This section is unlikely to apply to customers, although employers have an obligation (expressed in s. 28) to ensure the workplace health and safety of dancers. This section is of particular relevance, given the nature of the work.

Although there is no specific provision against verbal abuse, a *Workplace Harassment Advisory Standard 2004* has been made pursuant to the *Workplace Health and Safety Act*. The Standard specifies employer obligations in relation to the provision of a workplace free from harassment, and the Act provides that

businesses must comply with any standard, or adopt and follow another way that manages exposure to the risk, and take reasonable precautions and exercise proper diligence about the risk. However, given the large proportion of reports of verbal abuse by dancers in the live adult entertainment sector it would seem that reasonable precautions are not being taken and diligence is lacking.

### ***Physical and sexualised assault***

In contrast to the problem of verbal abuse and sexual harassment, physical assaults and assaults of a sexualised nature were less common. While just over half the dancers interviewed reported experiencing assaults, these incidents were rare events, with the more serious physical and sexual assaults (including rape) happening only once or twice through the course of a dancer's career. None of the assaults (defined as a crime under the Criminal Code) were reported to the QPS by dancers or owner/managers.

Most physical assaults reported in this review occurred at the hands of customers. In these cases, typical behaviour usually involved customers grabbing or holding dancers. However, a small number of serious assaults were reported, including a dancer being strangled by a customer and another having a knife pulled on her. Both cases of serious assault occurred in the unregulated sector. There were also a small number of cases involving dancers being assaulted by other dancers.

More seriously, nearly half of the dancers' experiences of assaults of a sexualised nature involved men interfering with, touching or trying to touch their genital area, including four cases of digital rape.

Clearly, verbal abuse, sexual harassment and physical and sexual assault can make the live adult entertainment workplace a risky one for dancers. In addition, these risks are likely to be greater in the unregulated sector, where dancers' performances are usually completely unsupervised. In AEP-controlled venues, section 149B of the Liquor Act makes supervision a legislative requirement. Notwithstanding this, supervision is only as good as the people doing the supervising. Furthermore, what is to be done in cases where the verbal abuse, sexual harassment, physical assault and/or sexual assault are being perpetrated by owners/managers or other staff? Dancers made it quite clear that they felt there was nowhere to turn in such cases. Strategies to enforce obligations on live adult entertainment venue owners/managers, especially in relation to workplace harassment, need to be developed. This issue is addressed in Recommendation 8 and in Chapter 5.

## **CONCLUSION**

In this chapter a number of possible threats to the efficacy of the current regulatory framework for live adult entertainment were noted. It would appear that, in order to improve the regulation of live adult entertainment in Queensland, a number of administrative, legal and employment issues including workplace health and safety concerns need to be addressed.

More specifically, it will be important to:

- make the application process for live adult entertainment and related licences less onerous and time consuming, thereby reducing the reported strain on industry and regulatory authority resources
- reduce the amount of confusion caused by a number of legislative and regulatory ambiguities by providing certainty among both the regulated and the regulators regarding what constitutes permissible conduct
- reassess policing and compliance procedures to achieve a consistent approach

- reconsider current advertising/marketing restrictions and ensure that both regulated and unregulated sectors of the live adult entertainment industry are subject to a similar policy
- introduce basic workplace health and safety standards to the live adult entertainment industry.

Chapter 5 examines how these improvements can be achieved, while also ensuring that community amenity is preserved and the live adult entertainment industry remains relatively free of crime, corruption and the presence of minors.

## OVERVIEW AND RECOMMENDATIONS

**This chapter considers options for improving the current regulatory framework and, in so doing, proposes the establishment of a new regulatory regime based on a strengthening and extension of the existing AEP system. This proposal is made with the aim of improving the efficacy of live adult entertainment regulation in Queensland.**

### INTRODUCTION

Live adult entertainment refers to a wide range of commodified sexually orientated activities/performances, commonly but not always referred to as striptease. In Queensland, live adult entertainment currently occurs within both a regulated sector and an unregulated sector. Most of the live adult entertainment occurring is unregulated rather than regulated.

Regulated live adult entertainment takes place in conjunction with the sale/supply of alcohol and is regulated under the Liquor Act. Liquor licensees/permittees wishing to supply live adult entertainment must hold a current AEP, which enables adult entertainers to perform acts of ‘an explicit sexual nature’, operationally defined as performances where the genitalia are exposed and/or when the adult entertainer is touching the customer in a ‘sexual way’. In this sector of the industry, typical performances involve semi-nude or full-nude striptease and some forms of sexualised physical contact between entertainers and customers.

In addition to the regulated live adult entertainment supplied through the AEP-controlled system, an unregulated industry flourishes in Queensland. Unregulated adult entertainment takes place in venues where liquor is sold/supplied but no adult entertainment permit is required, in venues where liquor is not sold/supplied, and through outcall services. In the first instance, the performances are limited by the Liquor Act requirement that entertainment cannot be sexually explicit unless an AEP is operating.

In contrast, for outcall services and venues where alcohol is not sold/supplied, the entertainment is controlled only by way of section 229E (Meaning of prostitution), section 227 (Indecent acts) and section 228 (Obscene publications and exhibitions) of the Criminal Code. In other words, as long as the entertainment does not breach the criminal laws in relation to prostitution, indecency or obscenity, it is permitted. Typical performances in this case involve semi-nude or full-nude striptease, with the possible incorporation of masturbation, insertion acts and/or lesbian group sex acts in private venues or in private booths in publicly accessible premises. In some venues, customers may be permitted to masturbate themselves in private rooms while watching entertainers perform.

This report documents the results of an extensive review of Queensland’s live adult entertainment industry, both regulated and unregulated with specific consideration being given to whether or not the intentions of the regulatory framework (introduced in 1999) have been achieved.

These intentions were to:

- distinguish legitimate live adult entertainment from prostitution, allowing both to be regulated separately
- keep organised crime, illicit drugs and corruption out of the live adult entertainment industry
- eliminate opportunities for the exploitation of minors in the live adult entertainment industry
- reduce negative impacts of the live adult entertainment industry on local communities.

The reference received by the CMC identified concerns that the unregulated sector of the live adult entertainment industry may be undermining the regulatory framework in effect since mid-2000 and that:

- criminals and their associates may be entering the industry
- the exploitation of minors could be occurring
- there could be some impact on local community amenity.

In relation to the above concerns, the CMC arrived at the following general conclusions:

- It seems that the current regulatory system is at least partly responsible for preventing illegal prostitution from occurring in AEP-controlled venues. The majority of reports, both from the industry and from regulatory authorities, relating to overt on-site illegal prostitution were linked mainly to the unregulated sector. The existing controls on the live adult entertainment industry appear to be reasonably effective in minimising the likelihood of overt illegal prostitution.
- There is some information to suggest the existence (albeit at relatively modest levels) of prostitution, illicit drug use/dealing and organised crime within Queensland's live adult entertainment industry, especially within the unregulated industry sector.
- There are inconsistent policing/regulatory practices within both the regulated and the unregulated sectors of the live adult entertainment industry. These inconsistencies are one of the factors that have led to allegations of less than professional conduct on the part of some police and LLD Compliance Officers.
- There are isolated claims of public officials behaving inappropriately and disrespectfully towards those working in the live adult entertainment industry.

With regard to the possible exploitation of minors in the live adult entertainment industry:

- A small number of minors aged 16–17 years do appear to have worked as adult entertainers, but primarily within the unregulated sector as a consequence of having 'fallen through' some legal and regulatory 'gaps'.

With respect to the issue of community amenity:

- Although there are some community concerns about the unregulated sector of the live adult entertainment industry touting for business, the live adult entertainment industry does not appear to be responsible for any significant negative impact on community amenity.

Other factors that were found to be detracting from the efficacy of the regulatory framework included:

- a licensing regime that is currently limited to a single industry sector — that is, performances defined as sexually explicit in venues where liquor is sold/supplied
- legislation and regulations that fail to provide certainty, among both the regulated and the regulators, about what constitutes lawful conduct
- restrictive advertising/marketing in the regulated sector but few advertising/marketing restrictions in the unregulated arena; which has resulted in inequities between the regulated and unregulated sectors and has contributed to some community concern with regard to touting/spruiking in the unregulated sector
- an absence of industry-specific workplace health and safety standards.

## A NEW REGULATORY REGIME FOR ADULT ENTERTAINMENT

As a direct result of the review undertaken by the CMC, two areas of change to the current legislative regime in Queensland are recommended. The intention of these recommended changes is to broaden the positive aspects of the existing AEP-based regulatory system to all live adult entertainment businesses. The first area of change is to the Criminal Code, in particular the provisions relating to ‘Indecent acts’. The second area is the implementation of a new regulatory scheme to govern the provision of a newly defined Adult Entertainment Licence (AEL).

The amendments to the Criminal Code will clarify the scope of the current indecency provisions as well as provide for increased operational effectiveness on the part of police and regulatory bodies responsible for enforcing the amended code. To this end, the ‘Indecent acts’ provision needs to be amended to clarify the definition of ‘a place to which the public is permitted to have access’ in order that it will more accurately reflect the current practice in the adult entertainment industry where performances are being provided in enclosed areas of public venues. Further, a new series of general offence provisions is recommended, covering the procuring of indecent acts by minors and the provision of indecent acts in general. These provisions will make explicit the criminality of not merely performing an indecent act, but also of providing or procuring others to do so. In the case of these proposed amendments, excluding those relating to minors, an exemption will exist for undertaking such acts under the authority of an AEL. These exemptions reflect the current state of the criminal law — with respect to AEPs and prostitution and indecency offences.

In order to more accurately reflect the reality of the adult entertainment industry in Queensland and in particular the distinctions between performance types, a new regulatory regime is proposed based upon universal AELs rather than selective AEP’s. The changes to the regulatory scheme will enable the system to license all sectors of the *legal* adult entertainment industry, thereby avoiding the deficiency in the current scheme which excludes and marginalises venues, thus reducing regulatory control.

With the enactment of the new provisions of the Criminal Code, operators of adult entertainment venues and outcall operators providing adult entertainment will be faced with the choice of either flirting with breaching the criminal law, and thereby facing possible conviction for the provision of indecent acts, or applying for and abiding by an AEL.

The proposed new regime recognises the effectiveness of the current AEP system within its more limited field of operation, and rather than dramatically change or replace this system, the Commission recommends a very similarly formulated but extended new structure. To this end, the new scheme provides a single licence (the AEL) required by all providers of live adult entertainment. This 'standard' AEL would then be supplemented by two ancillary 'special permits', each of which cover discrete areas of more explicit performance. Importantly however, the standard AEL only authorises a relatively low level of adult entertainment. For venues or operators seeking to provide more explicit entertainment, an additional special permit must be sought, one covering explicit or 'graphic' sex shows such as insertion acts and (lesbian) sex acts but with no physical contact between performers and audience members, and one covering less graphic performances but where there is some contact between performers and audience-members, namely lap-dancing.

The specifics of both the general licence and the additional permits will need to be included in an amended Adult Entertainment Code, in a manner similar to the provisions detailing the current AEP in the existing Adult Entertainment Code. The amendments would also include an offence penalising the provision of adult entertainment in breach of the conditions of a licence and any attached permit. The Commission's preference is for the new scheme to be situated within the Liquor Act and associated regulations (as is the current scheme) with the provisions establishing a requirement to hold a general licence and the administrative preconditions thereto being provided in the Act, while the details of the code and licence and permit scope be made through regulation.

The changes made to these two areas of the law serve two functions. First, they provide greater certainty under the new criminal provisions and the licence and permit conditions as to what is and is not acceptable behaviour. This applies both to the adult entertainment industry and to the regulatory and law enforcement bodies charged with enforcement duties. While indecency provisions are still regulated by societal norms of acceptable behaviour, the more expansive criminal sanctions ensure that no ambiguity exists as to who can be charged with breaches of these norms. Second, the changes ensure that all aspects of the live adult entertainment industry are either capable of being brought within the regulatory scheme, or alternatively are capable of criminal prosecution. Under the regime proposed by the CMC, the gaps that currently exist regarding private spaces within publicly accessible venues have been filled, and a real incentive for lower-level adult entertainment venues to join the regulatory scheme has been provided. Accordingly:

### ***Recommendation 1***

**That a new model for full regulation of Queensland's live adult entertainment industry incorporate the following:**

- **amendments to the Criminal Code providing for a new offence of providing indecent acts, with exemption for those acting with authority of an Adult Entertainment Licence (AEL)**
- **amendments to the Criminal Code 'Indecent acts' provisions to clarify the definition of 'a place to which to the public is permitted to have access'**
- **amendments to the Criminal Code providing new offences of procuring a minor to perform indecent acts and of providing a minor to perform indecent acts**
- **a licensing system for adult entertainment business owners, providing a general licence and two special permits, corresponding to the current range of activity in the adult entertainment industry**

- **an amended Adult Entertainment Code, including proscribed conduct for each licence and permit, to be made under regulation**
- **a set of specified conditions attaching to each licence and permit, including provision for advertising, the presence of minors, probity etc.**

## **Changes to the Criminal Code**

The CMC recommends three specific changes to the Criminal Code that are required in order to address three issues of immediate concern. These three issues are:

- clarifying the law of indecency
- protection of minors
- a new offence of ‘providing indecent acts’.

### ***Clarifying the law of indecency***

The indecency provisions of the Criminal Code currently provide an exemption in relation to the performance of indecent acts only if they take place under an adult entertainment permit [Criminal Code Act, s. 227(3)]. This applies both to acts in any place to which the public is permitted to have access [s. 227(1)(a)], and to any other place even where there is an intent to insult or offend [s. 227(1)(b)]. Further, one of the current limitations upon venues providing adult entertainment under the Liquor Act is that the area to be used for performances should not include lounge, booth, compartment or cubicle areas for private use (Liquor Act, s. 103H).

The combined effect of these three provisions on industry practice has been to exclude from the regulatory regime venues that are providing explicit sexual performance in private booths. Such acts are not criminalised by the Criminal Code provisions because judicial authority has determined that they do not take place in a ‘place to which the public are permitted to have access’ and nor are they done with an intent to insult or offend. Further, such acts cannot take place in an AEP-controlled venue because of the section 103H prohibitions in the Liquor Act. Thus, rather than being regulated by the Adult Entertainment Code or criminalised by the Criminal Code, such acts exploit a loophole created by legislative and judicial ambiguity. The scheme proposed in this report would seek to bring these performances and venues within the regulatory framework, rather than exclude or ignore them.

To this end, the proposed scheme makes a significant change to the indecency provision of section 227, expanding the definition of ‘a place to which the public is permitted to have access’ to include cubicles or enclosed rooms within non-domestic premises, meaning that acts taking place within these venues would still be subject to the laws of indecency. However, the proposed scheme exempts such acts from the indecency provisions so long as they take place under the authority of and in compliance with the conditions of an appropriate AEL. Accordingly it is proposed that an amendment be made to section 1 of the Criminal Code (the definition section) to insert a definition of the phrase ‘place to which the public are permitted to have access’. Accordingly:

### ***Recommendation 2***

**That the Criminal Code offence of indecent acts under section 227 be extended by defining the phrase ‘place to which the public is permitted to have access’ to include cubicles or other enclosed spaces in non-domestic premises.**

The following draft is provided by way of suggestion:

A 'place to which the public is permitted to have access' means a place to which admission may ordinarily be gained by members of the public (whether or not the public to whom it is open consists only of a limited class or number of persons).

Example: A cubicle, enclosure or room in a non-domestic premises.

### ***Protection of minors***

As previously noted, minors can and do work legally outside the AEP-controlled sector for businesses providing adult entertainment. While section 155AA of the Liquor Act prohibits minors being in any area which provides adult entertainment, businesses not regulated by an AEP are under no such obligation with respect to 16- and 17-year-olds. This gap will be substantially filled by the proposal to extend the reach of regulation in the industry. Indeed, one of the most pressing arguments for a fully regulated industry is the need for protection of minors. In addition, the CMC is particularly concerned that minors are not exploited as performers in the industry. The CMC therefore recommends two offences be created with specific regard to minors: procuring an indecent act by a minor (see Recommendation 3), and providing an indecent act by a minor (see Recommendation 4). Though some overlap may exist between these offences, it is vital that the fullest possible protection be afforded minors with respect to commercial sexual exploitation.

In respect of the proposed offence of procuring an indecent act by a minor, the following amendments (in *italics*) to section 227 of the Criminal Code are suggested:

Section 227 Indecent acts

- (1) Any person who —
  - (a) wilfully and without lawful excuse does any indecent act in any place to which the public are permitted to have access, whether on payment of a charge for admission or not;
  - (b) wilfully does any indecent act in any place with intent to insult or offend any person; or
  - (c) *procures under an arrangement of a commercial character an indecent act by a minor in any place, irrespective of intent to insult or offend any person*

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

- (2) The offender may be arrested without warrant.
- (3) Subsections (1)(a) and (b) do not apply to a person who does an indecent act under the authority of an Adult Entertainment or Sexual Services Licence.

### ***Recommendation 3***

**To ensure that minors are protected from exploitation for commercial sexualised performance, the CMC recommends that a criminal offence be created of procuring an indecent act by a minor under an arrangement of a commercial character.**

### ***A new offence of 'providing indecent acts'***

One of the major concerns with the current regulatory regime is that it offers too little incentive to business operators to work within the regulated sector. In part this is due to deficiencies in the interaction between the indecency provisions of the Criminal Code and the narrow regulations of the Adult Entertainment Code. In order to ensure compliance with the new licensing regime, a new offence is proposed which would make the provision of an indecent act under an arrangement of a commercial character illegal, unless an appropriate AEL were

held. This offence would differ from the more general indecent acts offence under section 227 of the Criminal Code in two ways. First, it would specifically cover owners and operators of venues and not only the performers, regardless of whether they consistently or occasionally provided adult entertainment. Second, it would regulate the activity of outcall agencies, who traditionally operate in a broad range of venues, both publicly accessible and not. The offence retains the public standard of indecency which governs the current law, and allows the courts to determine such issues, rather than have the law proscribe specific conduct.

In line with the discussion concerning Recommendation 3, this offence provision would also prohibit the provision of indecent acts by minors. The exemption for holders of an AEL would not apply to this prohibition.

It is envisaged that the offence provision would follow a format similar to the following suggestion:

Knowingly engaging in the provision of indecent acts

- (1) Any person who —
  - a) wilfully and without lawful excuse provides, or offers to provide, to another person, under an arrangement of a commercial character, an indecent act
  - b) provides, or offers to provide, to another person, under an arrangement of a commercial character, an indecent act by a minoris guilty of a misdemeanour.
- (2) Subsection (1)(a) does not apply to a person who provides an indecent act under the authority of an appropriate adult entertainment licence.

#### **Recommendation 4**

**That an offence be created which makes illegal the provision of indecent acts under an arrangement of a commercial character, except in those circumstances where the individual in question possesses a relevant AEL. Further, that an offence be created which makes illegal the provision of indecent acts by a minor under an arrangement of a commercial character.**

### **A new Adult Entertainment Code**

Legal protection is currently offered to the regulated sector of the live adult entertainment industry by the Adult Entertainment Code, which is made by way of regulation under the Liquor Act. Further rights and responsibilities are set out directly in the Liquor Act and Liquor Regulations. However, this code employs a definition of 'sexually explicit' based on a list of unauthorised activities. While this scheme has worked well for those sectors of the industry which have adopted the AEP, it has also excluded or allowed to be excluded sectors of performance and venues which have chosen to exploit the 'gap' in regulatory coverage provided for by the combination of the indecency provisions under the Criminal Code and the existing Adult Entertainment Code.

The consequence of this regulatory gap is that regulation of the live adult entertainment industry as a whole is at present largely based on continually evolving operational decisions made by Compliance Officers with the LLD (for the regulated sector) and police with the PETF (for the unregulated sector). These operational decisions are guided in part by judicial interpretation of legislation relating to adult entertainment, indecency and prostitution. In general, however, the courts have been of only limited assistance in clarifying the law in these areas. While only a limited number of cases have been brought before the courts, some industry stakeholders report that they are inclined to plead guilty because of the cost of defending matters in court. Judicial consideration of the law is therefore

limited to a handful of decisions made at the District and Magistrates Court level, and these are of varying degrees of utility.

It is telling that live adult entertainment business operators, the QPS and the LLD all drew attention to the urgent need for the Adult Entertainment Code (and the Criminal Code) to be made more explicit and exhaustive in terms of the conduct they proscribe. The CMC is persuaded of the merit of these calls and believes that codifying and streamlining the legal environment as it pertains to live adult entertainment is essential if a workable and efficient regulation framework is to be achieved. By clarifying the range of behaviour which is permissible under law, and in doing so, removing the present operational uncertainties, the regulation of a complex industry would be significantly strengthened and the presence of crime (including illicit drug use/dealing, prostitution and organised crime), the exploitation of minors and offence to community standards made less likely.

The CMC is of the view that implementation of the proposed scheme should take place through amendment to the current provisions of the Liquor Act and its associated regulations. Though the CMC recognises that a number of benefits may be gained from situating the proposed regime outside the confines of the Liquor Act, there are a number of attractive reasons for maintaining its current regulatory position. Primarily, given that there already exist a functioning Act and regulatory structure, in the form of the Liquor Act and Liquor Licensing Division, which currently oversee the operation of live adult entertainment, it is not inappropriate to simply continue to situate the new regulatory scheme within the Liquor Act and associated regulations. Under this proposal however, not all licences would be linked to the holding of a Liquor Licence as is the case for the current AEP-based system. On the contrary, in those instances where the activity sought to be licensed comprises activity only to be performed under the authority of an AEL Special Permit 1, no Liquor Licence would be permitted. However, these licences would be still regulated by the Liquor Act and Liquor Licensing Division through administrative convenience, even though not directly linked to the possession of a Liquor Licence. Accordingly:

### ***Recommendation 5***

**The CMC recommends that the regulation of live adult entertainment be consolidated in a single regulatory scheme. Further, that the basic legislative structure of the current AEP scheme be maintained, but with substantial alteration to the necessary provisions. Under this structure, the details of each licence and permit are contained in the Adult Entertainment Code, which is made by regulation authorised in the Act. Reflecting the current legislative approach, the CMC recommends that the following matters be included in the Act:**

- **authority for the making of an Adult Entertainment Code through regulation**
- **sanction for the provision of adult entertainment in breach of the conditions of an AEL or special permit**
- **sanction for allowing minors in any venue where adult entertainment is taking place under an AEL**
- **general provisions concerning such matters as venue specification, probity checks, duration of licences, restrictions upon licence holders and supervision of venues, as is provided in the current Liquor Act.**

### ***Recommendation 6***

**In order to achieve the objectives of the new regulatory regime, the CMC recommends that amendments to the Liquor Act be made in the following form:**

#### **Section A**

- (1) **There is to be an Adult Entertainment Code (the ‘code’).**
- (2) **The code prescribes the live entertainment that may be performed on premises to which a standard licence or special permit relates under an Adult Entertainment Licence.**
- (3) **Live adult entertainment is the provision of live entertainment that may be performed for an audience of one or more persons, under an arrangement of a commercial character, by a person performing an act of an explicit sexual nature.**
- (4) **Live adult entertainment that may be performed under the code does not include the following acts —**
  - (a) **sexual intercourse**
  - (b) **oral sex.**
- (5) **A person applying to be licensed to provide live adult entertainment must submit to appropriate criminal history checks.**
- (6) **An adult entertainment licensee or permittee may also hold a Liquor Licence except as otherwise provided in the code.**

#### **Section B**

- (1) **A person may apply for a Liquor Licence and a standard Adult Entertainment Licence concurrently.**
- (2) **A person is eligible to apply for an AEL Special Permit only concurrently with or subsequent to an application for a standard AEL.**

#### **Section C**

**A licensee or permittee must not provide adult entertainment in breach of the conditions of the Adult Entertainment Licence and permit held.**

**Maximum penalty — 200 penalty units.**

#### **Section D**

- (1) **This section applies despite any section allowing minors on liquor licensed premises.**
- (2) **The licensee, permittee or the licensee’s or permittee’s nominee or controller, if any, must ensure that a minor is not in an approved area when adult entertainment is being provided.**

**Maximum penalty — 200 penalty units.**

- (3) **To remove any doubt, it is declared that a minor cannot be in an approved area in any capacity including as a performer of adult entertainment.**

### **A new Adult Entertainment Licence structure**

A model of one standard Adult Entertainment Licence with two ancillary special permits to be issued and overseen by the LLD is proposed under the new regime. This licensing model recognises that the live adult entertainment industry in Queensland is made up of a series of relatively discrete performance types. These range from semi-nude waitresses and waiters at the lowest end of the spectrum, to full-nudity performances involving high levels of physical contact between performer and customer, at the highest end. The two special ancillary permits are based on (and reflective of) very particular types of acts being performed currently, and in general authorise a more explicit form of adult entertainment to take place.

In this way the licensing system proposed by the CMC extends the ‘reach’ of the current AEP regulatory system to all types of legal performance, with the two specific permits attaching to the more explicit performance areas. The differences between the standard permit and each of the two special permits are intended to preserve the current separation of industry performance and, in particular, strengthen the separation of adult entertainment from prostitution. The prescriptions proposed for the standard licence and special permits are to ensure that operators

are not simply able to provide the most explicit adult entertainment without due consideration by the regulatory body, and that those sectors of the industry which pose the greatest threats of infiltration by criminal elements and prostitution are regulated sufficiently. This means that probity checks and fees, for example, would differ between permits as a direct corollary of the range of permissible behaviours that would be associated with each of the special permits.

With this in mind, it should be noted that one important consequence of the scheme proposed in this report is that the small (but growing) number of venues that are blurring the distinctions between performance types, by offering the full range of adult entertainment services, would be markedly affected by the provisions of the new regime. These venues would be compelled to make a choice as to which of a more limited range of services they could lawfully provide.

The extending and streamlining of the legal environment is the most distinctive aspect of the scheme outlined in this report. By codifying current industry practice and bringing the entire adult entertainment industry within a uniform code, the regulation of a complex industry would be greatly enhanced and the presence of prostitution, crime, the exploitation of minors and offence to community standards made less likely.

The three levels of regulated conduct are described below, but in short can be summarised as follows:

- Adult Entertainment Licence (AEL)
  - Available for all businesses providing sexually explicit adult entertainment, regardless of whether a Liquor Licence is held.
  - Authorises a limited range of conduct, up to but not including acts that involve any physical contact between performers and any person other than a performer, or acts involving genital manipulation, including penetration.
- Adult Entertainment Licence (Special Permit 1)
  - Required that a business can not hold a simultaneous Liquor Licence
  - Authorises more explicit conduct, including genital self-manipulation by performers, but not including acts that involve any physical contact between performers and any persons other than performers.
- Adult Entertainment Licence (Special Permit 2)
  - Required that a venue must hold a simultaneous Liquor Licence
  - Authorises more explicit conduct, including some physical contact between performers and any other person, but not including acts that involve genital manipulation, including penetration.

All businesses wishing to provide sexually explicit adult entertainment and be protected from the indecency provisions of the Criminal Code must under the proposed regime hold a standard AEL, which allows for a relatively low level of explicit performance. For venues or operators wishing to provide more explicit entertainment, one of two special permits can be approved. Due to the fact that Special Permit 1 allows for graphic sex acts to be performed and Special Permit 2 allows for physical contact between customer and performer, no single venue or operator may simultaneously possess both permits. Similarly, Special Permit 1 is incompatible with a Liquor Licence, while Special Permit 2 requires a Liquor Licence. This division has been built into the regulatory system to both reflect dominant current industry practice, and to also reduce the risk of prostitution taking place in adult entertainment venues. Table 5.1 compares the ways in which the present and proposed regulatory schemes relate to the live adult entertainment industry.

**Table 5.1: Present and proposed regulatory regimes as applying to major categories of live adult entertainment**

**Present regime**

	<i>Lowest level</i>		<i>Highest level</i>	
<i>Location</i>	Typically restaurant/bar with Liquor Licence	Typically venue with Liquor Licence	Typically outcall agency providing services for private venues with no Liquor Licence	Typically venue with Liquor Licence
<i>Activity</i>	Semi-nude waiters/waitresses	Semi-nude and full-nudity 'traditional' striptease	'Traditional' striptease and 'graphic' full-nudity striptease (limited performer-patron physical contact*)	'Traditional' striptease and lap dancing (high level of performer-patron physical contact)
<i>Regulation</i>	Unregulated	Full nudity requires an AEP; otherwise unregulated	Unregulated	Only lawful under the terms of an AEP

\* Also includes a small number of adult cafés and 'peep' venues where performer-patron physical contact may occur under some circumstances.

**Proposed regime**

	<i>Lowest level</i>		<i>Highest level</i>	
<i>Location</i>	Typically restaurant/bar with Liquor Licence	May be venue with Liquor Licence	Required to be a business/venue without a Liquor Licence	Required to be venue with Liquor Licence
<i>Activity</i>	Semi-nude waiters/waitresses	Semi-nude and full-nudity 'traditional' striptease	'Traditional' striptease and 'graphic' full-nudity striptease (no performer-patron physical contact)	'Traditional' striptease and lap dancing (high level of performer-patron physical contact)
<i>Regulation</i>	Unregulated	Exemption from indecency provisions of the Criminal Code apply only to holders of an AEL	Only lawful under the terms of an AEL with Special Permit 1	Only lawful under the terms of an AEL with Special Permit 2

Note: Boxed areas signify changes between the present and proposed regimes.

### ***Recommendation 7***

**That the new live adult entertainment licensing system contain an Adult Entertainment Licence and two Special Permits, as follows:**

#### **Adult Entertainment Licence**

**This licence is available for all sexually explicit adult entertainment businesses and is sufficient in itself for those venues only providing striptease performances, involving partial or full nudity.**

#### **Adult Entertainment Licence (Special Permit 1)**

**This special permit is required for performances offering ‘graphic’ full-nudity striptease including performances involving genital self-penetration by performers. No physical contact will be allowed between performers and customers.**

**Venues must not hold a Liquor Licence concurrent with an Adult Entertainment Licence (Special Permit 1). Venues can therefore also not hold an Adult Entertainment Licence (Special Permit 1) in conjunction with an Adult Entertainment Licence (Special Permit 2).**

#### **Adult Entertainment Licence (Special Permit 2)**

**This licence is required for performances involving striptease with physical contact between performers and customers.**

**Venues must hold a Liquor Licence concurrently with an Adult Entertainment Licence (Special Permit 2). Venues can therefore also not hold an Adult Entertainment Licence (Special Permit 2) in conjunction with an Adult Entertainment Licence (Special Permit 1).**

### ***Adult Entertainment Licence: proscribed behaviours***

It is proposed that the following conduct not be permitted under an AEL in the absence of a special permit.<sup>14</sup>

- participating in sexual intercourse or oral sex
- physical contact (including contact with bodily fluids, and contact by means of an object manipulated by a person)<sup>15</sup> between a performer (or performers) and a person other than a performer
- performers placing their face in close proximity<sup>16</sup> to the genitalia<sup>17</sup> or anus of another person
- performers allowing another person to place their face in close proximity to the performer’s genitalia or anus
- genital manipulation, including the penetration, to any extent, of the genitalia or anus either by any part of the body or by an object<sup>18</sup>
- soliciting any person for the purpose of prostitution.

### ***Existing industry practice***

Nude waitresses are most commonly found working at private functions ordered through outcall adult entertainment agencies and in specialised restaurants where food and alcoholic drinks are served, to a mainly male corporate/business

---

14 The definitions that follow include footnotes which also apply to the other codes of proscribed conduct contained in this chapter.

15 Proscribed physical contact does not include incidental touching of a non-sexual nature.

16 The term ‘close proximity’ refers to a distance of less than 30 cm. This proscription is not intended to interfere with performers engaged in typical behaviours associated with the service of food or drinks.

17 ‘Genitalia’ means penis, scrotum, vulva and vagina, and includes surgically constructed genitalia.

18 Includes an animal, as set out in the current Adult Entertainment Code.

clientele. Nude waiter services are technically also available through outcall agencies for private functions such as hens' nights, but this service is reportedly only rarely sought.

Low-level striptease performances not involving full nudity or exposure of the genitals or anus are relatively common in Queensland. Typically, this type of entertainment takes place in local hotels, at private functions or in specialised strip clubs with or without a Liquor Licence. Bikini 'models', for example, are becoming increasingly popular in some Fortitude Valley licensed venues on a Friday night. These models will dance in their bikinis for patrons. Male strip acts that involve performers covering their genitals would also fall within this category. A small number of licensed strip clubs and unlicensed venues currently offer this type of striptease on a full-time basis (i.e. every night of the week). In licensed strip clubs, the striptease is provided on a general stage area, and in more private areas to patrons who are willing to pay. In unlicensed venues, the entertainment is provided in private booths/rooms and often involves sexually charged contact between performers and patrons, such as the customer touching/sucking the performer's breasts, and/or rubbing their hands over the performer's body (but not between their legs). Typically, at present, the degree of touching permitted depends on the amount of money a patron is willing to pay.

Full-nudity striptease performances or performances exposing the genitals or anus, are incorporated under the terms of the proposed standard AEL. This type of adult entertainment may currently be ordered for private functions through outcall agencies (for example, to 'do a nude strip' for a hens' or bucks' night), or may also be provided in licensed strip clubs and unlicensed venues (usually every night of the week). Once again, in licensed strip clubs the striptease is provided on a general stage area, and in more private areas to patrons who are willing to pay a higher fee. In unlicensed venues, the entertainment is only provided in private booths/rooms. At present, minimal touching occurs between performers and audience members during agency performances, and in venues (both licensed and unlicensed) the amount of touching permitted depends on the price paid.

### ***Impact of proposed code on the existing industry***

Physical contact (which does not include incidental touching of a non-sexual nature) would no longer be permitted under the terms of a standard AEL. While the existing industry sector includes both partial and full-nudity performances, the licence would be mandatory only for those performances which would otherwise contravene the indecency law, usually conduct involving full nudity or exposure of the genitals or anus. There appears to be little controversy over full-nudity striptease or performances exposing genitals or anus being indecent, but there is some potential for doubt as to the necessary indecency of partial nude striptease acts where the genital and anus are covered. In order that the proposed regulatory scheme does not inadvertently criminalise or proscribe behaviour not currently so proscribed, an approach has been adopted which seeks to be avoid unnecessary expansion of the criminal law and have a minimal impact upon personal sexual and recreational choices. Venues providing performances which do not involve full nudity or exposure of the genitalia or anus, but which may nevertheless involve conduct of a description likely to attract indecency charges, would be able to apply for a licence and in doing so would be protected from prosecution for indecency or the provision of indecent acts.

In leaving some partial-nudity striptease and performances not exposing genitals or anus outside of the mandatory regulatory scheme, the CMC has sought to recognise that a substantial portion of this entertainment is not sexually explicit and should not therefore be criminalised unnecessarily. The CMC does, however, recognise that the licensing regime will enable operators wishing to provide

low-level striptease, but who are uncertain of the reach of the indecency laws to protect themselves from prosecution by applying for a licence and complying with its conditions. Further, this proposal does not curtail either the capacity of citizens to bring complaint against unregulated operators, nor the operators themselves to moderate their own behaviour to ensure compliance with existing indecency standards. In effect, it offers a balance between prevailing social norms regarding freedom of expression and indecency, and a not excessive level of regulation.

### ***Adult Entertainment Licence (Special Permit 1): proscribed behaviours***

It is proposed that the following conduct not be permitted under an Adult Entertainment Licence (Special Permit 1):

- participation in sexual intercourse<sup>19</sup> or oral sex
- physical contact (including: contact with bodily fluids, and contact by means of an object manipulated by a person) between a performer (or performers) and a person other than a performer
- performers placing their face in close proximity to the genitalia or anus of a person other than a performer
- performers allowing any persons other than performers to place their face in close proximity to performers' genitalia or anus
- soliciting any person for the purpose of prostitution.

### ***Existing industry practice***

The more sexually explicit striptease performances involving self-masturbation, insertion acts and so on are currently only available for private functions (such as bucks' nights) through an outcall agency or in strip venues where alcohol is not provided.

In the case of outcall agency performances, acts are typically performed before large audiences in settings to which the public are not permitted access, such as private homes, private venues and workplaces. The number of patrons in the audience can be quite large. Typical acts incorporate natural masturbation and may also involve the insertion of various types of objects into the vagina and/or anus. Lesbian duo (or group) sex shows are also popular, and will often involve simulated sex with a variety of sex toys or other objects.

At present, a limited degree of audience participation occurs at times during these types of shows. This often occurs in a 'fun' atmosphere where the performer may elicit audience participation by, for example, embarrassing a patron by rubbing cream-smearred breasts in his face. There is however, a tendency for operators to move towards more explicit conduct.

Performances involving similar explicit acts are also available for viewing in strip venues without a Liquor Licence. Typically, these venues operate every day of the week and the entertainment is provided in private booths/rooms. In addition to masturbation, insertion and duo acts, touching may be permitted in these establishments. Unlike the outcall shows, the conduct in these venues occurs in a highly sexualised atmosphere. The amount of touching permitted will depend on the price paid, with the only limitation relating to genital contact. In addition, patrons may masturbate in private booths while watching the performance. In some cases, entertainers will also wipe up customers' semen after performances as an accepted part of the customer service provided.

---

<sup>19</sup> For the purposes of an AEL Special Permit 1, the definition of 'sexual intercourse' does not include section 229(D)(1)(b) of the Criminal Code definition.

### ***Impact of proposed code on the existing industry***

Physical contact (which does not include incidental touching of a non-sexual nature) would no longer be permitted under the terms of an AEL (Special Permit 1). This means that audience participation, which is a common feature of agency shows, would no longer be permitted. The clean-up of customer semen by performers would also no longer be permitted. The small number of venues that currently provide these more sexually explicit types of performances, cater for customer masturbation, and provide the very sexualised form of lap dancing, would need to decide what services they most wanted to provide, and what services they were prepared to withdraw, because it will not be possible to hold an AEL (Special Permit 1) in conjunction with an AEL (Special Permit 2).

### ***Adult Entertainment Licence (Special Permit 2): proscribed behaviours***

It is proposed that the following conduct not be permitted under an AEL (Special Permit 2):

- participation in sexual intercourse or oral sex
- physical contact between the performers' genitalia or anus and the face and/or hands of other persons
- physical contact between other persons' genitalia or anus and the face and/or hands of performers
- performers placing their face in close proximity to the genitalia or anus of another person
- performers allowing another person to place their face in close proximity to performers' genitalia or anus
- genital manipulation, including the penetration, to any extent, of the genitalia or anus, either by any part of the body or by an object
- penetration by another person, to any extent, of the performer's genitalia or anus, either by any part of the body or by an object
- masturbation by customer
- any customer nudity either partial or full
- soliciting any person for the purpose of prostitution.

### ***Existing industry practice***

Striptease involving a high degree of physical contact between performer and customer is commonly referred to as lap dancing and currently occurs in venues with and without a Liquor Licence.

Lap dancers typically rub against audience members in a sexually suggestive manner — for example, straddling the seated (clothed) customers and moving their naked bodies against them. Customers in turn touch the dancers in equally intimate ways, including caressing/kissing/sucking the performers' breasts and stroking their thighs/buttocks/back. The only area of the body 'out of bounds' with respect to direct touching by the customer during a lap dance is the performers' genitalia or anus.

In lap-dance venues with Liquor Licences, patrons may also be entertained by semi-nude and/or nude striptease performances and served food/drinks by semi-nude or nude waitresses. In venues without a Liquor Licence, lap dancing may be provided in private rooms/booths alongside semi-nude and nude striptease and sexually explicit performances involving masturbation, insertion acts and lesbian duo/group acts. At present, customers may also be permitted to masturbate themselves in private booths/rooms while watching the striptease and other

sexually explicit acts, but such masturbation is not permitted while a lap dance is being experienced. As previously noted, a post-ejaculation clean-up service may also be provided in these contexts.

Non-contact 'dating' and striptease services are also offered by some adult entertainment businesses. The non-contact 'dating' services allow customers to take performers out on 'dates' under set conditions, including that the 'couple' must stay in public at all times and the performer must let management know where she/he is at all times. To date, these non-contact 'dating' services have only been provided by strip clubs with a Liquor Licence. 'Dating' services of this kind are not about the provision of a sexual service involving physical contact, but rather are generally aimed at simply providing customers with company and the chance to 'go out with' an attractive young person.

### ***Impact of proposed code on the existing industry***

The level of physical contact between performers and patrons that currently occurs during lap dances and the nature of the non-contact 'dating' services would be unchanged under the terms of an AEL (Special Permit 2). Under the terms of an AEL (Special Permit 2) however, the sexually explicit striptease involving performer self-masturbation or insertion and group/duo sex acts authorised by an AEL (Special Permit 1) and currently occurring in venues without Liquor Licences would not be permitted.

## **LIVE ADULT ENTERTAINMENT REGULATORY AND ADVISORY BODY**

As already noted, the CMC believes that there is merit in adult entertainment continuing to be regulated by a single agency, linked directly to the Act and associated Adult Entertainment Code. Accordingly, the regulatory regime proposed by the CMC adapts and extends rather than replaces the existing system with the LLD continuing to be tasked with primary responsibility for the regulated sector of the live adult entertainment industry under the Liquor Act. The QPS remain tasked to enforce the Criminal Code. In extending the existing regulatory system, the CMC takes the view that the tasks of the LLD should be clarified to reflect their expanded responsibilities under the amended Act and Adult Entertainment Code. Accordingly:

### ***Recommendation 8***

**Regulation of the entire adult entertainment industry should be undertaken by a single agency and that this agency should remain the Liquor Licensing Division. The role of this regulatory body should include the following:**

- **issue Adult Entertainment Licences and Special Permits**
- **monitor and enforce the suggested live adult entertainment regime and accompanying regulations**
- **Provide advice to both live adult entertainment business owners/managers and entertainers regarding permissible and impermissible conduct**
- **introduce (in negotiation with the live adult entertainment industry) some basic health, safety and workplace standards as conditions of Adult Entertainment Licences**
- **oversee compliance by licensees with regulations, licensing conditions and any other obligation contained in the new regime and in any relevant workplace health and safety legislation**
- **monitor venues offering live adult entertainment operating with an Adult Entertainment Licence or a Liquor Licence. In instances where a venue operating without the protection provided by an Adult Entertainment Licence appears to be in breach of the indecency provisions of the criminal code, such breaches must be immediately reported to QPS for action**

- **periodically audit enforcement practices**
- **establish a means by which adult entertainers and others in the industry may report (anonymously if they so choose) prostitution, other criminal activity (including illicit drug use/dealing and organised crime), the exploitation of minors, workplace harassment, assault, misconduct/corruption, and problems with workplace health/workplace safety conditions within any sector of the live adult entertainment industry.**

## Locale and venue

Under the present AEP scheme there are a number of safeguards within the Liquor Act relating to the suitability of locales and venues aimed at protecting community amenity and preventing prostitution. They include:

- a requirement that the LLD consider any AEP application with regard to the number of licensed brothels and live adult entertainment premises already servicing a locale, to ensure that a red light district is not created
- giving the public the opportunity to lodge objections against an AEP application, and making them aware of this opportunity
- advising local government and the QPS of AEP applications and giving them both the opportunity to object to the application on the grounds that the amenity, quiet or good order of the locality would be lessened if the AEP were granted
- requiring live adult entertainment venues to be fully enclosed in a way that prevents a person outside the area seeing inside it
- requiring AEP-approved venues to provide signage in every entrance area, stating that live adult entertainment is being provided
- requiring business names to be approved by the Chief Executive of the LLD
- requiring that no AEP-controlled venue should contain for private use a lounge, booth, compartment or cubicle, to ensure that the nature of the live adult entertainment remains visible.

It will be recalled that a general finding of this review was that live adult entertainment had relatively little impact on community amenity. However, some broader concerns regarding signage emerged in the context of the very specific concerns relating to spruiking/touting (particularly with respect to unregulated adult entertainment venues).

It is therefore proposed that the new live adult entertainment licensing system carry over the following provisions (adapted from those currently used in the case of AEPs in the Liquor Act) for AELs for venues where entertainment is regularly provided, such as for more than three consecutive days or more than six times per year:<sup>20</sup>

- that the regulatory authority consider venue applications with regard to the number of licensed brothels and live adult entertainment premises already servicing a locale, to ensure that community amenity is not adversely affected
- that the public be given and made aware of the opportunity to lodge objections against a venue licence application

---

<sup>20</sup> This is in line with current AEP procedures relating to one-off as opposed to annual permits. It will be recalled that one-off AEPs may be issued for a specific function or night to be held on no more than three consecutive days and no more than six times per year. If the entertainment is to be provided more regularly than this, an annual permit is currently required. Compared with annual AEP applications, one-off applications are subjected to fewer community amenity checks. The public is not, for example, generally given the opportunity to object to a one-off AEP application.

- that local government and the QPS be advised of venue licence applications and both be given the opportunity to object to the application on the grounds that the amenity, quiet or good order of the locality would be lessened if the licence were granted
- that venues supplying these forms of live adult entertainment be fully enclosed in a way that prevents a person outside the area seeing inside it
- that business names for these venues be approved by the regulatory authority.

The present requirement that AEP-controlled venues shall not contain for private use a lounge, booth, compartment or cubicle has been excluded from the above set of provisions because it is recognised that this requirement is only applicable to certain sectors of the industry, namely those venues that are operating in accordance with an AEL with an attached Special Permit 2. It is the CMC's view that, for the purposes of supervision, once physical contact is permitted between customers and adult entertainers, performances should only occur in publicly assessable areas to ensure that the entertainment remains visible (as is currently the case in AEP-controlled venues). At the point of physical contact, the line between live adult entertainment and prostitution becomes less clear cut and the risk to dancers' physical wellbeing is increased.

This proposal would require no structural change to existing AEP venues. Nor are any other sectors of the industry affected by this proposal apart from the very small number of adult cafés that currently provide both Special Permit 1 and Special Permit 2 type services. However, as noted previously, under the proposed scheme these two licences cannot be held in conjunction, so adult café owners will need to decide between the two special permits they can attach to the standard AEL. Obviously, if a Special Permit 2 is opted for within an adult café, the entertainment could no longer be provided in private rooms. If Special Permit 1 is used instead, these private rooms could stay. Accordingly:

### ***Recommendation 9***

**That all publicly accessible venues offering live adult entertainment display appropriate signage for the purposes of warning persons that live adult entertainment occurs on the premises and preventing minors from entering in any capacity.**

### ***Recommendation 10***

**That the following licensing provisions be imposed on Adult Entertainment Licences for fixed adult entertainment venues (venues where adult entertainment is provided for more than three consecutive days or more than six times per year) only:**

- 1 **that the regulatory authority consider venue applications with regard to the number of licensed brothels and live adult entertainment premises already servicing a locale, to ensure that a red light district is not created**
- 2 **that the public be given and made aware of the opportunity to lodge objections against a venue licence application**
- 3 **that local government and the QPS be advised of venue licence applications and both be given the opportunity to object to the application on the grounds that the amenity, quiet or good order of the locality would be lessened if the licence were granted**
- 4 **that venues supplying these forms of live adult entertainment be fully enclosed in a way that prevents a person outside the area seeing inside it**
- 5 **that business names for these venues be approved by the regulatory authority.**

### **Recommendation 11**

**To ensure that the live adult entertainment remains visible, and to reduce the risk of unlicensed prostitution taking place, that no venue operating under the terms of an Adult Entertainment Licence with an attached Special Permit 2 contain for private use a lounge, booth, compartment or cubicle.**

### **Persons involved in the operations of live adult entertainment businesses**

In order to keep prostitution, organised crime, illicit drugs and corruption out of the live adult entertainment industry, and reduce the negative impacts of the industry on local communities, live adult entertainment should only be provided by honest persons of good character and integrity who have the ability to operate live adult entertainment businesses without causing community offence (as is currently the regulation in the Liquor Act with regard to AEP-controlled venues).

It is proposed that the highest level of probity testing under the new regulatory framework would apply to businesses requiring an AEL with an attached Special Permit 2. This reflects current practice, where AEPs and thus probity checking are required when higher-level live adult entertainment is on offer. On the continuum of the live sex industry, adult entertainment incorporating sexualised physical contact between performers and patrons occupies the grey zone between adult entertainment and prostitution. Maintaining probity at this point is considered important by the CMC because it is here that the potential for prostitution or other forms of criminal activity is likely to be greatest.

At the lower end of the live sex industry continuum the CMC does not advocate extensive probity checks. The mere act of licensing this industry sector — in its entirety — with the accompanying threat of losing one's licence (and thus one's business) if criminal activity is engaged in, should act as a strong deterrent. (See below for discussion of the penalties for licence breach.) It must also be remembered that probity checking is resource-intensive; given that reports of criminal activity within the live adult entertainment industry are at present only modest, extending extensive probity checks to lower-level (non-contact) entertainment is not thought to be warranted.

The CMC notes that any provision made in relation to the probity of associates should specify the status of a spouse, and whether a spouse may, consistently with the relevant anti-discrimination provisions, be made an associate for the purposes of any equivalent of the current section 107E(1)(c) of the Liquor Act. The CMC also notes that any provision made in relation to the probity of associates should specify the status of persons who are associates to corporations, where corporations are applicants for a licence. The current section 107E(1)(d) of the Liquor Act relates to 'whether there is an associate of the applicant who is unsuitable'; applicants are usually corporations, and the definition of 'associate' does not speak to corporations, so its application to corporations and hence the operation of section 107E in relation to corporations is unclear. This approach would be consistent with the associates provisions in the *Gaming Machine Act 1991*. The current section 107E(1)(b) of the Liquor Act provides that the Chief Executive must, in assessing an applicant's suitability to be granted an AEP, consider whether an applicant has committed an indictable offence or an offence against the Prostitution Act. Similarly, section 107E(1)(e) makes relevant the question of whether the applicant has been charged with an offence of a sexual nature.

With regard to the Special Permit 2, it is proposed that the current AEP regulatory scheme be retained, with the modifications suggested above. Less extensive checking will be sufficient for other applicants. For example, it would be sufficient for applicants for a standard AEL to be subject merely to a criminal history check.

In the CMC's view, regard should be had to previous convictions when determining the suitability of a person to be granted a licence, but previous convictions should not necessarily be a bar to the granting of a licence or permit. The current requirement that regard be given to whether an applicant has been charged with an offence of a sexual nature should be retained.

#### ***Recommendation 12***

**That probity checks be retained at levels currently set out in the Liquor Act in relation to applicants for a Special Permit 2, with more limited checking for other applicants.**

#### ***Recommendation 13***

**That attention be specifically given to the status of a spouse in relation to the question of an applicant's probity.**

#### ***Recommendation 14***

**That the status of 'corporate' associates be clarified for the purposes of any applicant probity requirement.**

#### ***Recommendation 15***

**That the probity checking process ensure that previous criminal convictions (especially for offences of a sexual nature) are relevant to determining the suitability of a person for a licence, but are not an automatic bar to the granting of a licence.**

It will also be important to ensure that adult entertainment providers under any new licensing regime do not have interests in legal brothel/brothels. As is currently the case with AEPs, inquiries should be made to the PLA by the authority responsible for adult entertainment licensing to ensure applicants do not have such interests. Section 8 of the Prostitution Act should further be amended so that persons are ineligible to apply for a brothel licence if they also hold an AEL. Accordingly:

#### ***Recommendation 16***

**That as the authority responsible for issuing Adult Entertainment Licences, the LLD make inquiries to ensure applicants do not have interests in legal brothels and that section 8 of the Prostitution Act be amended to ensure that persons are ineligible to hold a brothel licence if they hold an Adult Entertainment Licence.**

### **Appropriate management**

The presence of crime (including prostitution, organised crime and illicit drugs), corruption, the exploitation of minors, and offence to community standards can be made less likely by way of a regulatory framework requiring live adult entertainment to be appropriately managed.

Inherent in any scheme to regulate live adult entertainment should be a mechanism to counter the impetus toward ever more sexually explicit conduct and/or prostitution. In the current scheme, supervision requirements (contained in s. 149B of the Liquor Act) attach to a licensee, permittee or controller. Although the present controller regime has been criticised by business owners/managers and the LLD for being overly resource-intensive, the dancers (as noted in Chapter 4) currently working in the regulated sector are uniformly in favour of a live controller scheme for workplace health and safety reasons. The level of supervision provided by controllers may also prevent prostitution from taking place, especially within

the already highlighted grey zone where sexualised physical contact between performers and patrons occurs.

In general, the extension to the controller system proposed by the CMC would be very similar to that operating under the current AEP regime, but with some enhancement. As noted in the body of this report, controllers tend to be drawn from a transitory population and tend to 'move on' before probity checks can be completed. The CMC believes that controllers under the new business licensing system proposed should not be subject to probity checks, since probity checks cause delays of many months to permit applications. Controller suitability should instead be assessed by a faster mechanism, such as a criminal history check only. The transitory nature of the population from which controllers tend to be drawn also points to the need to detach controller licences from venues. Consideration might be given to developing a controller register that would allow a controller to work for a range of live adult entertainment businesses.

It should also be recalled here that, under the current AEP system, controllers are effectively approved by the LLD upon submission of their details for checking. By the time final approval or rejection is determined by the LLD, the controller may well have already ceased employment and moved on to a new place of employment, where the process is then commenced anew. Removal of probity checking for controllers is therefore unlikely to result in any great practical change to the status quo.

A further issue relating to performer safety is raised by the 'dating' services currently provided by a number of venues. These services provide non-contact 'dates' to clients under strict contractual guidelines which a client is required to sign. Guidelines typically prohibit sexual contact and govern where a 'date' may take place.

In terms of 'dating' services also permissible under a Special Permit 2 attachment to an AEL, adequate provision (in line with current industry practice) must be made to ensure 'companion' safety and to prevent prostitution. With this view in mind, it will be important to ensure that the services provided remain strictly non-contact 'dates' and that such meetings always take place in public rather than private places.

The CMC believes that the supervision of live adult entertainment is important and should be a requirement of every AEL. However, the level and means by which the supervision should be provided will depend on and be adapted to the licence level and the context in which the entertainment is being provided. In some areas of the industry a controller (that is, a physical presence) will not be workable or applicable. Accordingly:

#### ***Recommendation 17***

**That a system of controllers supervising client–performer interactions wherever lap dancing takes place, as exists under current Liquor Act provisions, be maintained in the case of businesses operating under the terms of a Special Permit 2; but that controller licensing/registration be introduced to enable controllers to work across a range of venues, and that probity checking be limited to a criminal history check.**

#### ***Recommendation 18***

**That the operation of a non-contact 'dating' service by the holder of a Special Permit 2 be permitted, subject to adequate provision being required in line with current industry practice, to maintain 'date' safety and deter prostitution.**

### ***Recommendation 19***

**That supervision be made a requirement for all Adult Entertainment Licences with or without a Special Permit 1 or 2 but that the means and level of supervision be made dependent on the licence type and the context in which the entertainment is being provided.**

### **Advertising and marketing**

Advertising restrictions currently exist in relation to the regulated industry, but not in relation to the unregulated industry (which is the location of the more extreme forms of adult entertainment). This anomaly should be removed so that advertising restrictions are consistent throughout all sectors of the live adult entertainment industry.

The CMC is not persuaded that the current advertising restrictions placed on AEP-controlled venues are overly restrictive and accordingly takes the view that the current advertising restrictions should be retained and made applicable to the entire adult entertainment industry (given that all providers will now be required to possess an AEL). Accordingly:

### ***Recommendation 20***

**That the existing advertising restrictions applying to live adult entertainment businesses be retained and applied to all licensed providers of adult entertainment.**

The CMC is also of the view that controls over spruiking/touting may need to be extended, in light of community concern about unregulated sectors of the live adult entertainment industry touting for business. The CMC proposes that present limitations in the Liquor Act on spruiking and touting should be retained under the new regulatory framework and extended to the currently unregulated sectors of the industry. Accordingly:

### ***Recommendation 21***

**That spruiking and touting be restricted in every sector of the live adult entertainment industry. Licensees must ensure that spruiking or touting for business involving live adult entertainment occurs only on the premises in which the live adult entertainment is taking place and only on parts of the premises from which the spruiking or touting is not audible or visible to a person who is not on the premises.**

### **Variability of adult entertainment business licence conditions**

In the present regime, AEPs are extremely sensitive to change, in that small changes in permittee or venue circumstances trigger a cancellation of the permit.

The current provisions of the Liquor Act that enable variations to be made to licences could be used as a model for the proposed adult entertainment/sexual services business licence system to allow variations to permit conditions or circumstances without triggering a cancellation of the licence. Some examples of permissible variations could be:

- changes in nominee — a change in nominee currently triggers a cancellation of the AEP, but nominees are relatively mobile, and in many cases are simply employees with no other interest in the applicant corporation
- changes in controller
- changes in conditions (such as control or supervision arrangements) negotiated with the administering authority.

Variations to conditions could be made by application by the licensee, or conversely by the authority during the term of the licence.

### ***Recommendation 22***

**That the amendments made to establish the proposed licensing scheme include a regulation-making power and a power to condition licences; and allow also for reasonable variations to be made to licensing conditions or licensee circumstances without triggering a cancellation of the licence.**

### ***Recommendation 23***

**That the new licensing scheme provide a mechanism for variation of conditions either at the instigation of the licensee or at the instigation of the licensing authority.**

## **Trading hours**

There are a number of anomalies in relation to trading hours in the live adult entertainment industry. The current attachment of live adult entertainment regulation to Liquor Licences restricts venue opening hours, while in the unregulated sector venues without Liquor Licences may operate 24 hours a day, seven days a week, 365 days a year if they so choose.

Consideration needs to be given to this issue and a response developed by government.

## **Sale of live adult entertainment businesses**

The new regulatory scheme proposed to regulate the live adult entertainment industry should take account of present difficulties with the AEP system in relation to application for a licence where the purchase of the business to which it attaches is not yet finalised.

There is currently a time lag between purchasing a business and being able to start trading under an AEP. Provision could be made for licence applications to be made concurrently with an attempt to purchase a business or venue for the purpose of supplying adult entertainment. This would have the consequence of allowing an applicant in the process of purchasing a live adult entertainment business or venue to apply for an AEL before the sale settles. In this case, the licence would not be effective until settlement of the sale. Accordingly:

### ***Recommendation 24***

**That provision be made to enable a person who has contracted to purchase premises, to make application for an Adult Entertainment Licence at the time when the contract is made.**

## **Duration of Adult Entertainment Licences**

The extension of duration from one year, as is currently the case with AEPs, to three years for AELs is suggested in response to feedback from the industry and from the LLD that the probity checks, lack of resources on both sides, and high turnover of employees in the industry combine to create an ongoing administrative backlog, where venues and parties to the licence are frequently between licences while they wait for applications to be processed. Accordingly:

### ***Recommendation 25***

**That the length of Adult Entertainment Licences be extended (for example, three years), with a simple annual renewal process involving:**

- **payment of fees**
- **selected, random or targeted probity checks**
- **selected, random or targeted auditing of compliance with licensing conditions.**

### ***Recommendation 26***

**That a probity check be conducted at the beginning of any licence period and that the current licence continue to operate for the duration of any probity check made in the course of any change of licensee or nominee.**

### **Transitional issues**

Recognising the advantages in the current AEP system, and in order to create as little disruption to the industry as possible, the CMC believes that any venue currently holding a valid AEP should be granted an interim standard AEL and, upon request, an interim Special Permit 2. Accordingly:

### ***Recommendation 27***

**That all venues and operators currently holding a valid Adult Entertainment Permit should be granted an interim Adult Entertainment Licence and, on request, an interim Special Permit 2.**

### **Mechanism for periodic review of live adult entertainment regulation**

The live adult entertainment landscape may change in any jurisdiction over time. The current status quo of a complex enforcement regime is partly caused by the legal requirement to impose standards and frameworks developed over centuries of criminal law. Any regulatory framework developed in the context of live adult entertainment will require a mechanism for constant adaptation to changing community standards and changing industry practice. Accordingly:

### ***Recommendation 28***

**That any framework to regulate the live adult entertainment industry include a mechanism for periodic review — in the first instance to take place three years from the publication of this report.**

## **CAVEAT AGAINST CENSORSHIP OF ARTISTIC PERFORMANCE**

It is neither the intent nor the role of the CMC to make recommendations that have the effect of censoring or limiting artistic performances. Control over the limits of sexually explicit artistic performance properly resides with the criminal law, which determines which conduct is criminally indecent. The CMC recognises that a grey area between the two industries (arts and adult entertainment) will persist despite any codification. In such instances, ambiguities should continue to be resolved through the present mechanisms — for instance, through appropriate consultation between the QPS and Arts Queensland that does not usurp the proper role of the judiciary in interpreting the law. These mechanisms appear to be functioning well in this context. Accordingly:

### ***Recommendation 29***

**That the codification regime referred to in Recommendations 5–7 be drafted with the intent of accommodating current practice in the performing arts industry in relation to the treatment of sexual themes, subject to limits established by the criminal law.**

## THE WAY FORWARD

A robust live adult entertainment industry offering a variety of sexually oriented services exists in Queensland today. The industry is, however, largely unregulated, particularly those parts of the industry specialising in the most sexually confronting types of entertainment. The CMC is persuaded that the unclear and incomplete regulation of live adult entertainment underlies genuine and problematic uncertainties for business operators, law-enforcement agencies, performers, customers and the broader public about what exactly constitutes lawful adult entertainment.

The CMC believes that a more exhaustive, coherent and stringent approach to regulation of the live adult entertainment industry (in its entirety) is required for the purposes of preserving community amenity and minimising crimes such as illicit drug use/dealing, prostitution and the sexual exploitation of minors. In the CMC's view this can be achieved by clarifying a number of aspects of the existing regulatory scheme based upon AEPs and then extending this form of regulation to every provider of all but the very lowest-level forms of adult entertainment.

The regulatory scheme proposed by the CMC in this report is largely neutral in terms of its impact upon already well-established industry practices, but, to the extent that there are unavoidable changes associated with the imposition of a standardised scheme across both regulated and unregulated sectors, a conservative approach has generally been adopted. In the scheme proposed by the CMC, some practices occurring on the margins of the broader adult entertainment industry would no longer be permitted.

Critically, the CMC is confident that the licensing system outlined in this report 'draws a line in the sand' in a way that establishes very substantial impediments to the continuing drift towards ever more sexually explicit performances which increasingly blur the line between adult entertainment and prostitution. The CMC is also confident that the licensing system outlined in this report would foster the development of a more mature, accountable and crime-resistant live adult entertainment industry in Queensland.



# APPENDIX

---

## LETTER OF REFERRAL FROM THE PREMIER



Please quote: AR04/Law and Justice Policy

Mr Brendan Butler SC  
Chairperson  
Crime and Misconduct Commission  
GPO Box 3123  
BRISBANE QLD 4001

Dear Brendan

**Referral of research matter pursuant to s.52(1)(c) of the *Crime and Misconduct Act 2001* – review of the adult entertainment industry in Queensland**

In 1999 the Queensland Government imposed a regulatory framework on adult entertainment and prostitution through the enactment of the *Prostitution Act 1999*, and amendments to the *Criminal Code* and the *Liquor Act 1992*. The regulatory framework operates alongside certain offences in the *Criminal Code* to define the parameters of the lawful sex industry in Queensland.

There is now evidence of an unregulated adult entertainment industry that operates outside the regulatory framework. Examples include the provision of sexual acts under an arrangement of a commercial character performed on unlicensed premises, and peep shows. I am concerned that this unregulated part of the sex industry may undermine the effectiveness of the regulatory framework, including through enabling the entry of criminals and their associates into the sex industry.

Pursuant to section 52(1)(c) of the *Crime and Misconduct Act 2001*, I request the Crime and Misconduct Commission to undertake a review of the adult entertainment industry in Queensland, both regulated and unregulated, with the primary objective of considering options for improving the current regulatory framework in accordance with the attached terms of reference.

Executive Building  
100 George Street Brisbane  
PO Box 185 Brisbane Albert Street  
Queensland 4002 Australia  
**Telephone +61 7 3224 4500**  
**Facsimile +61 7 3221 3631**  
**Email** [ThePremier@premiers.qld.gov.au](mailto:ThePremier@premiers.qld.gov.au)  
**Website** [www.thepremier.qld.gov.au](http://www.thepremier.qld.gov.au)

## LETTER OF REFERRAL FROM THE PREMIER (Continued)

The review should complement rather than duplicate any investigations that the Crime and Misconduct Commission may presently be conducting in its review of the *Prostitution Act 1999*. Ultimately, the Commission's report on the *Prostitution Act 1999* taken with its report on the adult entertainment industry would provide government with a comprehensive analysis of the sex industry, both regulated and unregulated, and will inform any necessary changes. I have requested Louisa Pink, Executive Director, Law and Justice Policy to meet with you to discuss the referral, and assistance with resourcing this research project should it be required. Ms Pink may be contacted on telephone number 340 62121.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P Beattie', written in a cursive style.

**PETER BEATTIE MP**  
**PREMIER AND MINISTER FOR TRADE**

## LETTER OF REFERRAL FROM THE PREMIER (Continued)

### TERMS OF REFERENCE

#### Review of the Adult Entertainment Industry in Queensland

In 1999 the Queensland Government imposed a regulatory framework on adult entertainment and prostitution through the enactment of the *Prostitution Act 1999*, and amendments to the *Criminal Code* and the *Liquor Act 1992*. The regulatory framework operates alongside certain offences in the *Criminal Code* to define the parameters of the lawful sex industry in Queensland.

There is now evidence of an unregulated adult entertainment industry that operates outside the regulatory framework. Examples include the provision of sexual acts under an arrangement of a commercial character performed on unlicensed premises, and peep shows.

There is concern that this unregulated part of the sex industry may undermine the effectiveness of the regulatory framework. A principal concern is that it will enable the entry of criminals and their associates into the sex industry. One of the principal goals of the regulatory framework was to exclude criminals and their associates from involvement in the sex industry due to the historically strong connection in Queensland of the sex industry to criminal activity such as organised crime, illicit drugs and official corruption. Associated concerns include creating opportunities for the exploitation of minors and impacts on the amenity of local communities.

Pursuant to section 52(1)(c) of the *Crime and Misconduct Act 2001*, the Crime and Misconduct Commission is requested by the Honourable Peter Beattie MP Premier and Minister for Trade to undertake a review of the adult entertainment industry in Queensland, both regulated and unregulated, with the primary objective of considering options for improving the current regulatory framework.

The review should complement rather than duplicate any investigations that the Crime and Misconduct Commission may presently be conducting in its review of the *Prostitution Act 1999*. Ultimately, the Crime and Misconduct Commission's report on the *Prostitution Act 1999* taken with its report on the adult entertainment industry would provide government with a comprehensive analysis of the sex industry, both regulated and unregulated, and will inform any necessary changes.

## BIBLIOGRAPHY

---

Australian Bureau of Statistics 2004, *Queensland key statistics*, <<http://datahub/govnet.qld.gov.au>>.

Bergstrand, C & Williams, JB 2000, 'Today's alternative marriage styles: the case of swingers', *Electronic Journal of Human Sexuality*, vol. 3, <<http://www.ejhs.org/volume3/swing/body.htm>>.

Bernard, C, DeGabrielle, C, Cartier, L, Monk-Turner, E, Phill, C, Sherwood, J & Tyree, T 2003, 'Exotic dancers: gender differences in societal reaction, subcultural ties, and conventional support', *Journal of Criminal Justice and Popular Culture*, vol. 10, no. 1, pp. 1–11.

Bruckert, C 2002, *Taking it off, putting it on: women in the strip trade*, Women's Press, Toronto.

Bruckert, C & Dufresne, M 2002, 'Reconfiguring the margins: tracing the regulatory context of Ottawa strip clubs 1974–2000', *Canadian Journal of Law and Society*, vol. 17, no. 1, pp. 69–87.

Boswell, K 2004, *Future perspectives: legislative reform for Queensland's adult retail industry*, Adult Business Summit, Brisbane, 4 & 5 October 2004.

Chapkis, W 1997, *Live sex acts: women performing erotic labour*, Routledge, New York.

Dudash, T 1997, 'Peepshow feminism', in Nagle, J (ed.), *Whores and other feminists*, Routledge, New York.

Frank, K 1998, 'The production of identity and the negotiation of intimacy in a "gentlemen's club"', *Sexualities*, vol. 1, no. 2, pp. 175–201.

Frank, K 2002, *G-strings and sympathy: strip club regulars and male desire*, Duke University Press, London.

Hobson, BM 1987, *Uneasy virtue: the politics of prostitution and the American reform tradition*, Basic Books, New York.

Jordan, J 1997, 'User pays: why men buy sex', *Australian and New Zealand Journal of Criminology*, vol. 30, no. 1, pp. 55–71.

Lamoin, AL 2000, 'Staging commercial pleasure: women, work and the exotic dance industry', thesis submitted at The University of Queensland in partial fulfilment of the requirements of the degree Bachelor of Arts (Honours in Women's Studies).

Lewis, J 1998, 'Learning to strip: the socialization experiences of exotic dancers', *Canadian Journal of Human Sexuality*, vol. 7, no. 1, pp. 51–66.

Liepe-Levinson, K 2002, *Strip show: performances of gender and desire*, Routledge, London.

Monto, MA 2004, 'Female prostitution, customers, and violence', *Violence Against Women*, vol. 10, no. 2, pp. 160–88.

Neave, M 2002, 'The failure of prostitution law reform — the John Barry Memorial Lecture', *Australian and New Zealand Journal of Criminology*, vol. 21, no. 4, pp. 202–13.

Phoenix, J 2000, 'Prostitutes' identities: men, money and violence', *British Journal of Criminology*, vol. 40, no. 1, pp. 37–55.

Striptease Artists Australia Incorporated 2004, *Log of claims*, Striptease Artists Australia Incorporated, Canberra.

Scrutiny of Legislation Committee 1997, *The use of 'Henry VIII clauses' in Queensland legislation*, Legislative Assembly of Queensland.

Wood, EA 2000, 'Working in the fantasy factory: the attention hypothesis and the enacting of masculine power in strip clubs', *Journal of Contemporary Ethnography*, vol. 29, no. 1, pp. 5–31.